How do international women’s rights norms become effective in domestic contexts?

An analysis of the *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW)

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<th>Description</th>
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<tbody>
<tr>
<td>ACABQ</td>
<td>Advisory Committee on Administrative and Budgetary Questions</td>
</tr>
<tr>
<td>BPFA</td>
<td>Beijing Platform for Action</td>
</tr>
<tr>
<td>CAT</td>
<td>Convention/ Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>(I)CCPR</td>
<td>(International) Covenant on Civil and Political Rights</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
</tr>
<tr>
<td>(I)CERD</td>
<td>(International) Convention/ Committee on the Elimination of All Forms of Racial Discrimination</td>
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<tr>
<td>CEPAL</td>
<td>Economic Commission for Latin America and the Caribbean of the UN</td>
</tr>
<tr>
<td>(I)CESCR</td>
<td>(International) Covenant/ Committee on Economic, Social and Cultural Rights</td>
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<tr>
<td>CHR</td>
<td>Commission on Human Rights</td>
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<tr>
<td>CIM</td>
<td>Comisión Interamericana de Mujeres (Inter-American Commission of Women)</td>
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<tr>
<td>CMW</td>
<td>Convention/ Committee on the Rights of Migrant Workers and their Families</td>
</tr>
<tr>
<td>CNBB</td>
<td>National Conference of Bishops of Brazil</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention/ Committee on the Rights of the Child</td>
</tr>
<tr>
<td>CSW</td>
<td>Commission on the Status of Women</td>
</tr>
<tr>
<td>DAW</td>
<td>Division for the Advancement of Women</td>
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<tr>
<td>DAWN</td>
<td>Development Alternatives with Women for a New Era, NGO</td>
</tr>
<tr>
<td>DEDAW</td>
<td>Declaration on the Elimination of Discrimination against Women</td>
</tr>
<tr>
<td>DIESA</td>
<td>Department of International Economic and Social Affairs, former department of the UN</td>
</tr>
<tr>
<td>ECOSOC</td>
<td>Economic and Social Council of the United Nations</td>
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<tr>
<td>FWLD</td>
<td>Forum on Women, Law and Development, NGO in Nepal</td>
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<tr>
<td>GA</td>
<td>General Assembly of the United Nations</td>
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<tr>
<td>GASU</td>
<td>Gender Advisory Service Unit of the DAW</td>
</tr>
<tr>
<td>GDI</td>
<td>Gender-related Development Index</td>
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<tr>
<td>GEM</td>
<td>Gender Empowerment Measure</td>
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<tr>
<td>GR</td>
<td>General Recommendation of the CEDAW Committee</td>
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<tr>
<td>HDR</td>
<td>Human Development Report</td>
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<tr>
<td>HDI</td>
<td>Human Development Index</td>
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<tr>
<td>HRC</td>
<td>Human Rights Committee</td>
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ILO  International Labour Organization
IR  International Relations as an Academic Discipline
IWRAW  International Women's Rights Action Watch
IWRAW Asia Pacific  International Women's Rights Action Watch Asia Pacific
NGO  Non-governmental organization
NYTKIS  The Coalition of Finnish Women's Associations
OEP  Organización de Economía Popular (Basic needs organization)
OP  Optional Protocol to the CEDAW Convention
PDC  Partido Demócrata Christiano (Chilean Christian Democratic Party)
PPD  Partido por la Democracia (Chilean Party for Democracy)
PS  Partido Socialista (Chilean Socialist Party)
ROP  Rules of Procedure of the CEDAW Committee
SERNAM  Servicio Nacional de la Mujer (Chilean Women's Policy Agency)
SG  Secretary General of the United Nations
TAN  Transnational Advocacy Network
TANE  Tasa-Arvoasiain Neuvottelukunta (Finnish Women's Policy Agency "Council for Equality between men and women")
UDHR  Universal Declaration of Human Rights
UN  United Nations
UNCED  United Nations Conference on Environment and Development
UNDP  United Nations Development Programme
UNESCO  United Nations Educational, Scientific and Cultural Organization
UNHCHR  United Nations High Commissioner for Human Rights
UNHCR  United Nations High Commissioner for Refugees
UNFPA  United Nations Population Fund
UNICEF  United Nations Children's Fund
UNIFEM  United Nations Development Fund for Women
VCLT  Vienna Convention on the Law of Treaties
WHO  World Health Organization
WILDAF  Women in Law and Development in Africa
WILPF  Women's International League for Peace and Freedom, NGO
WPA  Women's Policy Agency
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Introduction

In the last 30 years the unequal gender relations that persist in all parts of the world have become a matter of international concern. Gender policy has developed into a field of its own for international organizations and now takes a place next to long-established domains of international cooperation such as trade relations or disarmament. A parallel process has occurred within nation states; since the 1970s states in every world region have created a variety of public gender policies. Both international and national dynamics have been strongly influenced, and often brought about, by non-governmental women's organizations and have shaped a global discourse on gender norms (Friedman 1995; Meyer and Prügl 1999; Mintrom and True 2001; Ruppert 2001). Main elements of this discourse are awareness raising regarding diverse forms of gender hierarchies worldwide and the struggle for universal standards to eliminate discrimination against women.

The global debate on gender norms has been sustained by governmental and non-governmental voices from different, yet often overlapping, cultural contexts. It has been ongoing precisely because it is full of contradictory ideas as to the best means to improve women's lives (Basu 1995). More recently, there have also been fundamental contestations and resistance, for example, from voices prioritising freedom of religion over gender equality (Friedman 2003). The 'public face' of this global discourse on gender norms has been the world conferences on women held between 1975 and 1995 in Mexico, Copenhagen, Nairobi and Beijing. A milestone in the discourse was the creation of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Adopted in 1979 by the General Assembly of the United Nations, CEDAW was the first international human rights instrument to explicitly define all forms of discrimination against women as fundamental human rights violations. As of June 2005, CEDAW has been ratified by 180 of 191 UN member states and thus represents the most wide-ranging international commitment of governments to work for gender equality.

It is noteworthy that CEDAW has not received much scholarly attention, with the exception of feminist international law literature that has drawn attention to the Convention's groundbreaking contribution in gendering international human rights law (Byrnes 1989, 2002; Cook 1994a; Freeman 1999; Gallagher 1997). For a variety of reasons, both non-feminist and feminist International Relations (IR) scholars have shown little interest in CEDAW as a potential instrument for social change. While international cooperation and the dynamics of global norm emergence are crucial areas of IR research (Finnemore 1996; Levy et al. 1995;
Ruggie 1998), the field of global gender policies has been largely ignored by non-feminist IR scholarship. Also, international human rights treaties such as CEDAW have been discussed as a special, and maybe least promising field of international cooperation as they dispose of weaker enforcement mechanisms than other forms of international regimes (Donnelly 1986; Moravcsik 1995). Feminist approaches in IR have, in contrast, focused on the hegemonic structures underlying international cooperation and have found that actors traditionally engaging in international cooperation – predominantly governments - represent certain interests and exclude many others, most notably those of women, the poor and citizens from postcolonial nations (Grewal 1999; Peterson 1990). Thus, feminist scholarship has focused on global and transnational women's organizations and women's movements as crucial actors in bringing the interests of women into international politics and in transforming gendered international power hierarchies (Brabant et al. 2002; Friedman 2003; Meyer and Prügl 1999; Naples and Desai 2002). This perspective does only marginally consider an instrument such as CEDAW that was created as a state-centered mechanism.

This study draws on both perspectives. It analyses the creation and repercussions of the CEDAW Convention and develops a theoretical perspective on international norms that goes beyond the international sphere. The analysis pursues two objectives: on the one hand, it empirically reconstructs the actor constellations around the CEDAW Convention to assess in how far the Convention may be a suitable instrument to achieve de-facto gender equality. To better understand the realization of international women's rights norms, it encompasses the complex connections between intergovernmental negotiations, international organizational structures, national interests and resources, non-governmental struggles situated in local contexts, and transnational advocacy. On the other hand, the analysis adds to broadening the scope of IR theory in designing a methodological and theoretical approach that captures transnational political processes.

Epistemologically, this project acknowledges feminist approaches as an innovative voice in IR theorizing and as an important perspective to analyze the CEDAW Convention, particularly because non-feminist approaches in IR tend to ignore policies regarding gender justice as a relevant international policy field. Further, the methodological focus of this study is on the construction of meaning of actors involved in the CEDAW process (see chapter 1). The analysis is based on the assumption that the creation and realization of international norms depends on both on concrete agency of a variety of actors and on the contexts and hegemonic structures in which these actors are embedded. To capture both dimensions, the theoretical framework combines three strands of IR theorizing (see chapter 2): first, regime
analysis is used to explain international cooperation, focusing on international conditions of cooperation, including interests, values and argumentative processes. It is complemented by research on compliance dynamics to integrate national reactions to international agreements.

Second, research on global norm diffusion reconstructs the processes that convert certain values into internationally authoritative norms as well as the dynamics that make those international norms meaningful in domestic contexts. To a certain extent, this perspective overcomes the segmentation of international vs. national domains, yet the understanding of reciprocity between international, national and local discourses remains limited. Third, feminist approaches have developed an understanding of transnationalism that focuses on non-governmental networks linking international normative standards with locally or nationally contextualized interpretations. This perspective is used here to analyze CEDAW and its impact as contingent on transnational networks of supportive actors.

The empirical analysis identifies patterns of interaction that have been supportive or impeding for the influence of the CEDAW Convention. On four levels, the networks around CEDAW as well as the constructions of meaning of the involved actors are mapped out. The core research methods used were document analysis and expert interviews. To differing degrees, they cover both objective information and subjective assessment regarding the CEDAW process (see chapter 3). The four levels analyzed are: the intergovernmental negotiations that laid the normative foundations of the Convention; the international operationalization of the instrument, that is the international monitoring procedure embedded in UN institutions; the repercussion of CEDAW in national contexts, and transnational dimension of non-governmental advocacy to support and proliferate the CEDAW principles. The study of these four levels serves to understand the different meanings and functions that have been ascribed to the Convention, as well as the varying conditions for its implementation.

The first level, the concrete drafting process of CEDAW in the 1970s was embedded in the multilateral context of the UN as well as in intergovernmental dynamics and power constellations of that time (see chapter 4). The Convention was an outstanding innovation in as far as it brought together the increased awareness within the United Nations for women’s issues and the discourse on international human rights standards. The outcome of the negotiation process signified a strong commitment to the principles of gender equality and self-determination of women, while other ideological positions did not find its representation in the text. The enforcement mechanisms of the treaty were kept vague to minimize the influence of the monitoring body as to interfere into the inner affairs of sovereign states. Arguably,
this result reflects the hostile international atmosphere at that time that was fostered by block confrontation.

Second, the international operationalization of CEDAW consisting of the monitoring body and its international support structures is analyzed (see chapter 5). This dimension looks at the particularities of CEDAW Committee itself, its members' self-construction of expertise, the exclusionary structures of membership influenced by governmental priorities, and the work performed by the monitoring body. It is argued that the Committee has, in its 25 years of functioning, both added to the broader international discourse on women's rights – e.g. in interpreting the Convention's meaning – and helped to improve the conditions for domestic compliance, e.g. in making the constructive dialogue more effective. Thus, the Committee has developed its activities both within and beyond its original mandate, a change that has positive repercussions on its international authority and domestic impact. Similarly, a more proactive approach of CEDAW's international support structures have improved the Convention's functioning: the technical and administrative support structures evolved from an inadequate situation into one that is comparable to the other Human Rights Treaty Bodies; the cooperation among the Human Rights Treaty Bodies has helped the CEDAW Committee to break its isolated situation and to draw the broader attention to gender-based human rights violations; and the cooperation between CEDAW and a number of Specialized Agencies of the UN, especially UNIFEM and UNDP, has lead to a far-reaching integration of the CEDAW principles in UN operations.

Third, national responses to CEDAW are presented in an overview of international and domestic compliance patterns of States Parties to CEDAW (see chapter 6) and in two case studies focusing on the contextualization of international norms in the domestic contexts of Chile and Finland (see chapter 7). These two elements enable, on the one hand, to draw general conclusions on the entirety of States Parties' attitudes to CEDAW, and to gain insights on concrete processes of norm appropriation on the other.

According to the general findings, international compliance patterns reveal a great deal of diversity and seem to depend on ideological affinity to the Convention and on the resources states dispose of. While there are diverging and even opposing positions among States Parties regarding the admissibility of reservations, these are not openly discussed – a trend that underlines the relevance of intergovernmental power relations in the CEDAW regime. While not all states engage in the reporting procedure as they should, Committee members have observed a general trend of States Parties to better understand the complex requirements of eliminating discrimination against women. The analysis of domestic compliance patterns in
43 States Parties reveals a moderate and low/moderate degree of compliance in the majority of states, while only seven states show a high or high/moderate degree. A range of explanatory factors for good compliance with CEDAW is discussed, in particular socio-economic prosperity; the political system and the degree to which women's interests can be represented; and the cultural affinity between domestic gender norms and the CEDAW principles. In addition, the connection between (sub)national and international dynamics through NGO activism or governmental policies was considered. To elucidate why states refuse ratify the Convention, the domestic debate regarding the ratification of CEDAW in the United States which is not a State Party to the Convention is presented.

To expand the generalized findings on States Parties' responses to CEDAW, the specific processes of the Convention's implementation are reconstructed in two States Parties with a comparatively high degree of compliance and differing cultural contexts, namely Chile and Finland. The two case studies first map out the domestic context considering the political system, the socio-economic conditions, the cultural idiosyncrasies in relation to the international normative framework, and the prevailing gender regime. Then, the states' performance interacting with CEDAW on the international level, as well as domestic compliance processes are presented. Regarding domestic compliance dynamics, the strategies of both state institutions and civil society actors are considered, as well as obstacles and resistance to the implementation of CEDAW. The in-depth analysis of the two domestic contexts confirms, on the one hand, the relevance of the explanatory factors, and it reveals specific types of compliance on the other. Further, it sheds light on the domestic processes of interpreting, negotiating, and appropriating – or rejecting – international norms and thus, underlines the high relevance of domestic discourses for international norm creation.

The fourth level of analysis captures a form of activism that was not originally part of the CEDAW monitoring procedure, that is, transnational NGO activism linking the international women's rights discourse with domestic women's organizations and national actors responsible for designing gender policies (see chapter 8). The strategies of the two most relevant transnational networks around CEDAW - IWRAW and IWRAW Asia Pacific - are discussed. Both organizations have been working for the improvement of the CEDAW procedure, e.g. in bringing the voices of national NGOs to the monitoring process, and especially IWRAW Asia Pacific has engaged both in strengthening international gender norms and in their domestic implementation. They share the belief that it is a reasonable strategy for non-governmental organizations to use the international human rights framework to enter into a dialogue and cooperate with governments to achieve substantive equality for women. It is
argued that this form of collaborative activism has added a crucial dimension to the CEDAW process and has significantly increased the Convention's domestic repercussions.

The analysis of the Optional Protocol to the Convention indicates that in this recent process, the transnational emphasis of norm creation and implementation as favored by NGO networks has gained weight in the CEDAW regime (see chapter 9). The Optional Protocol adds a complaint procedure to the treaty and was created within the rationale of international law. While it is, as the Convention itself, predominantly shaped by the interests of states, it is also a product of non-governmental activism. With the Optional Protocol, the perspective of the women suffering from violations of their rights has been integrated into the Convention's state-centered monitoring mechanism; however, the chapter shows that despite this innovation that was strongly promoted by transnational non-governmental activists, the authority of CEDAW depends first and foremost on the recognition of states.

The conclusion reflects both on the findings of this study and on the methodological and theoretical framework that is the base for their reconstruction (see chapter 10). How can the dimensions of impact of the CEDAW Convention, including their contexts and impediments be summarized? And how do the empirical findings contribute to further IR theory building? To answer the first question, the potential of CEDAW to eliminate discrimination against women is limited, in as far as CEDAW is a mechanism based on scarce resources that it is faced with a variety of normative traditions all over the world that are note particularly supportive to gender norms. In other words, the hegemonic structures it is embedded in suggest that a long-term perspective of change, if any, is most adequate. The Convention can, however, give impulses of change within all of these contexts, especially if this is enhanced by transnational activism that makes the domestic contextualization of international women's rights norms possible. Compliance strategies in which international, non-governmental and governmental actors work together have proved to be best suited to produce this contextualized translation. Regarding the second question, the result of this study is that the development of CEDAW from an international women's rights regime to a transnational implementation network bears several contributions to IR theory. The author wants to emphasize four of them, namely the acknowledgement of the complexity of political practice as base for theory building, the expansion of the scope of IR theory to capture transnational processes, the additional insights gained on the principle of state sovereignty, and the new elements elucidating the nature of international cooperation.
1. How to combine International Relations and feminist theories - epistemological considerations

International Relations (IR\(^1\)) has developed as a discipline with a predominantly – but not exclusively - positivist epistemology focusing on the relations between states and their repercussions for a stable world order. Within the so-called "Third debate" in the 1990s constructivist perspectives have gained weight. In this context, the epistemological assumptions of the discipline were challenged and new research topics were addressed, e.g. the function of non-state actors in international politics, the emergence of new international policy fields such as climate change, migration, and socio-economic globalization processes (List et al. 1995). Feminist approaches in the social sciences have not emerged as a discipline, but as an interdisciplinary critique of academic androcentrism. The conditions of the production of knowledge and the social construction of gender have played a paramount role in feminist debates (Lorber 1995). Within IR, feminist scholars have both given epistemological impulses in showing how the category of gender shapes research interests and outcomes, and they have widened the discipline's ontological scope in focusing on the international activism of women or targeting gender relations. In doing so, feminist scholars have contributed to construct gender policies as a new global policy field (Ruppert 1998a).

This project aims at contributing to combine constructivist and feminist discourses within IR and at develop crosscutting research questions. To map out the epistemological assumptions of this project, this chapter traces the disciplinary context in which constructivist approaches within IR emerged (1.1) and outlines the emergence of feminist scholarship in the field (1.2).

1.1 Paradigms and epistemological debates in IR theorizing

Contrary to other social sciences, IR was for a long time not significantly shaped by epistemological considerations. In Menzel's classification (2001), four main paradigms have shaped the IR discourse; while they shared the perception of the international realm as being uncontrollable, they developed different ways of explaining it: In the aftermath of World War I, Idealism emerged as a normative paradigm. Based on Kant's assumptions that peace is a reasonable choice for states, and that free societies are less likely to fight against each other

\(^1\) The acronym IR stands for "International Relations" as a discipline, in contrast to the political processes that are the field or research of this discipline; international relations as political processes are written with small letters.
than dictatorial states, representatives of this strand of thought assumed that states are prone to international cooperation for the sake of peace (Angell 1972; Long and Wilson 1995). While this paradigm lost a great deal of explanatory force after the failure of the League of Nations and in the light of German fascism, it has unfolded long-term repercussions in the development of international law. In the historical context of World War II and its aftermath, Idealism was replaced by Realism. This school of thought did not count on the ability of states to learn and to work together for a peaceful world order, but viewed them as exclusively interested in securing their self-preservation in a world of rivals. In a state of anarchy, this cold best be achieved by power over other states (Morgenthau 1948). Neo-realism as the structural elaboration of realism assumes that deterrence is required to maintain a balance of power, however, cooperation between states may take place as a by-product of the realization of the states’ interests (Waltz 1979). Institutionalism ranges between the two: Its basic assumption is that a peaceful international system is possible, if it serves the interests of states. It is not possible out of pure idealism, but based on the need of security of all states. At the same time, it needs a certain degree of mutual trust and reliability (Bull 1977). Contrary to the realist assumption of anarchy, institutionalism conceptualizes the international system as predominantly interdependent and in need of cooperation. Several other strands of thought, e.g. neoliberalism, depart from the idea of international cooperation as utility-maximizing behavior among states (Keohane and Nye 1977). Finally, Structuralism looks at the material structures on which the international system is based and places the interests of states foremost in the international economic system. Its main assumption is that international (in)security depends on the degree of international exploitation and the resulting distribution of resources (Galtung 1969; Krippendorff 1975).

These paradigms have not been developed based on explicit epistemological assumptions, however, the 1950s and 1960s brought a debate about appropriate methodologies in the discipline. Between the traditionalist approach that draws on historical methods and the new positivism that uses empiricist scientific techniques the latter prevailed, especially for the US-American IR discourse that has arguably been most influential in the discipline (Menzel 2001). In the 1990s, the “third debate” resulted in an epistemological reorientation of IR theorizing also know as the "constructivist turn". Basically, the assumptions of positivism have been questioned from different perspectives and to different degrees – constructivist

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2 In the European context, positivism was never as undisputed as in the US, and it gained highest relevance only in the 1980s in various rational-choice-approaches.
3 The "third debate" is preceded by the "first debate" between idealism and realism, which dealt with ontological questions, and the above mentioned "second debate" that resulted in the epistemological dominance of positivism (see Menzel 2001).
positions ranged from reforming positivist assumptions\textsuperscript{4} to radically criticizing them and to establishing epistemological alternatives (Menzel 2001: 46).

The main differences between positivist and constructivist positions as can be summarized as follows: While the epistemological access of positivists is to explain a problem from a not involved, objective position, constructivists intend to understand the meaning of action from within the social context of the actors. Positivists proceed from the idea of human beings as rational, independent actors with given preferences. They take rational decisions based on their preferences and all available information. According to constructivists, human beings are situated in a network of intersubjective meaning. Their preferences are not given, but constantly evolving and influenced by the social networks and norms around them. The rationalist \textit{homo oeconomicus} is situated in an international order that is perceived as a system of anarchy, while the constructivist \textit{homo sociologicus} is surrounded by an international community guided by common norms and rules (Schaber and Ulbert 1994: 141f). However, to construct a non-overlapping separation between positivism and constructivism does not reflect research practice, as the two positions have merged into a variety of approaches that combine elements of both in a logic of methodological appropriateness.

A position of “weak criticism” of positivism is the cognitivist-reflexive approach represented among others by Ernst Haas and Peter Haas (Hasenclever et al. 1997). Their main focus is on cognitive learning processes of actors embedded in a network of meanings and institutional practices. From the cognitivist perspective, cooperation and coordination of interests results from an ongoing process of sharing and comparing knowledge, a process that may result in adjusting and reformulating interests. Thus, contrary to positivism that takes interests for granted as driving forces for rational action, the focus here is on the cognitive and interactive \textit{creation} of interests. This process is based on sharing knowledge that is conceptualized as “shared meanings about cause-effect relationships … irrespective of ideological commitments” (Schaber and Ulbert 1994: 147). The approach does not take interests for granted but elaborates on their materialization. It thus adds a lot to the understanding of interests, but does not fundamentally challenge the basic logic of rational choice approaches.

\textsuperscript{4} One part of the “reformist” strand debated on the appropriateness of the research methods within a positivist framework. The trigger for this debate was the \textit{Designing Social Inquiry: Scientific Inference in Qualitative Research} by King, Keohane and Verba (King et al. 1994). The main purpose of the authors was to underline the necessity to reflect on the tie between theoretical assumptions and empirical research – and in this light, to explore the use of qualitative next to quantitative research methods. A number of scholars, many of them in the field of international regimes, have followed this approach (e.g. Bernauer and Mitchell 2001; Bernauer and Moser 1996; Young and Osherenko 1993).
A more radical rethinking of positivist assumptions is inherent in interpretative neo-institutionalist approaches (Checkel 1999; Finnemore 1996; Kratochwil and Ruggie 1986; Kratochwil 1989; Ruggie 1998; Schaber 1996; Wendt 1992). The notion here is that rules and institutions are guiding principles for the behavior of actors. Kratochwil states that “the world of observable facts” has to be interpreted by “the world of intention and meaning” which is embedded in “the world of institutional facts” (Kratochwil 1989: 23). In other words, there are no facts without interpretation, and no interpretation or opinion without institutional contexts. This concept focuses on the intersubjective momentum as well as on the normative force of institutions. In contrast to classical institutionalism and neo-liberalism looking at the potential of cooperation under the condition of anarchy, neo-institutionalism assumes a world community guided by underlying norms. Norm-guided behavior is based on the perceived legitimacy of these norms, not on utility-maximization. The most important new impulse of these approaches is the perception of the mutual and ongoing creation of actors and structures (e.g. Wendt 1992). It rejects the assumption that states, as interest-driven entities are the starting point of international relations, yet point to their non-static, constantly evolving character within the context of norms and institutions.

1.2 The "radical reinterpretation of tradition" as source of feminist theory building

Feminist scholarship5 has mostly developed as interdisciplinary perspective, because many existing academic disciplines seemed to be too androcentric and as a result, narrow-viewed to explore the gendered dimensions of reality in all its complexities (Kahlert 2001: 6). Next to academic production of knowledge, many feminist scholars have had the vision of political and social change. In the words of Gita Sen, "the essence of feminism is the radical reinterpretation of tradition" (quoted in Zalewski 1995: 339). As the co-founder of DAWN, an international network of women from the Global South, Sen has contributed both to improving the living conditions of women and to broadening the theoretical scope of international debates on gender and social justice.

Faced with an androcentric view on social reality, the political goal of feminists within the academic realm was the transformation of gender hierarchies by means of creating gender-

5 The term "feminist scholarship" is used here as a catch-all phrase for women’s studies, gender studies, and feminist theory, even if each term stands for different foci of research. In acknowledging the theoretical and conceptual diversity of feminist scholarship, the perspective here is to underline common grounds.
sensitive knowledge (Klinger 1990). The transformative potential of feminists in academia has been summarized as

"the deconstruction of error (eliminating falsehoods generated by sex-biased inquiry); the reconstruction of fact (incorporating women’s activities and perspectives into the study of humankind); and the reconstruction of theory (rethinking fundamental relationships of knowledge, power and community” (Peterson 1992: 192).

Accordingly, feminists concerned with international relations first criticized the focus on male actors and experiences and the omission of women's activities as the "givens" of IR theorizing (Beckman and D’Amico 1994; Ruppert 1998a; Sylvester 1994a; Tickner 1992; Whitworth 1994a). Second, they analyzed the roles of women within the "classical" fields of international politics, such as international organizations, the military, or in foreign policy (D’Amico 1999; Enloe 1990; Winslow 1995). The “Where-are-the-women?”-question lead to an expansion of traditional IR boundaries, as personal actions and experiences of women could be conceptualized as having international consequences. For example, the analysis of the roles of wives of soldiers and military prostitutes for the military as a legitimate and smoothly functioning organization has considerably changed our understanding of the connection between the military and civil sectors of society (see Enloe 1990; 1993; 2000). Armed forces are not only a war and defense machinery, its individuals need to be kept in best conditions for fighting, e.g. by means of military prostitution, that is, by women and even girls who often do not have another choice to earn their living. The military not only creates the need for prostitution, and therewith trafficking in and exploitation of women and girls. It further relies on loyal wives of soldiers who may cushion the psychological damages caused by warfare suffered by their partners once they are back in civil life.

Third, the ontological expansion inherent in taking women seriously led feminists to rethink the epistemological foundations of theory building in several ways. Among other innovations, the superiority of the theory-guided perspective of the researcher over "daily life" constructions of meaning was challenged (Abels 1993; Müller 1994); academic rationalism was criticized and a politically transforming perspective of feminist social science guided by partiality and empathy was developed (Mies 1978). Some feminists have formulated a research perspective called radical or standpoint feminism (Reardon 1985; Ruddick 1983) that has later been criticized by constructivists for its supposed "monopoly of insight" (Sylvester 1994b: 317). Feminist constructivists aim at rethinking the “natural givens and categories” of academic disciplines from a gendered perspective (Locher and Prügl 2001; Peterson 1992; Zalewski 1995; 1998). Their approach of a contextualized perspective to create knowledge is
diametrically opposed to standpoint feminism: instead of exchanging an implicitly androcentric with an explicitly gynocentric perspective, feminist constructivists situate the creation of knowledge within hegemonic relationships based on gender as well as on other mechanisms of exclusion such as class or race. In the words of Christine Sylvester,

“I want theorists of IR to take seriously the situated and shifting frames of knowledge that filter across the eyes of disenfranchised groups. But I do not want to say … that those groups have a monopoly of insight (…) The method I particularly want to explore is … a process of positional slippage that occurs when one listens seriously to the concerns, fears, and agendas of those one is unaccustomed to heeding when building social theory, taking on board rather than dismissing” (Sylvester 1994b: 317).

While these different feminist voices\(^6\) depart from different epistemological assumptions, most feminist scholars argue that a multi-voiced feminist project is needed to transform disciplinary theory building. For IR, Whitworth suggests that all feminist approaches make “a contribution toward uncovering the ways in which women have not been absent from international relations and the ways in which world politics have always been gendered.” (Whitworth 1994a: 83) She proposes a combined “gender-in-International-Relations”-perspective that investigates the traditional absence of women both from practice and study of international relations, expands the arena of legitimate inquiry in world politics, and emphasizes the ways in which identity and meaning are contingent and socially constructed (ibid.). Likewise, Ruppert (1998b) proposes an open, multi-layered, fragmented, bridging approach for feminist theorizing in IR that criticizes power relations, conceptualizes the international as global in bringing other than state actors in, and focuses on feminist transnational practice.

Within the broad range of feminist scholarship, a focus on international and global issues has become particularly strong since the 1990s. Several authors have tackled with the international gendered division of labor (Wichterich 1998), the meaning of racism and colonialism for gendered identities (Brems 1997; Coomaraswamy 1994; Grewal and Kaplan 1994a; Grewal 1999; Mohanty 2003), the gendered construction of states and nations (Kandiyoti 1991; Radcliffe and Westwood 1996), and the emergence of global women’s movements (Basu 1995; Friedman 1995; 2003; Kingeibi and Randeria 1998; Lenz et al. 1996, 2000; Naples and Desai 2002; Ruppert 1998a). Many of these studies have been inspired by global political activism of women. Further, they have expanded the scope of IR, both in focusing on the activism of women shaping the world order and in pointing to the gendered dynamics of

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\(^6\) Whitworth (1994a) and Ruppert (1998b) distinguish between three strands called empiricist or liberal feminism, radical feminism, and postmodern feminism.
all fields of world politics. Thus, they have been challenging the gender-blind foundations of IR theory building.

The development of feminist theory depends on the possibilities to connect with other discourses. In the case of IR, it has been difficult for feminist scholars to permeate the discipline – one hint for this is the absence of gender issues in important journals. In the special issue of the 50th anniversary of *International Organization*, Finnemore and Sikkink hold a shared understanding of "appropriateness" among IR scholars responsible for this absence:

"(T)here may have been a well-internalized norm … that research on gender and women did not constitute an appropriate topic for international relations scholarship. … (T)his does not imply that the editors self-consciously rejected articles on gender-related topics. To the contrary, we know a strong norm is in effect when it does not occur to authors to write on the topic or submit articles because it is not generally understood as an appropriate topic.” (Finnemore and Sikkink 1998: 894)

Thus, despite the growing contribution of feminist scholars to IR literature, gender is not understood as a crucial category within the discipline. However, the degree of openness towards feminist approaches varies among IR scholars. Robert Keohane, prominent representative of neo-liberalism and one of the early voices assessing feminist IR contributions, is an example of limited openness, even if he explicitly welcomes some feminist insights (Keohane 1989). He invites standpoint feminism to improve IR foundations, yet in a complete misunderstanding of the goal of this approach (Weber 1994). In this view, all what can be accepted from feminism is the category of sex as an additional variable that does not threat the foundations of the discipline (Peterson 1992). The constructivist Gerd Krell (1996) goes further in understanding the richness of feminist scholarship; he sees common ideas between feminists and diverse critical and constructivist IR authors, and criticizes feminist authors for having ignored these shared grounds; in his view, feminists paint a too monolithic picture of “male-stream”-IR.

Locher and Prügl (2001) propose to make use of the similarities between feminism and constructivism and to create a feminist constructivism based on the “ontology of becoming” – that is, on rejecting essentialism for the benefit of acknowledging dynamics and transformations - and an epistemology that takes power hierarchies as expressed in gender relations seriously. They argue that “sharing the middle ground” could be enriching for all perspectives, while the differences and specificities of each have to be valued. This kind of per-

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7 This debate was revived a few years later, yet did not get over the mutual misperceptions (Tickner 1997; Keohane 1998).
8 However, as Locher (1996) shows, Krell is also not fully aware of feminist scholarship, especially not of feminist constructivism.
ception prevents a simplifying polarization between academic approaches and bears potential for fruitful scholarly negotiations. However, open negotiation requires the valuation of distinctiveness, especially for feminist scholarship, as it is faced with the danger of being subsumed under other, e.g. post-positivist traditions (Zalewski 1998). Two feminist features are particularly valuable: first, the diverse knowledge gathered by different theoretical approaches, including liberal and standpoint feminism. The absence of women in IR and the power relation inherent in gender hierarchies all over the world are not only still existing, but also still not taken seriously enough in academic discourses. Second, cooperation with other producers of knowledge outside of academia, most importantly with the growing number of transnational gender activists, is an innovative and maybe the most powerful part of the feminist project of social transformation.

In sum, the relevance of feminist perspectives has not been acknowledged by all positions within IR theory, but the analysis of gender as a relevant category and new policy field in international relations has nevertheless become part of the discipline. In this context, it seems that feminist theorizing has the greatest potential of cooperation with constructivist IR approaches. Accordingly, this project draws on both traditions. The choice of the object of research – the CEDAW Convention and its repercussions – follows the goal of feminist scholarship to make activities of women visible. The scholarly neglect of women’s activism or, in the case of CEDAW, of an instrument in favor of women, contributes to the biased construction of disciplinary boundaries and of "reality" as defined by IR. Thus, this project is thought as correcting a blind spot of IR ontology, and as a result, of IR theory building. The project is also part of the epistemological broadening of IR. Instead of conceptualizing "the International" as mere activities between states, it is understood here as the sum of relations between a wide range of actors that “make the world hang together” (Ruggie 1998). This expansion is based on the understanding that intergovernmental, international, national, local and transnational processes mutually influence each other. It thus suggests a transgression of the disciplinary borderlines of IR and Comparative Politics. The assumption of interconnectedness of different spheres further draws attention to national and local activism that has often been neglected as a topic for IR theorizing, especially if constructed as "limited" to national or local contexts.
2. Theoretical perspectives on CEDAW: International regimes, global norm diffusion, and feminist transnationalism

The theoretical framework of this study intends to capture the transforming potential of CEDAW as comprehensively as possible. For this purpose, three theoretical approaches are combined, that is, regime theory and research on compliance, theories of global norm creation and diffusion, and feminist perspectives on transnationalism. This triangulation was chosen because all three theoretical positions provide important elements for the analysis of CEDAW, but at the same time, seemed to neglect other relevant dimensions. Hence, the combination of three theoretical perspectives aims at developing the most adequate analytical framework for my research purpose.

The first perspective, regime theory, analyses the dynamics of international cooperation in specific issue areas. In its constructivist version, regime theory looks at diverse impulses for cooperation besides interests of states, such as shared values or joint learning processes. Further, it considers the repercussion between concrete regimes and the broader context of international society as relevant for the formation and impact of regimes and includes the analysis of international institutions and non-state actors within these dynamics. Research on compliance extends this framework towards domestic dynamics resulting from international cooperation. The regime perspective serves well to analyze CEDAW as an arena of international cooperation regarding women's rights norms. It enables to look at the intergovernmental dynamics that led to the formation of CEDAW within a specific historical constellation, at the operationalization of CEDAW within the context of the United Nations as an international women's rights regime, at the attitudes of cooperating actors, in particular, at their efforts to comply with the international agreement enshrined in CEDAW. From a regime theory perspective, the main actors in this regard are states because they ratified the Convention, but the United Nations as international support structure as well as non-governmental organizations may also play a role in international cooperation.

The second approach, theories on global norm creation and diffusion, asks more generally how normative claims such as women's rights get internationally authoritative and under which conditions they gain relevance in domestic contexts. This perspective conceptualizes international and domestic normative discourses not as separated, but intertwined and overlapping. It examines the dynamics that create globally shared cultural values, explores why certain values become internationally accepted norms and others do not, and which actors are most relevant to produce such processes. Studies on global norm diffusion have shed light on the relevance of new actors in creating and spreading norms, particularly transna-
tional advocacy networks. From this perspective, transnational activism has profoundly transformed international relations, especially regarding the notion of state sovereignty and the clear separation of the international and the national. Theories on global norm diffusion go beyond the analysis of a concrete process of international cooperation and focus on the normative embeddedness of an international regime such as CEDAW. As international and domestic cultural contexts are understood as connected, this approach allows seeing CEDAW as a specific product of differing normative preferences. The focus on actors that connect domestic with international discourses provides a new way to look at modes of impact of the Convention beyond mere state action.

The third perspective is feminist transnationalism. Drawing from the growing literature on transnationalism and from global and transnational women's activism, feminist scholars have engaged strongly in the debate of transnational networks and discourses. This view complements the traditional view of IR theory on state-centered mechanisms. It focuses on situated women's struggles, their cooperation across national boundaries, and their potential to challenge international discourses and structures. Transnational non-governmental networks have linked international normative standards with locally or nationally contextualized interpretations and thus, have played an important role to legitimize - or to criticize and reject - global norms from the "bottom up". This theoretical approach perceives global norm creation not as a predominantly international discourse, but as a process that takes place in multiple contexts and is shaped by reciprocity and negotiation between these contexts – thus, it incorporates the dimension of local discourses and practices in theorizing international norms. In this analysis, a transnational feminist perspective helps to interpret CEDAW from the situated perspectives of women's rights activists. While it is a product of intergovernmental negotiations, its concrete domestic repercussions are better analyzed in the light of the linkages transnational feminist networks make between the Convention and their struggles for women's rights.

2.1 International rule-formation and national adherence: Constructivist approaches in regime theory and research on domestic compliance

In the 1970s, the CEDAW Convention was created based on the belief that an international treaty is an adequate tool to protect women's rights. At about the same time, regime analysis emerged as a new debate in IR theory. It reacted to the neo-realist underestimation of international agreements as results of states' interests without a transforming capacity on their own (Krasner 1983) and aimed at proving the relevance of cooperation for international sta-
bility. After decades of research and numerous studies on international regimes in different fields, it seems to be clear that international regimes are not only “epiphenomenal in relation to underlying forces”, as neo-realists see them (Levy et al. 1995: 287). At the same time, neo-liberal and constructivist perspectives have developed widely differing perceptions on international cooperation and regimes (Hasenclever et al. 1997; Levy et al. 1995; Müller 1993).

2.1.1 What is an international regime?

Neo-liberal (Bernauer and Moser 1996; Levy et al. 1995; Young and Osherenko 1993) and constructivist (Kratochwil and Ruggie 1986; Müller 1993; Schaber 1996) definitions of regimes resemble each other. Levy et al. start from Krasner’s early and widely accepted definition: "International Regimes are defined as principles, norms, rules, and decision making procedures around which actor expectations converge in a given issue area” (Krasner 1983: 2). Thus, the two crucial elements of regimes are the quality of setting stable rules and relationships, and the focus on a specific issue area, e.g. environmentalism or trade. In their own definition - “(I)nternational regimes (are) social institutions consisting of agreed upon principles, norms, rules, procedures and programs that govern the interactions of actors in specific issue areas” (Levy et al. 1995: 274) -, Levy et al. stress the aspect of constancy of regimes as social institutions. Also, they use the concepts of “principles, norms, rules, procedures and programs” to underline the different layers of agreement - going from most abstract to most concrete – which are inherent in international interaction. From a neo-liberal perspective, the core question of regime analysis is "(why) states may generate institutions in identifiable issues areas that affect their behaviour and foster cooperation, even if short-term interests would dictate deviation.” (Levy et al. 1995: 271)

Constructivist perspectives strengthen the idea of regimes creating social order and consensus: Kratochwil and Ruggie conceptualize international regimes as “principled and shared understandings of desirable and acceptable forms of social behaviour” (Kratochwil and Ruggie 1986: 764) with a regulative and a constitutive dimension: “that is, on the one hand, they operate as imperatives requiring states to behave in accordance with certain principles, norms and rules; on the other hand, they help create a common social world by fixing the meaning of behaviour.” (Hasenclever et al. 1997: 163) Thus, contrary to the neo-liberal perspective on states' interests in regimes, constructivists perceive regimes as both embedded in and creating an international social order based on shared believes and norms.
In the light of these definitions, the CEDAW Convention and its monitoring process can be called a women's rights regime. First, it consists of a stable set of principles, norms, rules, procedures and programs which are partly defined in the Convention itself, partly they were created in the working process. The principles CEDAW is based on in the sense of “goal orientations and causal beliefs” (Levy et al. 1995: 273) are three of the most important institutions of international law: the dignity of human beings, and here women in particular, resulting in individual rights; the respect of state sovereignty; and the principle to keep a contract. More specifically, CEDAW is based on the norm that discrimination against women has to be eliminated and that equality between men and women is desirable; the rules and procedures spelled out in the articles of the Convention give concrete instructions how to convert this norm into reality. Finally, the constructive dialogue with States Parties supports them in developing programs to realize the normative substance of the Convention. Second, CEDAW is operating in an issue area, namely the elimination of discrimination against women and gender equality. Third, CEDAW as a human rights treaty governs interaction of states, but in an indirect form: it monitors self-commitment of states with the long-term goal that states internalize women's rights norms. The more adherence to human rights norms becomes part of an international standard of state behavior, the more it becomes a relevant feature in international cooperation (Müller 1993: 169). Fourth, CEDAW contributes to the creation of common understanding regarding the social roles and rights of women. The recommendations of the Committee and its constructive dialogue with States Parties to the Convention have helped to clarify the meaning of women's rights and to set international standards.

2.1.2 Human Rights regimes: The special case

While regime theory has contributed a lot to the knowledge of international cooperation, only a handful of regime analysts have looked at Human Rights regimes more specifically (e.g. Donelly 1986; Henderson 1988; Krasner 1995; Moravcsik 1995; Schaber 1996). The reason for this is that human rights are special field of states’ cooperation: Unlike in trade or security regimes, which are concluded because non-cooperation would “(leave) each state worse off than it might have otherwise been” (Krasner 1995: 139), states do not directly cooperate in human rights regimes. Instead, they concentrate on international norm creation and promotion, but the enforcement of these norms remains under the control of each sovereign state; yet "the implementation of human rights in one polity is not likely to be dependent on monitoring behaviours in others" (Krasner 1995: 141). Thus, strictly speaking, the inter-
governmental cooperation in human rights regimes is on negotiating universally acceptable norms only, not on their realization. Donelly (1986) has called this form or regime "promotional" instead of "enforcing", while the enforcement capacity of a regime does not depend on the international agreement, but on the concrete behavior of states:

“(the) strength of a regime cannot be understood from an analysis of legal texts and constitutional structures alone but requires examining how states (and other relevant actors) use and operate within the formally specified norms and procedures; the real norms and procedures of a regime arise from the practice of its participants, which …often is not exactly what is specified in the legal texts” (Donelly 1986: 605).

In the case of the United Nations Human Rights Treaties, the promotional dimension of the regime has gotten stronger, as human rights norms form an “interdependent and synergistically interactive system of guarantees” (Donelly 1986: 607). This system started with the Universal Declaration on Human Rights in 1948 and has been further developed ever since, as the large number of specialized human rights treaties shows. However, even if these rights are viewed as binding international standards, states retain sovereignty in implementing these norms and often block their enforcement. This regime construct – high international authority, but decision making on the domestic level – is based on the political intention of the regime creators: on the one hand, they wanted to satisfy the "moral demand" to set a standard of human dignity after the atrocities of World War II, on the other hand, this demand was not connected to material interests of states and was therefore not a priority for states on the long run (Donelly 1986: 616f).

Accordingly, neo-realist and also some neo-liberal scholars perceive human rights regimes as "weak" regimes, because of their only promotional influence on domestic norm enforcement. Both Moravcsik and Donelly suggest that the influence of a human rights regime correlates with the cultural homogeneity of participating states. Moravcsik (1995) finds that even under conditions of relative cultural homogeneity as in the "best case" of European human rights regimes, the development took a long time, and it was only “successful … among nations that already effectively guarantee basic rights, rather than introducing human rights to new jurisdiction.” (Moravcsik 1995: 157) The most important European Human Rights Institutions were able to promote a process of perfection of pre-existing domestic human rights guarantees, but they could not effectively deal with gross human rights violations. In a broader study on several regional human rights regimes, Donelly similarly observes “a trade-off between regime strength and inclusiveness. (…) relative homogeneity … seems almost a necessary condition for moving beyond a promotional regime.” (Donelly 1986: 637) Further, the strength of a human rights regime depends on national commitment, but not only by the
government itself, but also by internal forces and civil society in general. The compliance with international human rights norms presupposes an autonomous civil society and robust domestic legal institutions (Moravcsik 1995). As many states lack these preconditions for an effective international regime, Moravcsik suggests that it would be more useful to try to create these conditions – e.g. strengthening civil society - than to hope for regime effects.

In sum, the impact of human rights regimes depends to a large extent on domestic commitment, and thus, the expectation that a Human Rights Treaty such as CEDAW directly causes social change has to be put into perspective. Within a constructivist theoretical framework, this study envisions more than the direct cause-effect relationship between one specific international regime and its domestic impact. The constructivist perspective makes it possible to look at human rights regimes as contributing to and being shaped by a common international discourse on human rights, that is, they are not seen as independent procedures, but as part of a broader normative framework (Schaber 1996). As a consequence, human rights regimes' indirect and long-term influences both on international norms and domestic social change are also part of the analysis.

2.1.3 Perspectives on regimes

According to Hasenclever et al. (1997), the three most important strands of research on international regimes are power-based theories, interest-based theories, and cognitivist approaches. All three perspectives share the neo-institutional assumption that institutions matter (March and Olson 1984), yet they disagree in how much institutions matter. Power-based theories of regimes “are least inclined to ascribe a considerable degree of significance to international institutions, although they acknowledge that regime-based inter-state cooperation is a reality that is in need of explanation” (Hasenclever et al. 1997: 3). Interest-based – or neo-liberal - theories of regimes “emphasize the role of international regimes in helping states to realize common interests.” States are portrayed as utility maximizers, while institutions are seen as helpful for “self-interested states to coordinate their behaviour such that they may avoid collectively suboptimal outcomes” (Hasenclever et al. 1997: 4). Cognitivist - or constructivist - perspectives on regimes criticize several epistemological assumptions of power-based and interest-based approaches (see 1.1), in particular, the conception of states as unitary actors rationally pursuing their interests and the static view of the international system as result of state action. To overcome this flaw, constructivists suggest that “an institutionalism that is informed by a sociological rather than a rational choice perspective is appropriate for
the international system” (Hasenclever et al. 1997: 5). In this view, states are understood as role-players rather than utility-maximizers, and “international institutions appear as necessary features of international politics because they are prerequisites for, rather than consequences, of rational choices.” (Hasenclever et al. 1997: 139) This section presents those perspectives considered most appropriate for the analysis of CEDAW, that is, predominantly constructivist approaches⁹. Both power-based and interest-based approaches do not sufficiently capture the dynamics of a human rights regime; power based approaches ascribe too little weight to the transforming potential of an international institution such as CEDAW, and interest-based approaches assume that states cooperate to avoid collective disadvantages – however, human rights regimes are forms of international cooperation that do not monitor inter-state conflicts and thus, a state does not directly gain any advantage from joining the regime; instead, it accepts that an international mechanism scrutinizes its domestic affairs, and it confirms the legitimacy of international human rights norms.

2.1.3.1 Stages of regime building and operation

As one of the authors combining neo-liberal and constructivist elements, Oran Young (1998) developed a scheme of regime formation and operation. He divides a regime into three stages: “agenda formation” as an open process of consultations before embarking for a concrete regime, “negotiation” as the process of bargaining resulting in a fixed agreement, and international and domestic "operationalization"; on the international level, this is a monitoring apparatus to administer the regime on an ongoing basis, on the domestic levels, it is the diverse ways of governments trying to translate the provisions of the regime from paper into practice. Contrary to the belief of cooperation being shaped by interests only, Young finds that each of these stages follows different rationales: in the first stage, ideas are the driving forces of the process, while interests become most important during concrete negotiations. For both international and domestic operationalization, material resources are crucial. Further, states are not the only actors in this process, but they are influenced by non-state actors, especially because international negotiations are linked to domestic bargaining processes.

Young takes regime formation and effectiveness into consideration and integrates different factors influencing regime building and operation. He stresses the point that a regimes should provide space to find common grounds, to define the problem in a suitable way for all

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⁹ It has to be noted that there is not always a clear-cut line between interest-based and constructivist approaches, as some authors combine them (e.g. Young 1998; 2001).
parties involved, and to allow learning processes. This perception of cooperation comes close to the nature of human rights regimes that have the goal to come to a shared understanding of norms without the means of sanctions. However, the linearity of regime stages as spelled out in his model remains too static to encompass international human rights regimes. The debate about norms does not end with signing the treaty, as their contestation, interpretation and clarification remain an integral part of international and domestic operationalization. Thus, the regime may be better perceived as a circular, not a linear process: states agree on norms in a treaty, but further interpret and possibly transform these norms in their compliance practice, together with international and domestic non-state actors.

2.1.3.2 Intersubjective interpretations and learning processes

Constructivists assume that reality is always subject of interpretation, yet interpretation depends “on the body of knowledge actors hold at a given time and place.” (Hasenclever et al. 1997: 140) Intersubjectively shared knowledge and on this base, common interpretations, are necessary for both regime formation and regime performance. It is a question of particular interest where these shared expectations are acquired and how and why they change, since changes in ideas may result in a change of interests and of behavior. These processes of change have been called “complex learning” (Nye 1987: 380) and are encouraged by special actor constellations. E.g., Haas (1992) has found "epistemic communities" to be crucial actors in international learning processes. He defines them as: “network(s) of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue area” (Haas 1992: 3). Their authority depends predominantly on the need of information and a high degree of uncertainty among policy makers, and on consensus among scientists.

The element of learning suits the monitoring rationale of human rights regimes and of CEDAW in particular, and the monitoring bodies as well as a number of non-state actors try to influence governments similarly to Haas' epistemic communities. There is a high degree of uncertainty among policy makers about how to implement human rights norms, thus, expert knowledge is needed. However, uncertainty about an issue does not necessarily make it a priority for policy makers, as is the case for human rights, and even more for women's rights. Further, it is almost impossible to gather uncontested knowledge as for how to solve social problems underlying human rights violations. Thus, Haas’s understanding of knowledge seems to be better applicable to scientific than to social questions. It would have to be expanded and include social movement actors in the category of experts, and “scientific consen-
sual knowledge“ would have to be converted into a process of coming to share assessments from different angles (Finke 1998).

2.1.3.3 Regimes within the broader context of international society

Contrary to "utilitarian approaches (that) do not problematize the capacity of rational actors to engage in optimising behaviour", constructivist perspectives argue that “international regimes are embedded in the broader normative structures of an international society and that (...) individual rationality always presupposes sociality” (Hasenclever et al. 1997: 155). In this view, international regimes are more robust than utilitarian reasoning would predict, because of their belonging to broader normative networks. It would be misleading to conceptualize states as already existing entities that create cooperating institutions. Rather, institutions constitute states. Andrew Hurrell (1995) reflected on the connection between theories on regimes and on international society as a broader context of commonality. Both share the idea that laws and norms exercise a “compliance pull of their own”, partially independent of power and interests. While regime theory looks more closely at concrete mechanisms of international cooperation, models of international society (Bull 1977) shows that specific legal rules only gain constitutive force in the broader structure of an international system: states follow rules, if they are generally interested in a “law-impregnated” international society. Thus, the “transcendental interest” of states to belong to an international society runs much deeper than utility-maximization. Accordingly, state's interests depend on the community of states, on an international "sense of we-ness" (Henkin 1990).

Concrete cooperation mechanisms and international society mutually reinforce each other: Each cooperation mechanism potentially strengthens the international community building and contributes to establishing shared believes. It is probably more important to find shared understandings in areas of deeply rooted moral values such as in the field of human rights than in others. On the other hand, a general framework of justice and order can foster specific projects of international cooperation. The diversity of domestic contexts build the components of international community, both as “suppliers of values” and as “fields of repercussion” of international rules. From another angle, the unitary character of the "international

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10 According to Bull's definition, international society "exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another and share in the workings of common institutions." (Bull 1977: 13)

11 However, Müller points out that shared believes are equally important in trade regimes, even if they seem to be based “only” on interest-calculation and utility-maximization of the players, as these are already shared values (Müller 1995).
community” is questioned. Mayer et al. (1995) argue it is unlikely that one kind of social order will dominate IR in the near future, instead, “(t)he coexistence of different partial orders each considered legitimate in its sphere may turn out to be a permanent feature of international politics.” (Mayer et al. 1995: 405) Within this model of coexistence, non-hierarchical institutions based on cooperation will gain relative importance over states.

More than instruments of direct intergovernmental utility-maximization, human rights regimes are mechanisms to build common normative ground. This feature makes the constructivist consideration of institutions as embedding forces a fruitful analytical perspective. CEDAW can be conceptualized as a concrete regime in the framework of international society that contributes to the body of shared international values. Nonetheless, state's interests and power relations play a significant role in human rights regimes, yet they have to be understood within their international context.

2.1.3.4 Regimes constructing an intersubjective web of meaning

Constructivists perceive regimes as “principled and shared understandings of desirable and acceptable forms of social behaviour” with a regulative and a constitutive dimension (Kratochwil and Ruggie 1986: 764; see also 2.1.1). This notion sheds new light on the meaning of regime impact: apart from the regulative dimensions of domestic compliance, regime effectiveness in the constitutive sense means that norms gain recognition and validity within an international "web of meaning". This kind of shared recognition depends on practical discourses between international actors. “There is a permanent need for communication in international relations in order to produce and maintain the convergence in expectations that regimes live by.” (Hasenclever et al. 1997: 176) In the tradition of Habermas, communication is perceived as the logic or arguing based on the force of the better argument (Risse 2000). The focus on a regime's constitutive dimension allows interpreting non-compliant behavior of states not as regime weakness; instead, the communication processes that the supposed breach of rules causes can lead to a rethinking of the rules and the breach. In discussing non-compliant behavior, international actors may find that the concerned state didn’t have another choice or that it interpreted the rules in a different way. Thus, the understanding of rules is not unambiguous, but a matter of intersubjective appraisal – their meaning has to be jointly constructed.

This perspective changes the view on international regimes that are perceived as "weak" simply because they lack coercive enforcement mechanisms such as sanctions. The logic of arguing with the aim to find a way to share principles and agree on a set of norms is
not considered weak, but as maybe even more effective than coercive instruments, since states
are not challenged in their sovereignty and are more likely to agree to the rules voluntarily.
The idea of "constructing intersubjective meaning" also stresses the relevance of continuous
debate to come to shared norms. Clearly, it is not enough to once sign a treaty, but constant
scrutiny and interpretation is needed.

2.1.3.5 International treaties as concrete mechanisms of “we-ness”

In their research on compliance with international treaties, the international law schol-
ars Abraham and Antonia Chayes perceive concrete treaties as the "basic architecture" of the
international order (Chayes and Chayes 1993; 1995). In opposition to the assumption that
states break treaties whenever his seems to serve their interests, Chayes and Chayes observe
a strong propensity of states to stick to international agreements. They found two most ex-
planatory factors for this behavior: First, it serves a state’s interest to join a treaty, yet the no-
tion of interest is neither static nor pre-existing to the treaty: “Modern treaty making … can be
seen as a creative enterprise through which the parties not only weigh the benefits and bur-
dens of commitment but also explore, redefine, and sometimes discover their interests”
(Chayes and Chayes 1995: 4f). Treaty negotiations usually leave room for accommodating
divergent interests, especially under a well-designed agreement which is “sensible, compre-
prehensible, and with a practical eye to probable patterns of conduct and interaction” (Chayes and
Chayes 1995: 7). Second, the normative character of treaties exercises a compliance pull,
since actors won’t ignore norms completely, if they consider them legitimate. Only in very
rare cases, states do willfully violate treaties or join them exclusively to appease other states.

Thus, the authors’ assumption is that states do not have to be forced to comply with
their international obligations, because they are (at least in principle) favorable, not unwilling
to follow them. Instead of coercive measures that are inefficient to increase compliance,
Chayes and Chayes present an alternative “managerial model” which relies “primarily on a
cooperative, problem-solving approach” (Chayes and Chayes 1995: 3). The underlying idea
of this model is that in the world of today, states need to cooperate and thus, come to a diffe-
rent understanding of national sovereignty that “for all but a few self-isolated nations, … no
longer consists in the freedom of states to act independently, in their perceived self-interest,
but in membership in reasonably good standing in the regimes that make up the substance of
international life.” (Chayes and Chayes 1995: 27; see also Schaber 1996: 222)

If states are indeed willing to comply with their treaty obligations, why does the real
situation of compliance reveal another picture, particularly regarding human rights treaties?
Chayes and Chayes identify three major problems that hinder states to comply. First, the ambiguity of treaty language makes it difficult for states to exactly be aware of what their responsibilities are. Most treaties are written in a language that is open to interpretation, sometimes because of lacking consensus in the negotiations, sometimes to leave space to treaty parties to develop own legitimate ways of implementation. Thus, in most cases, non-compliance is not clearly identifiable deviant behavior, but a form of interpreting the treaty in a way that is not considered adequate by other treaty parties. A debate about treaty interpretation may suffice to transform this form of non-compliance. Second, states have limited capacities to comply with treaty obligations, especially if the regime involves affirmative obligations of the state, or if it is not only state behavior that is regulated, but behavior of private actors as well (Chayes and Chayes 1995: 13). Third, there is a time shift between setting up an international regime and the domestic enforcement of it. This is true even under ideal circumstances, which requires international treaties to concede transition periods to states. Human rights regimes “may be seen as an extreme case of the time lag between undertaking and performance” (Chayes and Chayes 1995: 16), nevertheless, “they embody ideals of the international system but, like other regulatory treaties, they were designed to initiate a process that over time … would bring behaviour into greater congruence with those ideals.” (Chayes and Chayes 1995: 17) In the view of the authors, these expectations have not been wholly disappointed.

To deal with these obstacles, the authors propose a managerial model of compliance. In this model, unsatisfactory performance “represents a problem to be solved by mutual consultation and analysis, rather than an offence to be punished” (Chayes and Chayes 1995: 26). States have to give reasons for suspect conduct, but at all stages, they are given every opportunity to conform. In the end, if a state still doesn’t conform, the sanction for violation is not penal, but exclusion from the network of solidarity and cooperation. Key elements of this model most relevant to human rights regimes are, first, ensuring transparency, second, capacity building to reduce deficits of technical and bureaucratic capability, and third, the adoption and modification of treaty norms. Transparency ensures that every treaty party has access to information about the compliance behavior of others and thus serves as a measure of deterrence for non-compliance. It can be ensured by different measures: self-reporting is “a first step of translating norms into the daily work of administration” (Chayes and Chayes 1995: 154), while independent information, e.g. provided by NGOs or special rapporteurs appointed by international institutions are an effective supplement. The adoption and modification of treaty norms form an ongoing discourse of what the regime norms actually mean, whereas
international and domestic experts are involved. In case of human rights treaties, committees of international experts initiated the practice of general recommendations and created its own capacity to interpret norms that were kept too vague in the treaty (Chayes and Chayes 1995: 216). Likewise, the policy review and assessment is designed as a dialogue between states representatives and the international monitoring body. It can unfold pressure, but it is also a mechanism of reassurance of treaty interpretation. NGOs as well as international institutions have a significant influence in making this model meaningful.

It has been claimed that the high level of compliance observed by compliance researchers has to do with the fact that most treaties require states to make only modest departures from what they would have done in the absence of the agreement (Downs et al. 1996). While this argument does not hold true for a range of treaties, especially in the field of human rights, it loses validity within a constructivist perspective of international norm creation as a joint effort among states. Within a community of states, it is not out of place that agreements on and compliance with international norms follow a logic of small steps on a path of uncertainty. However, the managerial model seems to be based on some unspecified and unquestioned assumptions that need to be clarified, e.g. why it is supposed to be so worthwhile for states to be rule-abiding. The relevance of the approach for this project lies in its view on compliance as a long, evolving learning process and its focus on the step-by-step potential of international treaties to increase compliance.

2.1.4 Constructivist regime theory under scrutiny – final critical remarks

While constructivist perspectives on international regimes are most insightful for the purpose of this study, two critical remarks seem appropriate here. The first point of critique is that the notion of states and international society mutually constituting each other is misleading because “the level of institutionalisation of international politics is still, by far, too low to significantly affect the identities and interests of the actors” (Hasenclever et al. 1997: 210). Besides, states usually are more influenced by domestic than by international dynamics. This remark is important to maintain a balanced view of the relations between international, state and non-state domestic and transnational actors. It helps to perceive the impact of an international regime such as CEDAW as embedded in a web of other, predominantly domestic actors.

The second criticism points to the power structures underlying international cooperation that are neglected by regime theory. The claim is that cooperation is not a good thing as such, as regime theory implicitly or explicitly assumes: “It (regime theory, S.Z.) encourages
us to regard regimes as benevolent, voluntary, cooperative, and thus legitimate associations – as desirable as well as important phenomena.” (Keeley 1990: 84; see also Strange 1983) Also, it is analytically misleading to view regimes from the perspective of the actors in favor of it: “although international regimes may be valuable to their creators, they do not necessarily improve world welfare. They are not ipso facto good.” (Keohane 1984: 73). The question of power is especially relevant for regimes that aim at developing dominant discourses, such as human rights regimes. Krasner argues that the development after 1945, which brought about the strongest Human Rights regime in history, was clearly based on western values, because “the prominence of western conceptions reflects the distribution of powers … in the international system.” (Krasner 1995: 161) Other conceptions, e.g. with a lesser emphasis on the individual, were less powerful and did therefore not shape the concept of human rights to a significant extend. Similarly, Cox (1996) describes the international institutions of the post war era as part of a hegemonic world order controlled by the United States with other OECD nations. As the concept of human rights is part of this order, it does not follow principles of justice, but reflects the values and interests of the most powerful.

A Foucaultian view on regimes “takes seriously how actors understand, construct, and act within public spaces, but … does not accept legitimacy claims on behalf of specific constructions. Consequently, he (Foucault, S.Z.) highlights public spaces and regimes as forums and objects of struggle.” (Keeley 1990: 105) Instead of looking only at the actors which agree to join in cooperation, all perspectives are part of the problem, including those that do not get integrated in the definition of what the problem is and how it should be handled: “The standard case … assumes that people, fish, and sea gulls want clean water in Lake Erie; who asks the scum?” (Keeley 1990: 86) From this point of view, a regime is a set of hegemonic discourses that defines order in a certain public issue area. These discourses are based on power, which Foucault defines as networks of relations. Regimes, then, are “localized power/ knowledge – specific arrays of analyses, issue-areas, and disciplinary devices – in this network” (Keeley 1990: 96).

In sum, a regime will include a discourse over the correct naming and evaluation of an issue area while splitting off deviant perceptions. It contains actors who accept this base and claim it to be legitimate, “free-riders”, who don’t want to support the regime but benefit from it, rebels, who work to change the order or the regime from inside, and total outsiders. The consideration of power relations is without doubt highly relevant in a regime that defines the legitimate frame of human rights of women. Thus, the reflection of the position of power of actors involved in regime creation and operation of CEDAW as well as the normative convic-
tions resulting from this position is a central part of this study; also, the transformation of the initial rationale of the CEDAW Convention by actors that were first excluded from the process points to the relevance of inclusion and exclusion of certain positions of power.

2.2 Human rights and global norm diffusion: the concepts of transnational networks and advocacy coalitions

While regime theory analyses CEDAW as an international agreement, this section turns to the question how global norm emerge, how they become meaningful in domestic contexts and which actors are promoting and translating them. From this angle, CEDAW can be understood not only as an inter-governamental agreement, but also as an inter- and transnational network supporting the enforcement of women's rights.

2.2.1 Concepts of global norms and the process of their diffusion

The term of norm diffusion is born out of the context of neo-institutionalism (Boli and Thomas 1997; Meyer et al. 1997). The basic argument of this approach is that bureaucratic organizations do not rise and spread because they are functional, but because they are legitimated by a wider environment that supports rational bureaucracy as a social good. Accordingly, supposedly abstract functional principles such as rationality or efficiency have to be conceptualized as culturally embedded (March and Olsen 1984). Hence, for neo-institutionalists, the international society is based on a “world culture” dominated by “Western” cultural values such as rationality, individualism, and the ideas of progress and justice. The “Western-style bureaucratic state” has become the uncontested form of political organization, not because it is functional for all societies in the world, but because a larger world culture supports them. (Finnemore 1996). Accordingly, neo-institutionalists analyze the “isomorphism of social forms across very different areas of the world in a wide variety of substantive areas” (Finnemore 1996: 334). They ask why institutions around the world do look so much alike even in radically different circumstances, and why they are not necessarily evolving according to local material needs. The crucial observation they make is the disconnection of local conditions and ideology of world culture: For example, what a given constitution contains is often more related to an international normative standard than to the social conditions within a national context.\(^\text{12}\)

\(^{12}\) Werz (1999) makes this argument related to Latin American constitutions (see also 7.1.1.1).
The neo-institutionalist notion of “world culture” captures the ideological foundation of international institutions such as the United Nations, international law, and human rights. A world standard has evolved here, mainly but not exclusively influenced by Western thought. This standard is ideologically well connected to some national and local contexts, in others however, it is less meaningful or even threatening. What is problematic about this notion of world culture particularly in the work of Meyer et al. (1997) is the under-emphasis of contestation and coercion in the creation of cultural norms, and likewise the homogeneous and static concept of "Western culture". It does not point to the inherent contradictions and tensions of world culture, and to the changeability of Western core convictions by non-Western influences (Finnemore 1996: 340f).

Finnemore and Sikkink (1998) build up on these neo-institutionalist assumptions and create a model of global norm diffusion including concrete mechanisms and agents. They define norms as “standard of appropriate behaviour for actors with a given identity” (Finnemore and Sikkink 1998: 891), yet what is appropriate behavior depends on intersubjective judgment. While there are “no bad norms from the vantage point of those who promote the norm”, this judgment might not be shared by the majority. “Because norms by definition embody a … shared moral assessment, norms prompt justifications for action and leave an extensive trail of communication among actors” (Finnemore and Sikkink 1998: 892). In other words, norms are contested fields, and they can unfold their validity in smaller or larger contexts in high or low intensity, varying over time. Domestic and international norms are not separated nor fundamentally different in nature, but hang together. Not only were many international norms first developed in domestic contexts, but “international norms must always work their influence through the filter of domestic structures and domestic norms, which can produce important variations in compliance and interpretation of these norms” (Finnemore and Sikkink 1998: 893).

Starting from this understanding of norms, Finnemore and Sikkink develop a model of a “norm life-cycle”, containing the three stages of norm emergence, norm cascade, and norm internalization. In the first stage, norm entrepreneurs with effective organizational platforms call attention to norms or create new norms. They try to persuade relevant actors and the general public to reconsider the dominant interpretation of a certain issue in accordance with the norm. This implies normative contestation, and persuasion strategies of norm entrepreneurs often use explicitly inappropriate means to redefine “appropriateness”. Motives of norm en-

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13 A number of authors make this argument for human rights norms, e.g. Brems 1997; Bunting 1996; Grewal 1999; Wilfred 1994.
entrepreneurs are ideational commitment or a “shared perspective of common humanity”, both of which are not necessarily free of self-interest.

The norm moves to stage two and "cascades" when it reaches a “threshold point” – that this, when the norm entrepreneurs have persuaded a critical mass of states and when the norm has become internationally institutionalized to a certain degree. From this point on, the forms of norm acceptance change: norm followers imitate norm leaders. These following states do not adopt a norm because they have been persuaded by pressure groups, instead, their motives are “a combination of pressure and conformity, desire to enhance international legitimation, and the desire of state leaders to enhance their self-esteem” (Finnemore and Sikkink 1998: 895). Thus, the dominant mechanism in the second stage is international socialization through international legitimacy and esteem.

In the third stage, the norm acquires a taken-for-granted quality – it is no longer subject of public debate. Internalized norms can be both extremely powerful and hard to discern, precisely because they are not contested. The motive to follow the norm in this stage is conformity, and usually the norm is taken care of in specific institutions or bureaucracies.

While this model is a helpful construct to operationalize norm diffusion, it remains too static and too linear. In particular, the idea of a norm "cascading" over those states that are not entirely persuaded by it seems simplistic, as external motives of norm adoption may have consequences on norm internalization. Arguably, those states that seriously scrutinize the meaning of a norm and accept to behave accordingly may perform a much more comprehensive process of internalizing the norm than states that followed the norm because they are looking for international prestige. Further, even if a norm has become global in Finnemore's and Sikkink's sense, it still remains contested within some domestic contexts. In the case of women’s suffrage – an example often cited by the authors -, there are still states that do not accept the norm that women should be allowed to vote; thus, even if the threshold point of this norm has undoubtedly passed, it did not have enough impact on a number of states. Accordingly, Cortell and Davis (2000) criticize the norm life-cycle model as firmly anchored in an international perspective, despite Finnemore's and Sikkink's claim that domestic and international norms hang together. Their research focus on the system level tends to “capture group tendencies rather than the effects of norms on particular states”. Yet “a system-level analysis of compliance will underestimate the range of actors and decisions for which the norm was an important … factor.” (Cortell and Davis 2000: 68) Accordingly, the norm life-cycle model does not sufficiently look at the domestic dynamics to properly implement a
norm, in particular, the ongoing support and promotion that is still necessary even after international recognition\textsuperscript{14}.

\textbf{2.2.2 Domestic dynamics reacting to global norms}

Cortell and Davis detect a general research deficit in the field of international norm diffusion: not much effort has been made to measure norm salience in the domestic arena, or to trace pathways by which international norms come to infuse domestic understandings. In their view, a “better understanding of the domestic bases of support for international institutions” is needed (Cortell and Davis 2000: 87). Accordingly, they focus on the long neglected national context to identify those factors that make an international norm salient \textit{within} a given domestic context. “Domestic salience” of international norms is defined as the acceptance of the norm as “a guide to conduct and a basis for criticism, including self criticism.” … Salient norms give rise to feelings of obligation by social actors and, when violated, engender regret or a feeling that the deviation or violation requires justification.” (Cortell and Davis 2000: 69). However, domestic behavior consistent with an international norm does not necessarily mean that this norm is salient, as the behavior may have other causes. Therefore, Cortell and Davis suggest gauging salience along three dimensions: the changes in the national discourse, the state’s institutions, and the states policies \textit{in reaction to the norm} (see also Koh 1997). While changes in national discourses are most difficult to measure, they are most important, because the other two factors are influenced by this broader category, and because it can give insights to “non-events” that may be norm governed. As for different levels of salience, high salience corresponds to norm adoption in all three dimensions. Moderate salience accepts the norm as higher order, but the domestic discourse admits exceptions. The norm produces some change, but still has to confront countervailing institutions. If salience is low, norms have entered national discourse but fail to produce change. If a norm doesn’t have domestic advocates, there is no salience whatsoever.

A number of authors have discussed the question which kind of norm is likely to gain international recognition and to become meaningful in domestic contexts (e.g. Boli and Thomas 1997; Checkel 1997; 1999; Finnemore and Sikkink 1998; Keck and Sikkink 1998; Legro

\textsuperscript{14}The findings of Smith, Pagnucco and Lopez (1998) on the activities of NGOs in the field of human rights support this argument. Contrary to the assumption that NGOs engage primarily in bringing new normative claims on the international agenda, they invest a lot of their work force in the promotion of norms that are already partly accepted and in developing enforcement mechanisms for international standards. This is particularly true for southern NGOs, which tend to be more active in strengthening civil society and in trying to transform national institutions than northern NGOs. Obviously, there is a need to ongoing promotion of human rights norms, even if they have long been rhetorically approved.
Cortell and Davis suggest four important factors from an explicitly domestic perspective: First, the pre-existing domestic understandings that condition the impact of international norms (Cortell and Davis 2000: 73). A "cultural match" situation is one in which international norms "resonate with … widely held domestic understandings, beliefs, and obligations. The domestic discourse, then, provides the context within which the international norm takes on meaning" (ibid.). A situation of "cultural match" would be the best context for norm salience. If only parts of society (e.g. elites) share the international understanding, the adoption of the norm gets more contested, or, if domestic and international understandings do not coincide at all, it becomes unfeasible. The connection between international and domestic norms has to be perceived as a dynamic relationship, as a cultural match might evolve or vanish over time.

Second, the international norms are more likely to become salient if they are in accordance with the state's or some influential groups' interests, since a society's discourse partly evolves due to considerations of material interest. Norms become linked to important material interests, but they are not reducible to those interests. Third, “(d)omestic political institutions … establish rights and obligations, identify what is legitimate and what is not, and, in the process, help national actors define their interests … . The incorporation of an international norm into domestic institutions enhances its salience” (Cortell and Davis 2000: 79).15 Fourth, the rhetoric approval of governments: even if the original embrace of an international norm by a given state leader may be purely instrumental, it can still lead to the domestic salience of the norm, because a discursive opening is provided that enables critics to challenge the position. Linked with this factor is the dynamic of international socialization, especially if “state leaders aspire to belong to a normative community of nations” (Cortell and Davis 2000: 82).

In contrast to most constructivist authors, Cortell and Davis paint a separated picture of the international and domestic realm. In doing so, they highlight national particularities instead of subsuming them under global long-term developments. While it seems appropriate to see norms of different ranges as intertwined, it remains important to provide discursive space for single domestic developments. In this sense, the perspective of Cortell and Davis helps to complement the "international bias" in norm diffusion literature.

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15 The two case studies presented in 7.1 and 7.2 illustrate this point: in Chile, not all international human rights norms are incorporated into domestic institutions, e.g. there is no legal concept of discrimination, which makes the elimination of gender-based discrimination cumbersome. Finland, in contrast, has been fast in translating international gender norms into public institutions, as the early creation of its women's policy agency shows.
2.2.3 Who brings domestic and international norms together? The power of transnational activism

Some studies have intended to identify the concrete actors linking international with national norms, most prominently Risse, Ropp and Sikkink (1999), and Keck and Sikkink (1998). According to their findings, transnational non-governmental activism in strategic cooperation with governments (Risse et al. 1999) or transnational advocacy networks (Keck and Sikkink 1998) is most relevant.

The study of Risse et al. (1999) brings new insights in how a “fit” between international norms and domestic understandings can be achieved, even in cases where a cultural match does not exist. In their analysis of how and why states violating the right to life have been brought to change their behavior, the authors find that “the diffusion of international norms in the human rights area crucially depends on the establishment and the sustainability of networks among domestic and transnational actors who manage to link up with international regimes, to alert Western public opinion and Western governments.” (Risse and Sikkink 1999: 5). Transnational advocacy networks are non-hierarchical and bound together by shared values, predominantly consisting of domestic and international non-governmental organizations. They assemble "those relevant actors working internationally on an issue, who are bound together by … a common discourse, and dense exchanges of information and services" (Risse and Sikkink 1999: 18; see also Keck and Sikkink 1998). Their purposes are to raise international awareness on norm-violators and remind "liberal states" of their identities as promoters of human rights; to support, empower and protect domestic oppositional groups; and to create transnational structures pressuring norm-violating regimes both from the international and the domestic level.

Based on their cases, Risse et al. develop a “spiral model” of policy change running through five stages: norm violation that provokes transnational and domestic opposition; refusal of the norm by the government concurrent with the international community of states calling for norm-conform behavior; rhetorical acknowledgement of the norm and initiation of tactical concessions; recognition of the norm even if it is still occasionally violated; and fully norm-consistent behavior of state institutions (Risse and Sikkink 1999: 20). In this process, transnational networks are particularly successful under two conditions: first, if the concerned society is "open", that is if it disposes of “cultures and institutions that are responsive to and can accommodate some meaningful degree of internal debate and external influence” (Risse

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16 The "right to life" encompasses freedom from extrajudicial execution and disappearance and from arbitrary arrest and detention. The authors deem this right the most universally accepted and institutionalized of all human rights (Risse and Sikkink 1999: 2).
and Ropp 1999: 263). Second, the international acceptance of a norm - as international human rights norms have reached a consensual status by the 1990s, it has become impossible for states to deny their validity, whereas this was an option in earlier cases (Risse and Ropp 1999: 265f).

While Risse et al. deliver an important contribution to the dynamics of norm internalization in absence of a "cultural match" and show the concrete actors and mechanisms of this cumbersome process, the study is based on two assumptions that make it difficult to apply to the context of this project: First, the idea that "new-comer" states are integrated into the international community of liberal states by international socialization implies an oversimplification of norm adoption. It assumes that there is a stable set of liberal norms into which non-liberal states can be socialized, instead of conceptualizing this set of norms as an ongoing discourse that contains disagreements as well as consensus, and that has incorporated external impulses as well as excluded them. In fact, human rights norms are based on a continuous process of argumentation between all members of international society that may result in their reassurance as well as in transformation. Thus, the complex and reciprocal dynamics of domestic appropriation of international norms are not sufficiently explained by constructing a norm-violating government that has to be disciplined by the coalition of a liberal international community and domestic civil society.

Second, the norm at stake in the project – the right to life – may be globally accepted to a very high degree\(^\text{17}\), yet the bulk of human rights is not that unanimous especially in its enforcement and thus, subjected to ongoing interpretations with differing results. This is not only true for economic and social rights, but for every right that aims at participation or redistribution, and not at the mere absence of inhumane state practices. The violation of this broad category of rights is less spectacular, a fact that makes these violations appear less severe, and their realization is usually contentious. Most of the rights specifically relevant for women are of such nature, but in the case of women’s rights, two additional factors have to be considered: First, women’s NGOs still fight for the recognition of the gravity of human rights violations committed against women. Neither has sexual abuse in prison been understood as "real" torture (Wedel 2002), nor is the feminization of poverty accepted as a gross violation of human dignity of millions of women (Wichterich 1998). Second, since many human rights violations suffered by women are not committed by the state, but by private actors, the state ful-

\(^{17}\) Despite of this wide acceptance regardless of political ideology, Risse and Sikkink (1999: 8) rightly observe that the right to life is also crucial for liberal states to construct their own moral integrity. As a consequence, they easily label violators of these rights as immoral actors. Thus instead of universal, the set of rights to life is most suitable to mobilize liberals to draw a line between "us" and "them"; in contrast, economic and social rights are hardly ever used for such a construction.
fils a different function: instead of being targeted as the most dangerous violator of human rights, it is the central force to protect and enforce women’s rights.

Based on these considerations, this study conceptualizes women’s rights norms as contentious in realization even if almost universally accepted as a framework. Also, it refrains from dividing states into norm-abiding liberals and non-liberal norm violators. Instead, the sum of states is perceived as representing both overlapping and mutually exclusive socio-political orders. Accordingly, it is assumed that all of the 180 States Parties to CEDAW have the potential to improve the de-facto situation of women under the guidance of the Convention, even if some are arguably more advanced than others in this enterprise (see 6.2).

Keck and Sikkink (1998) take a slightly different angle and concentrate on the increasing visibility and transformative capacity of transnational advocacy networks (TAN) in international politics. They characterize TANs in the same way as Risse et al. (1999) and highlight their ability to create political spaces through communication:

"What is novel about these networks is the ability of nontraditional international actors to mobilize information strategically to help create new issues and categories and to persuade, pressure, and gain leverage over much more powerful organizations and governments." (Keck and Sikkink 1998: 2)

Usually, NGOs play a central, if not initiating role in TANs, yet parts of regional and international Intergovernmental Organizations and of state institutions may also be part of it. In linking civil society actors, states, and international organizations, TANs blur the boundaries between the national and the international and therefore contribute “to transform the practice of national sovereignty” (ibid.). They emerge most likely if civil society claims are blocked by a state and if transnational cooperation seems likely to strengthen these claims and cause what Keck and Sikkink call a “boomerang pattern” (Keck and Sikkink 1998: 12f).

How does it work to persuade and pressure more influential actors? The activism of TANs works on several levels: they quickly and credibly generate information that is framed in a way that provokes action ("information politics"), they use symbols to make a certain situation understood for a broad audience ("symbolic politics"), and they bring more powerful actors to act and monitor their deeds ("leverage and accountability politics") (Keck and Sikkink 1998: 16). As the strategic framing of information18 is most important to cause action, a

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18 The importance of framing is obvious in the international discourse on female genital cutting: initially, this practice was named "female circumcision" and thus understood as similar to male circumcision that is known as a widely practiced, harmless operation. Only when female genital cutting was connected to the violation of the right of women to bodily integrity, it could be interpreted as illegitimate.
main activity of TANs is campaigning. For successful campaigns, the concerned issues have to be concrete, and it has to be unequivocal who bears responsibility for the denounced problem. According to the authors’ observation, mobilization has been most successful around “issues involving bodily harm to vulnerable individuals and legal equality of opportunity” (Keck and Sikkink 1998: 204). While both issue resonate in Western liberalism, they also do in most other cultural traditions in the world; thus, the protection of most vulnerable parts of society seems to be a transcultural value.

Transnational networks emerge in the broader cultural setting of “transnational civil society”, influenced by internationalism and solidarity. The idea of the international as a common setting partly coincides with Bull’s concept of the “international society” (see footnote 10), yet the state is not taken as the only relevant entity in this society. Instead, Keck and Sikkink find a new international system with “overlapping authority and multiple loyalty” (Keck and Sikkink 1998: 210). According to their findings, “transnational civil society” is an arena of struggle and negotiation that is much less determined by western cultural values than theories on world culture suggest (Meyer et al. 1997). Keck and Sikkink focus on the construction of norms and their internalization through practice, and in particular, on the struggles to put new norms into practice. As they “tend to privilege explanations that highlight human agency” and “specific sets of interactions among purposeful individuals” (Keck and Sikkink 1998: 213), they find TANs to function as concrete and active motors of normative change.

The concept of transnational advocacy networks goes beyond the idea of international cooperation in constructivist regime theory and helps to explain the dynamics around the CEDAW Convention from a different angle. The empirical findings of this project show that

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19 While NGOs often engage in campaigning, it is important to note that they are active in many other fields as well. In their study on NGOs working in the field of international human rights, Smith et al. (1998) found that the most frequent activity of NGOs is the development of international standard setting (64%), followed by the monitoring of human rights violations, and the development of enforcement mechanisms for international standards (both 53%).

20 Grewal (1999) argues that global norm creation including human rights norms is a hegemonic process because it excludes most voices on this globe. From this perspective, transnational NGO activism does not automatically add legitimacy to inter-governmental processes, in fact it may perpetuate the hegemonic international order in constructing an exclusive transnational civil society.

21 However, the practical conditions for international norm creation suggest that a Western bias is to be assumed as a mere consequence of resources: Smith et al. (1998) found in their empirical study on NGOs working in the field of international human rights that two thirds of the organizations are based in Western Europe or North America and only one third is located in the “global south”. In addition, the organizations of the last third dispose of considerably less resources. Thus, even if there is a transnational discourse taking place to negotiate values and norms, it is undeniable that some perspectives have less chances to get access to international debates and voice their arguments than others. For example, the share of Eastern European organizations is less than 1%, compared to 46% of organizations coming from Western Europe.
network structures have been built supporting and extending the CEDAW monitoring procedure (see in particular chapters 5, 8 and 9). During the course of the Committee's monitoring practice, networks including transnational and domestic NGOs, international experts, parts of international governmental organizations and to a certain extent, state institutions have been interacting based on shared values, a common discourse and information exchange with the goal to implement the CEDAW provisions. These actors do not form a network of high density e.g. in terms of organizational structures, yet they cooperate to engage in information politics – in as far as the interpretation and re-interpretation of women's rights is concerned – and more intensely, in leverage and accountability politics. The involvement of domestic NGOs in the CEDAW monitoring process produces the dynamic the "boomerang pattern" describes, that is the state is pressured both by an international institution and by civil society actors. Also, CEDAW can be seen as a concrete mechanism to construct transnational civil society and to reframe state sovereignty. Both the creation of the CEDAW Convention and the ongoing interpretation of the meaning of women's rights in the Committee's practice can be seen as a process of coming to shared understandings between a variety of cultural backgrounds. Also, state sovereignty is transformed in the sense that states have to keep international women's rights standards in mind – with the adoption of an Optional Protocol to CEDAW they even have to accept individuals complaining about their sovereign practices.

2.3 Transnational discourses and practices on gender equality – feminist interpretations of international cooperation and global norms

The two theoretical strands presented in 2.1. and 2.2 depart from (different conceptions of) the international level and link it to a certain degree to national and transnational dynamics. While the discussion on global norm diffusion focuses on transnational networks that link international with local activism, the emphasis is on the remarkable influence TANs have been able to unfold on "more powerful actors" within an international setting. The third theoretical strand of transnational feminism complements these two perspectives in underscoring locally situated activism as primary source of creating transnational political strategies to confront gender hierarchies. Contrary to the assumption of cultural homogenization due to globalization, transnational feminism underscores the relevance of "politics of location", that is it develops a perspective on the local not as passive receiver of global norms, but as space of creating, negotiating, or resisting them.

This debate is situated within the growing body of literature on transnationalism in general and responds to global and transnational feminist activism in particular. After shortly
referring to the feminist critique of IR concepts of international cooperation, the chapter maps the development of feminist transnationalism. The main elements of this position are, on the one hand, a view of the world order that introduces the idea of pluri-locality within complex internationalization processes, and, on the other hand, the analysis of gender-sensitive counter-hegemonic strategies respecting marginalized perspectives and linking different sites of struggle.

2.3.1 International Cooperation under Feminist Eyes

It is not surprising that feminists have not strongly engaged in the positivist debate of international cooperation. The neo-liberal assumption (e.g. Keohane and Nye 1977; Keohane 1989) that states as gender-neutral, interest-driven entities shape international regimes and other forms of cooperation runs contrary to feminist notions on the nature of international relations (see 1.2). As a consequence, feminist IR scholars criticize the neglect of power and resources in regime theory, as it evades the question who has access to cooperation and who hasn't, and accordingly, whose interests are negotiated and whose are not. Women's interests – as diverse as they may be - are typically represented by actors with scarce resources such as non-governmental organizations. Thus, not only is women's access to international negotiations limited, but also are the conditions for their exclusion ignored by a gender-neutral perspective on regimes (D’Amico 1994; Grewal 1999; Peterson 1990; Ruppert 1998b; Sylvester 1994a). To a lesser extend, this exclusion is also inherent in constructivist perspectives on international cooperation, even if this strand of thought is more convergent with feminist theorizing (Krell 1996).

Over the last three decades, feminist scholarship has focused on global and transnational women's organizations and women's movements as crucial actors in transforming gendered international power hierarchies (Friedman 2003; Holland-Cunz and Ruppert 2000; Meyer and Prügl 1999; Naples and Desai 2002). As Ruppert (2001) observes, international feminist activism did not materialize within the centers of power, but at its margins. Accordingly, women's activists have not primarily been concerned with controlling world politics, but with restructuring the view of what is globally relevant – most importantly, the diverse living situations of women and the need to fight social injustice based on gender hierarchies and other hegemonic structures. Rather than joining intergovernmental negotiations, they tried to established counter-hegemonic forms of cooperation, especially transnational coalitions between women's organizations beyond state institutions (Grewal and Kaplan 1994a). This
theory-practice linkage is also the reason for the lack of feminist research on CEDAW: as the Women's Convention was initially created within the state-centered logic of human rights regimes, it was not in the focus of global women's activists or feminist academics. However, the 1990s brought a variety of new forms of global and transnational activisms that have been able to integrate CEDAW into their strategies in new ways and transform the Convention into a more far-reaching and meaningful instrument. These unforeseen influences also provide new insights for theorizing international cooperation.

2.3.2 Transnational feminism in theory and practice

The term "transnational feminism" is relatively recent; it can be read as a reaction to the formerly used expressions of international or global feminist activism (Mackie 2001). It draws on the practice of women's organizations from all parts of the world to establish transnational solidarity networks, taking advantage of the global space provided by the UN world conferences on women starting in 1975. After recognizing their differences especially in the first two conferences, organized women started to find common grounds and engaged in joint cross-national activities. During the 1990s, these networks grew and capitalized in the context of world conferences on other issues, such as environment and development, human rights, and population (Desai 2002; Moghadam 2000).

This process of transnational cooperation has not been free from frictions, as the dispute on key concepts illustrates: the notion of "global feminism" or "global sisterhood" was first used to describe a growing international women's movement. Strongly promoted by women from the West (e.g. Morgan 1984), the idea of "global sisterhood" was later criticized by women from developing countries as not reflecting their priorities (Mohanty 2003: 106f). While the term suggests that all women around the world agree on gender as the primary basis of oppression, the critics did not privilege gender-based discrimination over discrimination based on class, ethnicity, race or nationality as these were equally or even more relevant to them. Thus, "global feminism" has gotten the negative connotation of homogenizing the diversity of women's movements from a Western perspective. As a reaction, the concept of "transnational feminism" was created for a more accurate view with a greater potential of empowerment. It keeps the relevance of nations and nationality in the world system in place, and at the same time points to activism crossing national boundaries and thus transforming the concept of the nation state (Mackie 2001). Contrary to "global feminism", "transnational feminism" does not suggest that it encompasses the needs and interests of a global "woman-
kind" as if "localized specificities of gender inequalities" had ceased to exist (Grewal 1999: 340). Transnational feminist activism has ambivalent features as it may reproduce existing inequalities, e.g. between professional NGOs and grass root organizations or between donor foundations and women's groups from the Global South; at the same time, it may develop alternatives to global capitalist hegemony as well as to aggressive unilateralism as a form of solidarity across class, culture and national borders (Desai 2002; Naples 2002).

The idea of transnational feminism is embedded in a broader academic debate on transnationalism. As section 2.2 shows, there is a growing body of literature within the IR theorizing that goes beyond the understanding of "the international" as inter-state relations and turns to transnational political actors such as Transnational Advocacy Networks (e.g. Keck and Sikkink 1998; Risse-Kappen 1995; Risse et al. 1999; Willetts 2001). However, it has been within other disciplines that the term has caused more flourishing debates, especially in sociology, geography and anthropology (e.g. Jackson et al 2004a; Pries 2001; 2004; Vertovec 1999). Vertovec (1999) identifies six different notions of transnationalism: it is used to describe a social morphology, a type of consciousness, a mode of cultural reproduction, an avenue of capital, a site of political engagement, or a (re)construction of "place" or locality. Pries describes transnationalism as one among many dynamics of internationalization that stands for "different forms of rearrangements of geographic-social spaces beyond, alongside and above the formerly dominant national society paradigm." (Pries 2004: 53). In contrast to globalization that refers to processes of worldwide spanning of international transactions, communications, social practices, symbols and impacts and that is often associated with the "annihilation of space", transnationalization emphasizes the growing quantitative and qualitative importance of

"new trans- and pluri-local configurations which encompass and span traditional container spaces, and which are comprised of concentric circles of local, regional, national, supra-national and global phenomena. Transnationalization is based on a relational socio-geographic space and not a container space with its double and exclusiveness embeddedness of social space and geographic space." (Pries 2004: 59)

Jackson et al. (2004b) conceptualize transnationality as border-crossing relationships, but recognize the "continuing power of nation-states in defining the framework … within which transnational social relations take place" (Jackson et al. 2004b: 5). Instead of assuming that globalization processes unfold homogenizing forces, the authors strive for a dialectical understanding of the global and the local and argue that even the strongest global forces are subject to local inflections. At the same time, the emergence of a transnational public renders any
strictly bounded sense of locality obsolete, while the fact of being located in one or more contexts remains relevant. In their words, "(t)ransnationality is constituted through the dialectical relations of the grounded and the flighty, the settled and the flowing, the sticky and the smooth." (Jackson et al 2004b: 8) Transnationalization processes have the potential to bring about new transnational orders, such as habitual and accountable patterns of action, new transnational values, norms, and rules, and complex frameworks of regulation (Pries 2004).

In the concept of transnational feminism as spelled out by Grewal and Kaplan (1994a; 1994b), a postmodern feminist perspective is developed that challenges the foundations of modernity in "its colonial discourses and hegemonic First World Formations" (Grewal and Kaplan 1994b: 2), including hegemonic feminisms. Their perspective respects marginalized voices and resists thinking in hierarchical binaries such "First" vs. "Third world", or "center" vs. "periphery". Instead, it understands all cultural contexts as hybrids consisting of multiple and overlapping norms and sources of agency. The acknowledgement of the "existence of multiple expressions of 'local' identities and concerns and multiple globalities" (Grewal and Kaplan 1994b: 11) has two implications: first, the local and the global are seen as two aspects of the same phenomenon of cultural and socio-economic transgression; second, the notion of a one-way cultural flow from a global homogenizing culture predominantly shaped by Western values towards local contexts is deemed ethnocentric and inaccurate (see also Jackson et al 2004b). While Grewal and Kaplan take the hegemonic dimension of cultural flows into consideration, they focus on the localized reception and on the agency of subjects seemingly "entirely subordinated to transnational economic structures." (Grewal and Kaplan 1994b: 14) From this angle, the local becomes a multifaceted context that contains the potential of reformulation. Relating to the feminist debate on "politics of location" (Kaplan 1994), the authors emphasize the importance of place and locale as a source of resistance and protection against cultural homogenization without idealizing the local as better or purer.

Transnational feminist approaches need to understand this context of global hegemonies and transnational cultural flows to avoid reproducing universalizing gestures of dominant Western cultures: "We need to articulate the relationship of gender to scattered hegemonies such as global economic structures, patriarchal nationalisms, 'authentic' forms of tradition, local structures of domination, and legal-juridical oppression on multiple levels." (Grewal and Kaplan 1994b: 17) Thus, diverse local practices within this set of scattered hegemonies need to be linked to formulate transnational solidarities. Western feminists would have to understand their privileges as depending on a world system that oppresses other women, and ideologies such as new nationalisms and racial fundamentalisms that construct hierarchies and
exclusion need to be confronted. Feminist transnational practice needs to link transnational power structures, emphasize a variety of cultural hegemonies and avoid homogenization of the category "woman".

Contrary to IR-influenced debates starting from the international level, this perspective traces transnational feminist activism departing from locally situated contexts. One example may suffice here to illustrate how this theoretical perspective has been used in empirical studies: Millie Thayer (2001) analyses how rural Brazilian women belonging to a "structurally irrelevant local" take on an active role in fighting for their rights within a transnational web of political, economic and cultural relations. In the 1980s, they started organizing based on their gender as well as on their social class: as women, they wanted to overcome patriarchal social structures and decide freely over their bodies and movements; as farmers, they fought to maintain their way of living within global market structures extremely unfavorable to their modes of production. In the early 1990s, a contact was established between the rural women's movement and an urban feminist NGO that was part of international discourses on gender and women's rights. This contact helped the rural women to organize and to articulate their claims, also because the NGO connected them to foreign donors supporting the movement's work. While the cooperation took place within structures of inequality, the movement was still able to defend its autonomy. On the other hand, both the feminist NGO and the donors did not only "help", but also gained legitimacy out of their cooperation with grass-roots activism. This kind of linking different forms of activism may transmit global concepts to otherwise disconnected situated contexts, and at the same time enables local activists to interpret global normative concepts in their own rationale. For example, the feminist NGO once held a seminar to explain the meaning of the category "gender". The rural women found the idea of women and men being subjected to socially constructed power hierarchies a highly appealing concept for their activities. Thus, they transferred this new knowledge into their struggle for a better life of female and male farmers and encouraged men to take part in changing patriarchal patterns of behavior.

In sum, the cooperation described by Thayer is not based on similarities, but on linking different forms of activism embedded in global and national hierarchies. The actors – a rural movement, an urban NGO, and an international donor organization - base their cooperation on their own autonomy and on shared norms about social change, whereas these norms

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22 Other examples are the analysis of the local activities and national and international impulses that led to the establishment of a women's shelter in the German town of Duisburg (Kortendiek 2001); women's activism in Mali to bring the international human rights discourse into their domestic context (Wing 2002); or the transnational organization of domestic workers in Trinidad (Karides 2002).
not static, but open to interpretation. A necessary requirement for this kind of transnational cooperation is the mutual recognition of differing perspectives, and the understanding that reciprocal relationships of providing and receiving resources and knowledge are established.

### 2.3.3 Concrete Features of Transnational Feminist Networks

Grewal and Kaplan emphasize the need for transnational links between situated women's activities to shape counter-hegemonic feminist politics, yet they do not go into detail regarding the concrete features of transnational feminist networks, e.g. compared to other forms of transnational organizing, or in their connections to national political arenas. As a matter of fact, there is not much conceptual literature on the characteristics of feminist transnational networks. Moghadam found feminist transnational networks to address "social, economic and foreign policy issues in supra-national terms" (Moghadam 2000: 59) and to consciously supersede nationalist orientations. Because they are shaped by non-hierarchical structures, shared responsibilities and the emotional and political commitment of their members, they may offer an effective "alternative to male dominated political organization." (Moghadam 2000: 77) Lenz suggests that the outstanding features of feminist networks are heterogeneity of their participants and the mixing of three forms activism, that is, information exchange, consciousness raising and public action (Lenz 1999). Finke's analysis of transnational women's rights networks concludes that these networks have increased the legitimacy of global negotiation processes within the United Nations. Particularly democratizing potential ascribes Finke to the networks' organizational structures: they strived to construct a communication process based on mutual understanding, they worked to bring those voices in the negotiations who were practically affected by the outcome of the negotiations, and they tried to establish connections between the international arena and a transnational public (Finke 2001).

Transnational feminist networks have started to be considered within comparative politics, particularly in the growing field of feminist comparative policy (Ferree and Martin 1995; Lovenduski and Norris 1993; Mazur 1999; 2002; Stetson and Mazur 1995). In this context, the focus is on the formation of public gender policies in post-industrialized democracies, with a particular emphasis on the capacity of women's movements to formulate and introduce visions on “gender justice”, and on the women’s policy agency as the state institution.

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23 On the other hand, literature on transnational advocacy networks does not address gender as a relevant organizational category (Moghadam 2000: 58).
that produces gender policies in several issue areas. Transnational influences play a role in the national policy process in as far as there are domestic actors bringing them in. Extending this comparative perspective, Woodward (2001) identified the “velvet triangle of gender policy” as the most successful way to put gender policies into place: Movement actors, academics, and so called "femocrats" – politicians and civil servants pursuing any form of feminist agenda - cooperate on the national, but also on the regional and the international level. However, in Woodward's view, transnational strategies of identifying "best feminist practices" bear the risk to commodify political action and disregard local contexts. Woodward calls this "McDonaldization of political action" (Woodward 2001: 34) and warns not to transform action into an available product.

2.3.4 Global norms seen from "bottom up" – a transnational feminist perspective

Most literature on global norm diffusion adopts a theoretical top-down perspective: What is taking place on the domestic level is norm implementation, not a process of active appropriation, negotiation or even reformulation of the norm (see 2.2). This notion is also inherent in the logic of international conferences: an international agreement, while often very hard to achieve, is seen as a normative standard that subsequently should ‘trickle down’ to the domestic level and thus correct normative dissonances. At the world conference on women in 1995, the Beijing Platform for Action was constructed as an irreversible achievement, and those voices opposing it were termed backward or fundamentalist – that is, non-legitimate to renegotiate global standards. It is strategically reasonable that proponents of a certain understanding of women's rights aim at maintaining the high international level once agreed upon. However, a more dynamic understanding of appropriation of rights may be more effective politically and more accurate analytically.

From a transnational feminist perspective, it is indispensable to shift from an overemphasis of international discourses towards an inclusive view on norm creation and appropriation. The core processes of global norm creation are situated interpretations and practices. These interpretations may either make internationally agreed upon norms domestically legitimate and, as a consequence, applicable instruments, or they may reveal the hegemonic character of international norms within their specific context and, as a consequence, reject or renegotiate them. Thus, global norms have to be understood as intertwined international, national, local, and in the end, transnational normative discourses and practices (Ackerly 2001; Grewal and Kaplan 1994; Nash 2002). This perception is based on three assumptions:
The first assumption is that there is a common ground on which the parallel efforts of human rights activists around the world can be acknowledged. In other words, there are normative standards that can be agreed on beyond specific contexts, however, these standards are not fixed, but open to renegotiation inspired by situated knowledge.

Second, national or local contexts are not secluded cultural entities and they enshrine diverse sources of knowledge and legitimacy. Also, they are not simply subjected to homogenizing influences of globalization, but maintain their distinctiveness. This understanding of situatedness goes beyond the social construction of the "local" as a demarcated, non-universal, un-changing and culturally homogeneous space. In contrast, it is "constructed out of the multiplicity of social relations across all spatial scales, from the global reach … through the geography of the town, the settlement, the household and the workplace. (…) The identities of place are always unfixed, contested, and multiple. And the particularity of any place is, in these terms, constructed not by placing boundaries around it and defining its identity through counter-position to the other which lies beyond, but precisely (in part) through the specificity of the mix of links and interconnections to that 'beyond'" (Massey 1994: 4f).

While local contexts do have a character of their own, they consist of differing and yet overlapping experiences. This notion defies a homogeneous definition of "cultural context", but rather acknowledges its polyphony. Accordingly, the legitimate representation of a "culture" consists of a wide range of voices, including those of women in their diversity.

Third, national and local activism produces appropriate strategies for change, including contextualized interpretations of international norms. Thus, the acknowledgement of both general normative standards and their contextualization transcends the polarization of universalism vs. cultural relativism "by looking at the ways in which claims to rights are embedded in highly specific local contexts and struggles" (Stivens 2000: 2). Stivens argues in reference to the Asian region that human rights are not mere "imports" from Western liberalism. Instead, the claims for human rights made by women in diverse post-colonial situations can be read as distinct voices from within a discourse of "long-circulating, modern ideas about democracy, rights, equality and justice" that articulate locally produced ideas of human dignity (Stivens 2000: 24).

In sum, global norms only unfold their value in ongoing and collective interpretations and re-interpretations within local practices, or in other words, they need "contextualization without relativization" (Wilson in Stivens 2000: 2). This process of appropriation implies that the articulation of universal human rights is "contingent on the state of current cross-cultural and intra-cultural dialogues. As these dialogues continue, the substantive meaning of human
rights will change." (Ackerly 2001: 345). However, while global rights need to be contextualized, this is not an entirely contingent process. Instead, it is guided by agreed upon principles. In the case of human rights of women, CEDAW is such a guiding instrument. In the process of global norm creation as conceptualized here, CEDAW has the function to set legitimate international standards for state behavior as well as to provide a normative framework for domestic activists to pressure governments for implementation. From a bottom-up perspective, the question is not how CEDAW has been implemented, but if and how domestic actors have used it with which intention and result. Thus, the view is on national politicians and their dealing with international treaties, on transnational NGOs and the relevance of CEDAW in their strategies, on national or local women's organizations and their knowledge about and strategic use of CEDAW, as well as on state or civil society actors who oppose the CEDAW principles and engage in hindering their domestic appropriation.

2.4 Summary of theoretical discussion

Concrete mechanisms of international cooperation are embedded in and at the same time contribute to the normative structures of international society. Thus, CEDAW is not only a clearly defined monitoring mechanism states have agreed to join; it forms also part of the greater international discourse on the rights of women as expressed in a variety of statements, agreements and measures. This notion implies a double meaning of regime effectiveness: apart from the regulative dimensions of compliance, it also contains the constitutive dimension of strengthening recognition and validity of norms within an international "web of meaning". Thus, the analysis of an international regime has to consider both its direct domestic consequences as well as its repercussions within an international normative discourse. This is even more the case for Human Rights regimes, because they concentrate on international norm creation and promotion, while norm enforcement predominantly remains under the control of sovereign states.

In the context of international society, norms are contested fields that unfold their validity in stages: in successful cases, they are pushed on the international agenda by norm entrepreneurs, are taken over by states until they are transformed into widely accepted standards on the international level, and finally, get internalized within national contexts. Yet norm diffusion does not occur in a linear top-down manner from the global to the local, but it is a circular process of negotiation, appropriation, and contestation in and between international, national and sub-national contexts. Likewise, international treaties such as CEDAW have to
be understood as functioning in circularity: states may agree on the normative content of a treaty in intergovernmental negotiations, yet their compliance efforts may lead to further interpretations and even changes of previous understandings. Discussing and reformulating normative standards in the context of international cooperation produces learning processes and increases intersubjectively shared interpretations. International and non-governmental experts are crucial to enhance those learning processes of state actors.

While states remain the most important international actors, their attitude towards cooperation has changed: as members of an international community, their sovereignty is not only shaped by self-determination, but also by the need to cooperate. From this perspective, international monitoring mechanisms serve to advise and manage state behavior rather than condemning and punishing it. The interaction is based on a constructive ongoing dialogue aiming at gradual change according to the conditions of each state, not on confrontation. However, domestic reactions to international normative discourses are a crucial yet not sufficiently explored part of norm diffusion. The acceptance of an international norm can be measured in its resonance on national discourses, state institutions and state policies. The repercussion of international norms in domestic contexts depends on diverse factors, especially on the match with the domestic cultural values, on their incorporation into domestic institutions, and on the interests of influential domestic actors.

Crucial actors in making the link between international and domestic normative discourses are transnational networks consisting predominantly, but not exclusively of non-governmental actors. Their border-crossing activism enhances dialogue, cooperation and "soft pressure" between governments and civil society groups. They are an expression of transnational civil society and transform the meaning of national sovereignty. However, the research on these networks emphasizes their surprising influence on global discourses and "more powerful" international actors, yet neglects the locally situated sources of agency these networks are built upon.

From a feminist perspective, theorizing on international cooperation has to be receptive for marginalized voices and the exclusionary structures of the international system based on gender, race, nationality and property. Feminist transnational theorizing draws on non-governmental transnational feminist activism to develop a gender- and power-sensitive view on the international order. These activists link across different identities embedded in global and national hegemonies. Their potential to develop emancipatory policies depends on mutual recognition of differing perspectives and interpretations in the attempt to achieve overlapping goals. Transnational feminist activists have integrated the CEDAW Convention into their
strategies and thus have transformed and extended its functions. These unforeseen influences provide new insights for theorizing international cooperation "from the margins".

Transnational feminist approaches challenge the "scattered hegemonies" of modernity expressed in hierarchical binaries such as nationalism, fundamentalism, and sexism. While it starts from acknowledging global hegemonic structures, it rejects the notion of a one-way flow of Western globalized culture to national and local contexts. Instead, the similarities and connectedness of local and global spaces are underlined, and the local is as much a space of creation, negotiation, appropriation, and rejection as the global. In this understanding, global norm diffusion means a transnational, reciprocal process of negotiating and re-negotiating norms on the international, national, sub-national levels that all hang together.
3. CEDAW as a network structure - applied research methods

The research methods employed in this study correspond to the constructivist epistemological and theoretical framework elaborated in the previous two chapters (see 1 and 2). It is the methodological aim to reconstruct the dynamics that have shaped the CEDAW Convention, its functioning and its repercussions in several contexts. This approach includes the search for causal relationships, e.g. how certain actors have produced domestic impact of CEDAW. Further, it analyzes more implicit and indirect processes, e.g. what influence the Convention has had on the broader international human rights discourse, or in how far opposition against the CEDAW principles has curbed domestic compliance.

Four contexts were chosen to trace the networks established around the CEDAW Convention: the intergovernmental context of the Convention's creation, the international context of the Convention's functioning, the national responses to the instrument, and the transnational activism that links domestic claims and international norms (3.1). All these contexts include predominantly actors that enhance the implementation of CEDAW, but also international and domestic opposition to the Convention. The terms intergovernmental, international, national and transnational are used here in the following sense: "intergovernmental" refers to relations between the governments of states, even if they may be situated within an international organization such as the United Nations. "International" describes the dynamics within an international organization as well as activism that is directed to the shaping of mechanisms of global governance; "international dynamics" are, thus, less influenced by governmental interests, but nevertheless connected to them. "National" stands for governmental activism directed towards the domestic sphere and enshrines the understanding of different degrees of state sovereignty and agency; it also included non-governmental activism if it targets domestic policy processes. "Transnational" means that actors from different localities connect within and beyond national borders, while these links are mostly, but not exclusively, shaped by civil society organizations. The distinctions are made based on the understanding that the different categories are, in reality, not entirely separable from each other.

24 The national responses to CEDAW are most relevant regarding the direct impact of the Convention, yet it was beyond the scope of this project to analyze the implementation strategies of 180 States Parties. To get insights both about general trends and specific national policy dynamics influencing compliance behavior, I chose to combine a quantitative analysis of 43 States Parties with two detailed case studies (see 3.1 as well as 6.2 and 7).

25 In addition to these four dimensions, several scholars have drawn attention to the high and probably increasing relevance of regional institutions for the realization of normative claims (Fawcett and Hurrell 2000; Liebert 2003; Tripp 2004), however, this dimension has to be neglected here for reasons of space.
To reconstruct the web of meaning around CEDAW, three empirical methods were combined: document analysis and expert interviewing were the main instruments, while participant observation served to complement them and to provide access to the field (3.2). All methods contain both descriptions and assessments of the topic. The analysis follows several situated perspectives on the meaning of CEDAW as expressed in documents, interviews and in the author's observations. It is the project's analytical aim to integrate these perspectives into a comprehensive picture of the dynamics around the Convention.

### 3.1 The "web of meaning" around CEDAW traced in multilevel analysis

CEDAW is not a center of decision-making, but a set of prescriptions combined with a non-sanctioning monitoring body. Thus, the functioning of CEDAW is embedded in and dependent on a network of actors on different levels. This network embraces different types of actors, in particular: experts in gender issues who engage in international debates, cooperate with UN agencies, or are members of the CEDAW Committee; employees of the United Nations with gender expertise, especially in the Division for the Advancement of Women and UNIFEM; civil servants of national administrations developing public gender policies; transnational NGO-networks and national and local women's organizations supporting the implementation of CEDAW. These concrete actors are embedded in institutions, e.g. the United Nations as a multilateral international organization, or in national bureaucracies. They resemble what Keck and Sikkink (1998) describe as Transnational Advocacy Networks (TAN, see 2.2.3) in as far as they are

> “bound together by shared values, a common discourse, and dense exchanges of information and services. Such networks are most prevalent in issue areas characterized by high value content and informational uncertainty. At the core of the relationship is information exchange.” (Keck and Sikkink 1998: 2)

However, the CEDAW network as it is conceptualized here also differs from this concept in several ways: first, supporting structures for the implementation of the Convention have to a large extent been developed within inter-governmental and international structures – while NGO-activism has gained weight in the CEDAW process, it was not the initial driving force as in the ideal type of a TAN in Keck's and Sikkink's framework (see 2.2.3). Second, the relevance of state actors both in the creation of CEDAW as well as in realizing the norms enshrined in the Convention is paramount. Third, the CEDAW network is a loose structure: the Convention and its monitoring procedure figures as a point of reference with some actors en-
gaging around it on a continuous basis, others only occasionally. Also, not all parts of the network are necessarily cooperating, e.g. the Women's Policy Agency of one state with a women's organization of another. Fourth, this analysis also reflects on those actors that relate to CEDAW, but do not support or even oppose it, such as national civil society groups or states that partly or entirely reject CEDAW as a monitoring mechanism.

This network of actors is mapped out in a multilevel analysis. Since not much empirical research has been done regarding the effects of international norms, the mapping of the network around CEDAW follows inductive research logic. It traces concrete interaction to draw conclusions for a general understanding of the links between international norms, domestic discourses, and transnational activism. As relations between the different normative contexts can be manifold, the analysis should be “flexible and process oriented” (Cortell and Davis 2000: 85). The analysis of the CEDAW network serves two intertwined functions: first, it collects descriptive data that contributes to explain the interactions between the actors and their political outcomes. Second, it provides insights on the assessment of the involved actors about the CEDAW process and thus sheds light on different interpretations of the Convention as well as on different perceptions of obligations and opportunities related to it. The aim of this network tracing is to reconstruct intersubjective constructions of meaning and patterns of interaction that are characteristic for the CEDAW network and enhance or hinder the effectiveness of the instrument.

The empirical analysis traces the development of CEDAW in four different contexts: first, the intergovernmental context of the drafting of the Convention, second, the international context of the CEDAW monitoring procedure, third, the national context of state institutions and other domestic actors responding to the Convention, and fourth, the transnational context of predominantly non-governmental activism in relation to CEDAW. In all four contexts, the constellation and interactions of involved actors including their interests and strategies are mapped out to illustrate the forces that have influenced the CEDAW procedure's quality.

The intergovernmental context of the creation of CEDAW comprises the drafting process of the Convention. This process is reconstructed in chapter 4 within the multilateral agenda of the United Nations. The actors relevant in this context are the UN member states that drafted the Convention’s text within the Commission on the Status of Women and the General Assembly. As a result of the drafting process, CEDAW provides for a mechanism to monitor states' adherence to international women's rights norms. In the text, the scope of the Convention and its means of influence are defined: a monitoring procedure between those
states that ratify the Convention – the States Parties – and the CEDAW Committee is agreed on. The UN-Secretariat provides adequate administrative support for the Committee. Specialized Agencies of the United Nations are invited to contribute relevant information to the constructive dialogue. The States Parties elect the independent experts of the Committee in their biannual meetings (see 4.3 and graph 2).

The second context is the international operationalization of the CEDAW Convention. This dimension is explained in chapter 5 and includes the work of the CEDAW Committee and the linkages between the Convention and other discourses and instruments within the United Nations system. The core mechanism is the monitoring procedure carried out by the CEDAW Committee made up of 23 independent experts (see 5.1.3). The Division for the Advancement of Women (DAW) is the section of the UN Secretariat responsible for the administrative support of the Committee's work. Further, the CEDAW Committee interacts with other Human Rights Treaty Bodies in the context of the UN Human Rights System, and with Specialized Agencies, in particular UNIFEM. CEDAW is further in some ways connected to the intergovernmental Commission for the Status of Women and is ultimately accountable to the General Assembly (see 5.2.5 and graph 5).

The third context contains a shift of perspective and entails the national responses to CEDAW. This dimension contains the analysis of States Parties' behavior regarding their international duties under the Convention, and an overview of domestic measures taken to implement CEDAW (see chapter 6). To understand the domestic dynamics in further detail, the political processes responding to the Convention are mapped out in two States Parties (see chapter 7). The two cases – Chile and Finland - were selected out of 180 States Parties to CEDAW via theoretical sampling, that is, based on criteria that make cases particularly interesting in the light of the research question (Lamnek 1989; Yin 1993). The main selection criterion was “good compliance in different regional and cultural contexts”; "good cases", because only where efforts have been made to implement the Convention can these efforts be studied, including supportive and hindering factors for compliance; "dissimilar contexts" were chosen because these provide more diverse constructions of meaning regarding the CEDAW process than similar cases, e.g. two European states. Chile and Finland were selected for several reasons. First, both states have ratified the Convention before 1991, a fact

26 Besides CEDAW, these are: the HRC, CESCR, CERD, CAT, CRC, and most recently, the CMW.
27 In cases of non-compliance, it would be empirically questionable to assume a causal relationship between the Convention and state behavior, as the neglect of CEDAW principles may be entirely unrelated to the Convention. However, chapter 6.3 gives insights for the reasons of states not to ratify the Convention by following the domestic debate on ratification in the United States, one of the few states that have refused to become a State Party to CEDAW.
that makes it possible to observe their interaction with CEDAW over a 15-year-period. Second, they have both complied with their formal obligations, that is, they have never been significantly overdue with their reports. Also, they did not submit any substantial reservation to the Convention and thus accept its entire scope. Fourth, the concluding comments of the CEDAW Committee as well as available literature indicate that both states have used CEDAW in public policies or other domestic activities. Among the 43 states considered in the compliance overview (see 6.2), Finland ranks in the moderate/high compliance category, and Chile in the moderate category – thus both have shown a higher-than-average mode of compliance, Finland even significantly higher. The ultimate reason to choose these two countries was that they provide excellent and comparable conditions for conducting empirical research: both Finland and Chile are easily accessible, many sources of information are at public disposal, civil servants can be interviewed without complications, and last but not least, the author's knowledge of Spanish and English is adequate to communicate with interview partners in both countries.

Within the two domestic contexts, reactions to CEDAW were traced in three fields: public gender policies, judiciary, and civil society activism. The following actors were identified as relevant in relation to CEDAW: the State institutions officially interacting with CEDAW are the Women's Policy Agency (WPA) in Chile, and the WPA in cooperation with the Ministry of Foreign Affairs in Finland. In both cases, the WPA cooperated with other state institutions to prepare the periodic reports, and it was the most important state actor to design public gender policies in reference to the Convention. In both states, juridical actors did not play a significant role in transforming the Convention into domestic norms, despite the Convention's legally binding character. In Chile, women's organizations engaged in the Committee's constructive dialogue and promoted the Convention among Chilean women. In their activism, they cooperated with transnational actors, in particular with the NGO International Women's Rights Action Watch (IWRAW). In Finland, women's NGOs usually commented on the governmental report to CEDAW and once contributed to a constructive dialogue before the Committee (see 7.1.5, 7.2.5, 7.3 and graph 13).

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29 Of the 108 States Parties, only 56 have never or only once been overdue with their reports. Thus, roughly half of the states under consideration here do not fulfill the formal requirements under the Convention (see 6.1 in more detail on this issue).
30 Out of the 56 remaining states, seven states did enter such incompatible reservations (see 6.1 in more detail on the issue of incompatible reservations).
31 Several other states would have matched these criteria, e.g. the Costa Rica or Panama, yet at some point, the selection process had to be restricted. Many other interesting cases such as Turkey, Japan or the Republic of Korea had to be ruled out because of language barriers.
The fourth context is the use of CEDAW in transnational non-governmental activism. While this dimension is not part of the original scope of the Convention, it has expanded the possible effects of CEDAW (see chapter 8). In particular, transnational activism has linked the international standards enshrined in the Convention with locally situated struggles for women's rights. This context is predominantly shaped by the two transnational NGOs International Women’s Rights Action Watch and International Women’s Rights Action Watch Asia-Pacific, and by diverse women's organizations within national contexts. Their activism works on three levels: internationally, it adds to the CEDAW Committee's constructive dialogue and connects international discourses on human rights with contextualized interpretations of these rights by women activists. On the local level, transnational activism promotes knowledge about the Convention and international gender norms and thus adds legitimacy and strength to specific struggles for women's rights. On the national level, the link between international norms and domestic women's organizations' claims increase the accountability of the government to implement CEDAW (see 8.4 and graph 14).

The reconstruction of meaning ascribed to the CEDAW process by different actors is necessarily limited to the analysis of articulated positions. In other words, within the methodical framework of this study, only those who are "constructors" of this process can be focused on, while it is difficult to capture positions of actors that do hardly interact with CEDAW, e.g. States Parties with long overdue reports. To complement this perspective to a certain extent, descriptive and quantitative data covering all States Parties, e.g. regarding their performance in reporting, was also analyzed (see 6.2).

3.2 Document analysis, expert interviews, and participant observation – description of applied research methods

The relations within the CEDAW network are reconstructed according to the descriptions and assessments of involved actors and institutions. To avoid artificial data, two research methods - document analysis and expert interviews - were combined. Participant observation was used in the international and transnational contexts to provide access to the field and to complement the two main methods. In the following, each method is presented in its characteristics and mode of application in this study.
3.2.1 Document analysis: the interpretation of written texts within broader discourses

The main sources of data this project draws on are different types of documents. While there is no element of intersubjectivity when generating information in document analysis\(^{32}\), the choice of documents as well as their interpretation depends to a certain extent on the perspective of the researcher and the research question. In other words, the meaning of a text is predominantly determined by the context of its creation, yet it is also shaped by the way of its reception. To make a specific emphasis of content interpretation reliable, the researcher has to employ criteria to make the results plausible to others and has to reflect on his or her own role in the construction of results (Hardy et al. 2004: 21).

The technique of analyzing documents starts with determining which documents are relevant for the research interest and with getting access to these documents. The data contained in the acquired documents is then reduced by selection, categorization and summarizing, and finally, interpreted (Alemann 1995; Reh 1995). The interpretation of content requires considering the varying style of language depending on the function of the document. For example, the text of a law has the function to provide the framework for a certain type of action, thus its linguistic style is schematized and vague, while the style of language in negotiations tends to be flexible and vague to reach a consensus (Bergsdorf 1986). The researcher builds categories that explain the construction out of the data, yet existing empirical research and theoretical work may also influence categorization; the analysis of a document is then an interactive process of working back and forth between the text and the categories.

For this study, different kind of documents served to reconstruct the CEDAW network. According to the research interest, documents were selected that deal with the formation, the way of functioning, and the spheres of influence of CEDAW, and that describe interaction between CEDAW and other actors. Further, documents that shed light on the national contexts of Chile and Finland, and on strategies and assessments of actors in relation to CEDAW were analyzed\(^{33}\). These documents were written within different contexts and have varying functions:

- Legal documents, e.g. the CEDAW Convention itself or the Optional Protocol to the Convention are the result of inter-governmental negotiations. They have the function to ac-

\(^{32}\) See in contrast expert interviewing, where the generation of data depends on the relationship between expert and researcher (3.3.2).

\(^{33}\) Crucial for accessing most documents was the advise and support of experts at the UN, of the NGO IWRAW and of experts I met during my research trips in Chile and Finland (see 3.2.3).
commodate the interests of all drafting parties and to serve as a guideline. Accordingly, the texts are non-precise and composed of many elements. They contain vague formulations that could be agreed on in the negotiations and thus require specification in concrete contexts.

- **Reporting documents**, e.g. reports of the CEDAW sessions or other relevant UN organs, UN press releases or national statistics are prepared by UN staff members or civil servants. They have the function to portray processes or situations without any form of assessment.
- **Preparing documents**, e.g. agendas and working documents for CEDAW sessions. They have the function to enhance time-limited procedures and contain proposals elaborated by UN staff.
- **Documents containing a mission**, e.g. texts of speeches held before UN bodies; they usually have the rhetorical function to persuade listeners of certain normative understandings and to induce a corresponding behavior; often they are prepared by "norm entrepreneurs" belonging to the UN or national institutions.
- **Advisory documents** such as expert reports on issues of interest for the UN. They contain a stocktaking combined with recommendations for improvement. Their function is to provide UN bodies with the knowledge to take informed decisions regarding complex issues.
- **Accounting documents**, especially the periodic reports of States Parties to the CEDAW Committee; they are prepared by civil servants and have the function to present the steps a state has taken to comply with its duties under CEDAW. In doing so, the reports tend to overemphasize accomplishments, while shortcomings are often downplayed.
- **Criticizing documents**, e.g. shadow reports of NGOs and to a certain extend, publications of the national press. The function of this critique of "weak" actors is to use publicity to pressure a more powerful actor to change its behavior. Often, these documents also provide a self-construction of high morality.

### 3.2.2 Expert interviews: exclusive knowledge, competent assessment

Expert interviews reconstruct "particularly exclusive, detailed or comprehensive knowledge about special stocks of knowledge and practices" (Pfadenhauer 2002: 113). They

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34 Similarly, national laws are the result of Parliamentary negotiations and have to accommodate different domestic interests.
35 „besonders exklusive(s), detaillierte(s) oder umfassende(s) Wissen über besondere Wissensbestände und Praktiken“.
can be used in an explorative way to specify a field of research, or to get access to internal information and to comprehend processes of decision-making through the assessment of competent experts (Meuser and Nagel 1991: 444f). The focus of interest in expert interviews is the knowledge of a person as holder of a (professional) key position, not the private views of this person (Meuser and Nagel 1991). Further, expert interviews are not appropriate to capture knowledge that cannot be verbally reconstructed by the expert, such as habits and routines. Rather, is suitable for reconstructing “such knowledge that is remembered as learned and as a consequence, is known knowledge.” (Pfadenhauer 2002: 114, emphasis in original36)

To prepare expert interviews, the researcher first has to choose suitable experts. Schmid proposes to identify influential and well-informed interviewees a) according to their weight in decision-making processes relevant for the research question, b) according to their formal position, and c) according to recommendations by experts already interviewed (Schmid 1995: 315). Second, the researcher has to get the consent of experts for an interview, which is sometimes difficult due to time constraints or other priorities of the interviewees. Nevertheless it is crucial to get access to the “best” experts, since “systematic error will … be introduced if researchers only get access to certain types of respondents.” (Goldstein 2002: 669) Third, an interview guideline has to be elaborated. In contrast to other forms of interviews, expert interviews are usually neither fully structured nor completely unstructured. Experts tend to explain circumstances with their own expressions and would be irritated and even bored by a structured interview with closed-ended questions (Alemann 1995). One the other hand, the researcher has to provide a framework for the interview to prove his or her own expertise in the field. Therefore, a semi-structured interview with open-ended questions is the most appropriate setting for expert interviews. It gives the expert enough space, and allows the interviewer to control the flow of the conversation (Aberbach and Rockman 2002; Leech 2002).

While the interview guideline serves as background scheme for the conversation, it is crucial to provoke the interest of the expert in the research project and to expose the expertise in the field of the researcher. Pfadenhauer emphasizes this last point, since the exchange of knowledge between two experts contains more valuable information in terms of constructing reality than between an expert and a layman (Pfadenhauer 2002: 121). However, to avoid that the interviewee may think that her information is already familiar to the researcher and therefore not worth mentioning, the “interviewer should seem professional and generally knowledgeable, but less knowledgeable than the respondent on the particular topic of the inter-

36 „solchen Wissens, das als erlernt erinnerbar ist und folglich als Wissen gewusst wird.”
view.” (Leech 2002: 665) To create an atmosphere of confidence, it is recommendable that the interview takes place in an atmosphere familiar to the expert and that irritations are avoided, e.g. inappropriate dressing. Any wish of the expert in terms of confidentiality and recording of the interview has to be fully obeyed (Schmid 1995). However, even the best atmosphere for a conversation is not a guarantee for the truthfulness of the interviewee's comments. Manheim and Rich therefore suggest to „never treat what interviewees say as factual data, but rather treat the fact that they say it as data.“ (Mannheim and Rich 1986: 133, emphasis in original). On possibility to reduce this problem is to conduct several expert interviews and to let each interviewee know (Meuser and Nagel 1991: 466).

The function of expert interviews in this study is threefold: first, the interviews serve to gain exploratory knowledge about the field, second, they provide insider knowledge on the processes related to the CEDAW Convention, and third, they make subjective assessments about these processes. The interview partners were interviewed as experts regarding the functioning of the CEDAW Convention and their own involvement in it; any other knowledge except context knowledge regarding UN-structures or gender dynamics in Chile and Finland did not play a role. A total of 33 interviews were conducted, two concerning the intergovernmental level, 17 the international level, eight the national Chilean context, eight the national Finnish context, and 6 the transnational level, with a number of interviews covering more than one dimension. Two experts for the international level declined the request to be interviewed. The majority of interviewees were chosen due to their important position in the CEDAW-procedure: Seven members of CEDAW as of the year 2000, according to the regional proportional representation and their experience in the Committee; the head of the Women's Rights Section and the head of the Gender Advisory Service Unit of the Division for the Advancement of Women; the Program Director for CEDAW-related activities of UNIFEM; three representatives of the transnational NGOs IWRAW and IWRAW Asia Pacific; four civil servants of the women's policy agency in Chile and Finland who were responsible for the CEDAW reporting procedure; two NGOs in Finland and three in Chile that had either participated in preparing a shadow report or that were using CEDAW in their activism;

37 Expertise in this sense has to be understood broadly and goes beyond knowledge of political and socio-economic elites. For example, a grass-root women's organization in Chile that is active in transmitting international women's rights norms to women living in shantytowns has a lot to say about the domestic relevance of CEDAW (Appendix 1, interview 24).
38 As cultural and professional backgrounds of the experts shape their perception of the CEDAW process, it is understood here as context knowledge.
39 For a list of all interviews including the function each expert, his or her country of origin and profession, see Appendix 1. The identities of the experts are kept anonymous.
40 Three interviewees were from Western Europe and other Developed Regions, two from Africa, one from Latin America and the Caribbean, and one from Asia.
and three legal and experts in both countries who could give details on the juridical implementation of international human rights treaties. Apart from these directly involved actors, a few other interviewees provided knowledge on the general context and at the same time, fulfilled a "control function" contrasting with the more empathic and positive constructions of involved experts: three members of the Human Rights Committee as a monitoring body parallel to CEDAW provided an informed, but distant view on the Convention, and the Chairperson of the Commission on the Status of Women gave her assessment of the process leading to the adoption of the Optional Protocol to the Convention, in which she played a crucial role. Some interviews could be arranged due to the recommendation of other interview partners and provided additional context knowledge for the research purpose, e.g. an interview with the first female Under-Secretary General of the UN who is Finnish and was recommended by a Finnish NGO-activist.

The interview guidelines were developed along a few basic categories and were modified according to the expertise of each interviewee. Interviews on all levels included the following categories:

- Self-description of each interviewee including professional background, description of internal dynamics of her/ his organization or entity, the description and assessment of the goals of the organization and the work it is doing
- Perception of other organizations involved in the CEDAW process and mutual relationship (e.g. the relationship between CEDAW and other UN-Agencies or between IWRAW and the Committee members)
- Description of own efforts to support the CEDAW procedure
- Assessment of effectiveness of CEDAW
- Degree of satisfaction with the status quo and alternative visions, e.g. related to the Optional Protocol

Interviews regarding the national contexts included further categories:

- Description of the socio-political context of the country, especially attitudes and traditions concerning gender relations, and of public gender policies
- Description of the CEDAW ratification process, the reporting procedure and other international interaction of the state with CEDAW
- Description and assessment of application of CEDAW in public gender policies
- Description and assessment of application of CEDAW in the judiciary
• Description and assessment of other domestic repercussion of CEDAW, e.g. in the work of women’s organizations

When contacting the experts and during the interviews themselves, I tried to meet the needs of the interviewees as far as possible. Each expert was contacted well in advance, received a summary of the research project, and could determine the time of the appointment. The first contact was either made in person in cases where the expert could not be reached in advance, in other cases by email, fax or phone. As for the contacts to governmental representatives in Chile and Finland, I identified and addressed them with the help of the Permanent Representatives of these countries at the United Nations. In general, the knowledge I had acquired through the field research at the United Nations made access to interview partners at the national levels easier, as I added to my status as an expert of the international functioning of CEDAW interested in the national dynamics around the Convention. The duration of the interviews varied according to the time experts could dedicate to them and ranged on average from 45 to 60 minutes. To be able to concentrate on the flow of the conversation, I asked for permission to record the interviews. The transcripts of the interviews were later sent back to each expert for authorization.

The relationship between myself as the interviewer and the interviewees or the intersubjectivity of the data obtained was shaped by cultural and language differences, by status and age differences, and by the underlying notion of belonging to a feminist community stretching across the globe. The interviews took place in different places, and the interviewed experts came from 14 different countries. 22 interviews were conducted in English, 9 in Spanish, and 2 in German, while in twelve cases of the English-language interviews, experts were not using their mother tongue, and only in two of all cases did I as the interviewer use my mother tongue German. Accordingly, different cultural backgrounds and different use and interpretation of language are inherent in the interviews. Possible effects of these cultural differences may be mutual misunderstanding resulting from unfamiliar language styles, but also a broader tolerance regarding unknown expressions and practices because of the awareness of differences.

Most of the experts were significantly older than me and many were holding leading positions. While it is usually assumed that the interview situation gets biased if too strongly structured by differences of age, status and gender, such a constellation also contains prag-

41 New York, Minneapolis, Santiago de Chile, Helsinki, and via email.
42 Algeria, Australia, Bangladesh, Chile, Finland, Germany, Ghana, Italy, Japan, Mexico, New Zealand, Poland, South Africa and the USA.
matic advantages, such as the increased disposition of the interviewee to explain things (Abels 1997: 83). In my case, senior experts sometimes expressed their delight to pass their knowledge on to the "next generation"; however in other cases, it may also have been the case that I was not considered an expert on equal footing and as a consequence, information may have been withheld.

Finally, my identity as a female researcher analyzing a women's rights instrument made the interviewees assume a certain complicity between my research interest and their activism. This assumption often resulted in remarkable openness of the interviewed experts, which was particularly strong in the two national contexts and with experts working in NGOs. In general, I felt being received as part of a transnational network of feminists and as a symbolic supporter of the work my interview partners were engaged in. This constellation bears the danger of a role conflict for the researcher in as far as a high degree of identification with the analyzed actors and their purposes may distort the analytical view (see also 3.2.3). One measure to control this identification was to interview experts that did not consider themselves as involved in the CEDAW process, but as impartial observers.

The interviews were interpreted in several steps: First, the tape recordings were transcribed. Second, each interview was summarized in paraphrases, and the paraphrases were structured in categories. Third, along the categories, the statements of all interviews belonging to each category were combined to reconstruct linkages of interaction and to build typologies of support structures for the CEDAW process. This empirical reconstruction serves as the basis to draw generalized theoretical conclusions (Meuser and Nagel 1991).

3.2.3 Participant observation: detailed description, new questions, access to experts

Participant observation is a method that can „provide detailed description of a particular social phenomenon (…) It permits the investigator to study individuals as they actually behave in a real social or political setting.” (Brown 1986: 165). Thus, it adds a behavioral dimension of constructing reality that cannot be covered by documents and interviews. Lamnek distinguishes between different types of observation (Lamnek 1989: 244ff): *Structured* observation is conducted based on a system of previously selected categories, while *unstructured* observation starts from a few broad categories and allows the researcher more flexibility.

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43 Several comments and attitudes of interview partners are indicators for this "openness", e.g. side-comments on gender-biased statements of authorities with the underlying connotation that this has to be condemned; mentioning of information under the condition that I would treat it confidentially; great eagerness to receive me and to put me into contact with further experts; positive remarks on the importance of my research.
of interpretation. In an *open* observation, the researcher informs the involved actors about the research purpose, in a *concealed* observation, research is conducted without revealing the researcher's identity. The distinction between *passive participant* and *active participant* observation calls attention to the continuum between research and participation, as the researcher does usually not exclusively observe the social setting: in passive participant observation, the identity as researcher is predominant and the participation is subordinated (observer-as-participator), in active participant observation, the role as participator is prior to being researcher (participator-as-observer). This double profile may lead to a role conflict for the researcher, as the commitment necessary for or resulting from participant observation entails the danger of an excessive identification with the social context (Lamnek 1989: 258ff).

In an open observation, the researcher's own expertise combined with personal interest and commitment are a promising mix to get access to the field. If open observation is conducted in institutions, superiors as well as all persons that are going to be observed have to be asked for their consent. Furthermore, it is crucial to clarify from the beginning if there is any kind of information that mustn’t be used for research purposes (Lamnek 1989: 278ff).

In this study, participant observation has been applied to gain insights of the international and the transnational context of the CEDAW network: first, I spent a two months period from January to March 2000 as assistant within the Division for the Advancement of Women (DAW) of the United Nations Secretariat. This stay enabled me to attend one entire session of the CEDAW-Committee and to follow the administrative procedures behind such a session. Further, I could observe meetings of related UN bodies, most importantly of the Commission for the Status of Women (CSW) and of the Human Rights Committee (HRC). To see these bodies at work helped to better understand the institutional culture of the United Nations, and to grasp the broader discourse on women's issues and human rights. The second observation took place in a three-weeks-stay at the NGO International Women’s Rights Action Watch (IWRAW) based in Minneapolis in March 2000. There, I got insights into the concrete establishment of transnational links in the organization's daily routine. During all fieldtrips, including those to the two national contexts Chile and Finland44, I kept a research diary that served a similar, if more open function than participant observation, namely to write down all kinds of impressions and information that seemed to be relevant to my research question, e.g. comments made in informal talks, or debates in the national media that shed light on prevalent ideas of gender equality. In their subjective selectivity, these notes contributed to the reconstruction of the contexts of interest.

44 These field trips took place in March and August 2001.
The type of observation employed in this project is unstructured, open, and passive participant. It was guided by a flexible set of questions and approached the social interactions without previously formulated hypotheses. Guiding questions for the observation were: Who are the participants? Who is doing what, who is responsible for which activity within the process? How do participants interact and communicate with each other? Which parts of work are done routinely, which ones are exceptional? Are there proposals being made to change parts of the procedure? If so, how are they enforced?

My research interests were known and my presence accepted by the Chief of the Women's Rights Section within the DAW and the head of IWRAW. After my arrival both at the DAW and at IWRAW, I informed all persons whom I intended to observe and to interview about my research purposes. In exchange for getting the permission to do research, I offered assistance in the working procedures. Thus, I did participate in the processes that I intended to observe, yet it can be ruled out that this participation significantly influenced the social setting since my tasks – e.g. making and distributing copies or taking notes - were of subordinate nature. However, the participation certainly influenced my subject position as researcher since I identified stronger than previously with the construction of CEDAW articulated by Committee experts, UN staff members, and NGO activists, that is, with the importance and increasing effectiveness of the monitoring procedure. However, this identification diminished in subsequent stages of the project. The process of „oscillation between empathic-identifying convergence and reflexive-dissociating retreat“ (Abels 1993: 13)\(^{45}\) is part of empirical research, and as long as it is conscious, it can be reflected upon in the project.

Getting access to the DAW was as difficult as it was crucial for the project as a whole. Very high commitment and face-to-face contact were necessary to convince the Chief of the Women's Rights Section of my purpose and expertise\(^{46}\). The quasi-status of temporary belonging to the Secretariat helped tremendously to develop the project. In this position, I had direct access to CEDAW experts and UN staff members, which helped to get their consent for being interviewed. Also, the contact to the UN delegations of Chile and Finland was facilitated, which later enhanced the contact to relevant actors on the national levels. Finally, I had free access to all UN-documents relevant for my research via the UN-database. However, in

\(^{45}\) „Oszillieren zwischen empathisch-identifikatorischer Annäherung und reflexiv-abgrenzendem Rückzug“

\(^{46}\) To give just a short insight of what “access to the field” in this case meant: I had sent many emails presenting my research project to the DAW, but never received an answer. Finally, I was allowed to participate as academic expert in a conference on CEDAW and its domestic juridical implementation held in Vienna in late 1999. In exchange for this permission, I was asked to take notes on some parts of the Conference that were needed for a later publication. In this occasion, I had the chance to convince the Chief of the Women's Rights Section to give me access to the next CEDAW-session in New York in early 2000.
exchange for this free access, I had to assure not to use any information of the closed sessions of the CEDAW-Committee or of internal staff meetings of the DAW.

In sum, participant observation fulfills three functions in this project: first, it provided an insight of the CEDAW sessions, UN structures, and work of the NGO IWRAW that complements the information obtained from expert interviewing and document analysis. Second, the "insider-view" of the process helped to refine questions and develop new ones, even if parts of this insider knowledge cannot be used in this study. Third, it served as a “door-opener”, especially for the United Nations, and facilitated access to experts and documents crucial for the international and transnational dimension of the CEDAW network.

3.3 Applied Methods in Summary

The applied research methods used in this study trace the networks of actors and the webs of meaning they construct around the CEDAW Convention. The understanding of possible effects of the Convention includes its direct causal impact as well as linkages between the Convention and other discourses on women's rights that affect the status of women indirectly. These effects emerge out of a network around CEDAW consisting of various international, national, local and transnational actors. This network shows similarities to a Transnational Advocacy Network (see 2.2.3), yet its participants are more loosely connected. Further, the analysis also considers actors that do not enhance or even oppose the norms enshrined in the Convention. The concrete actor constellations and interactions of this network are traced in a four-level analysis covering the intergovernmental context of the Convention's creation, the international context of the Convention's functioning, the national responses to the instrument, and the transnational activism that links domestic claims and international norms. To get a reliable impression on the national responses to the Convention, the national level contains quantitative and qualitative elements: on the one hand, an overview of States Parties' behavior, on the other hand, detailed case studies of Chile and Finland, two states that are good compliers to the Convention. Tracing this multilevel network serves to discover those linkages that are characteristic for the CEDAW process and either enhance or hinder its effectiveness.

The empirical methods applied to reconstruct the network around CEDAW are document analysis and expert interviewing. Participant observation is used more selectively to complement the other methods and to get access to the international level of the United Nations. All methods shed light on descriptive and assessing constructions of reality as ex-
pressed by actors and institutions involved in the CEDAW process, while expert interviews arguably contain more subjective and intersubjectively constructed information than documents. The analysis is based on these constructions and thus draws on a combination of situated perspectives on the meaning of the CEDAW Convention.
4. The formation of CEDAW: Intergovernmental negotiations within the multilateral context of the United Nations

The CEDAW Convention was adopted by the General Assembly in 1979 and entered into force in 1981. This chapter maps out the negotiation process that led to this agreement and embeds the negotiations in the historical normative and institutional context. During the 1960s and 1970s, two discourses developed within the United Nations that shaped the agenda formation process for CEDAW: the need to advance the status of women on the one hand, and the setting of international human rights standards on the other. While they developed separately, the CEDAW Convention became the first instrument to integrate the concerns of women into the human rights framework. The chapter first provides an overview of the multilateral context in which CEDAW is embedded (4.1), including the organizational structures of the UN (4.1.1), and the development of the discourses on women's issues (4.1.2) and human rights standards (4.1.3) that have been taking place within these structures. Second, the drafting process of the Convention is analyzed (4.2), starting with a reconstruction of the formation of the Declaration on the Elimination of Discrimination of all forms of Discrimination against Women (4.2.1). The Declaration was adopted already in the 1960s and contains the basic principles of the later Convention – thus, it builds an important normative base for the developments taking place in the 1970s. Section 4.2.2 traces the exhaustive discussions that finally resulted in the adoption of CEDAW, drawing attention to the widely differing political and ideological positions on women's issues among UN member states. It presents the debates on contentious issues article by article and discusses the power and interest constellation behind the final compromise.

To emphasize the characteristics of the regime creation phase of CEDAW including its consequences for the scope of the mechanism, the following questions guide the analysis: If the negotiations leading to the Convention were embedded within the normative structure of an "international society", what were the characteristics of this international context at a specific historic period of time (1960s and 1970s)? Can the process of regime creation in the case of CEDAW be interpreted as contributing to this broader normative structure, does it suggest a "transcendental interest" of states to belong to an international community, as a constructivist view would propose? Or is a neo-liberal perspective more accurate that identifies the national interests of states as most important in shaping the negotiation process? In how far did the interest constellations during the negotiation influence the strength of the constitutive and a regulative function of CEDAW? If contestations in the negotiation process dealt predominantly with differing national norms, which states were able to push their proposals through,
which norms prevailed in the final outcome, and which actor and power constellations were crucial for this result? If we assume a hegemonic structure underlying the negotiation process, which were hegemonic positions, which voices were deemed legitimate, and which were excluded?

4.1 The UN Context

4.1.1 Organizational structures: the tension between multilateralism and inter-governmentalism

The United Nations (UN) was called into being in June, 1945 by a conference of 51 founding states and counted 191 member states by the year 2005. Its goals and principles are set down in the United Nations Charter. According to article 1 the UN has four main goals: the maintenance of international peace and security by means of peaceful conflict settlement and collective measures against threats; the creation of friendly relations among nations based on the principle of self-determination of peoples; international cooperation to resolve problems of economic, social, cultural and humanitarian character and to promote respect for human rights and fundamental freedoms. In addition, the UN was to form the center of all actions undertaken by nations to achieve these ends. In pursuing these goals the UN and its members must respect the sovereign equality of all member states, strive for the peaceful settlement of international conflicts, refrain from using threat or force against the territorial integrity or political independence of any other state, and must not intervene in domestic affairs (United Nations 2004).

The United Nations consists of six main organs, which may create further subsidiary organs if their mandates so require: the General Assembly (GA), the Security Council, the Economic and Social Council (ECOSOC), the Trusteeship Council the International Court of Justice, and the Secretariat (Unser 1997: 36). The relevant features of the three organs relevant for this project - the GA, ECOSOC and the Secretariat – can be summarized as follows:

1) The General Assembly forms the core of the organization. All member states are represented according to the "one country, one vote" principle. The GA has the right to debate any topic that falls within the mandate of the UN, and it is entitled to make recommendations addressed to UN members or to the Security Council (art. 10, UN Charter). While the recommendations, resolutions and declarations of the GA are not binding, they have become important guidelines in the development of international law. An excellent example for the normative force of these declarations is the Universal Declaration of Human Rights adopted by the
GA in 1948. In the codification of international law and human rights protection the GA has further specific functions (art. 11-13 UN Charter) and has adopted numerous Conventions specifying the meaning of human rights as spelled out in the Universal Declaration. These Conventions become legally binding through ratification or accession of states.

2) The Economic and Social Council (ECOSOC) conducts research and makes recommendations on economic, social, cultural, educational, and health-related questions and takes measures to promote human rights and basic freedoms (art. 62 UN Charter). It carries out recommendations made by the General Assembly within its mandate. The ECOSOC focuses on international cooperation to promote the economic, social and cultural conditions societies need to sustain peaceful social structures. It has responsibility for most activities related to improving the status of women within this context. The ECOSOC functions under the authority of the GA. In order to fulfill its tasks the ECOSOC has established a range of subsidiary bodies, among others the Commission on Human Rights (CHR) and the Commission on the Status of Women (CSW).

3) The Secretariat forms the administrative structure of the United Nations' main organs. As per art. 100 of the UN Charter it is independent from any government or authority outside of the UN. The highest international civil servant is the Secretary General (SG) who legally represents the United Nations as a whole. The SG is responsible for the financial management of the United Nations and prepares the budget proposal for the GA. The Secretariat is currently subdivided into 14 sections, although rearrangements take place frequently.

Respect for human rights and fundamental freedoms has high priority in the work of the UN. The UN Charter is the first document in history that defines the protection of human rights as a legitimate international task. The organization's activities in the field have three dimensions: a) setting standards and codifying human rights; b) promoting human rights; and c) establishing of protection mechanisms (Unser 1997: 46).

a) Standard setting and codification of human rights: in 1946, the ECOSOC founded its functional Commission on Human Rights and entrusted it with the development of human rights standard setting and codification. The Commission on the Status of Women was called into being in the same year (for more detail see 4.1.2). Both Commissions are intergovernmental organs, which means that they consist of UN member state delegations and serve as platforms for debate on human rights and women's rights standards, respectively. They submit

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47 However, the Charter does not specify which kind of rights should be protected by the United Nations. In the light of the predominant principle of non-intervention in domestic affairs of sovereign states, it is questionable how far-reaching the capacity of the UN regarding human rights protection can be (Unser 1997: 45; Wedel 1997: 341).
proposals for codification via the ECOSOC to the GA where these proposals are further debated and finally adopted.

The codification of human rights departs from the Universal Declaration of Human Rights and finds its expression in a number of Covenants and Conventions. The codification process follows a "multi-track and multi-level logic" (Delbrück 1981: 249). "Multi-track logic" means that instead of one treaty, various treaties have been created to codify the Universal Declaration. The most comprehensive in scope are the two Covenants, one on Civil and Political Rights (CCPR, adopted by GA in 1966, entered into force in 1976) and the other on Economic Social and Cultural Rights (CESCR, 1966/1976), both of which are the result of capitalist-socialist block confrontation and contradictory understandings of the core set of human rights. In addition, a number of Conventions were elaborated to protect the rights of a specific group of oppressed persons, namely the Convention on the Elimination of Racial Discrimination (CERD, 1965/1969), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW, 1979/1981), the Convention on the Rights of the Child (CRC, 1989/1990), and most recently, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW, 1990/2003). The Convention against Torture (CAT, 1984/1987) protects one specific right.

The process of codification goes through different levels starting with a resolution from the General Assembly. It addresses a specific field of human rights protection and requests the responsible organ – usually the CHR - to elaborate a draft legal document on the matter. A resolution is in itself not a legal norm, but an expression of will of the UN member states. It can be followed by a Declaration. A declaration is usually a general normative agreement of UN member states. It serves to find a political consensus and to strengthen the moral validity of the norm. The final stage of the codification process is the Convention. It specifies the norm and the norm-abiding behavior expected by potential State Parties and is legally binding for them. The negotiation processes required for this stage are initiated in the CHR or the CSW, respectively. They continue in the General Assembly's responsible sub-organ and are finalized in the plenary (Delbrück 1981: 249f).

48 "Mehrgleisigkeit und Mehrstufigkeit".
49 For more detail on these treaties and the functioning of the corresponding Treaty Bodies, see Office of the United Nations High Commissioner for Human Rights 2004a.
50 If no consensus on the issue can be reached, it is likely that the GA will not proceed to this second level and only adopts further resolutions.
51 "State Party" is the correct legal term referring to any state that has ratified a Convention and has thus become a party to it.
b) The CHR has initiated activities to promote human rights. It established a system of investigating, publishing and condemning human rights violations. To this end it has built up a system of subordinate organs, such as special rapporteurs on specific themes such as torture or violence against women. The High Commissioner for Human Rights, established in 1994, was a direct result of the UN-conference on human rights in 1993, where the UN was called to strengthen its efforts in the field of human rights. The High Commissioner's responsibilities are to play an active role in removing obstacles to the enjoyment of human rights, to engage in a dialogue with governments on securing respect for human rights, and to strengthen and rationalize the UN machinery with a view to improving its efficiency and effectiveness (Bayefsky 2001: 85).

c) Instruments for the protection of human rights: The human rights treaties mentioned above – CCPR, CESC, CERD, CEDAW, CAT, CRC, CMW – have a monitoring mechanism, which is carried out by the so-called Treaty Bodies, themselves a special category of subsidiary organs to the General Assembly. The main monitoring mechanism is the state reporting system: States Parties to each treaty submit reports and enter into a constructive dialogue with the monitoring body. All Treaty Bodies except the CESC and the CRC have individual complaint procedures at their disposal. These procedures allow individuals to file complaints directly before the respective Treaty Body, give the Treaty Body the right to investigate the case and to respond to the complaint in a public assessment. This procedure is only accessible to citizens of states that have agreed to accept it52, however.

Generally speaking, the UN structures provide for a system of human rights promotion and protection that rests on two pillars: intergovernmental debates and monitoring mechanisms based on state sovereignty and the degree of states' willingness to cooperate. These structures are born out of the logic of a multilateral institution and are necessarily insufficient where states refuse to engage in human rights protection and are even responsible for gross human rights violations (Wedel 1997: 342).

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52 There are other individual complaint procedures set up within the mandate of the CHR and the CSW. They have the advantage of being more universal, as they apply to all states regardless of their agreement. However, as they underlie the intergovernmental rationale of the bodies, they lack impartiality (Wedel 1997: 343). The complaint procedure under the CSW in particular has remained largely ineffective (see Cook 1995: 465; Tomasevski 1995: 106f).
4.1.2 Women's issues and multilateral agenda setting

At the time of its foundation in 1945, the United Nations was the first international organization that explicitly included the promotion and protection of human rights, including the human rights of women, in its mandate. In the decades to come, this mandate materialized into an unprecedented framework for the discussion and development of international women's rights standards. In a publication that presents the achievements of the UN regarding the advancement of women, the organization ascribes itself a "unique role" in this process "as a catalyst of change, as a global standard setter for the eradication of gender discrimination; as a forum for debate; and as an unparalleled source of balanced, comprehensive data on the status of women worldwide.” (United Nations 1996: 3) The same publication identifies four periods of the organization's engagement in women's issues: First, the phase of "securing the legal foundations of equality" (1945 to 1962). In a time of very little consciousness regarding discrimination against women, the UN addressed the legal and factual barriers women were confronted with. Second, the role of women in development was recognized (1963 to 1975). In this phase, “(t)he Organization’s focus broadened from codification of equality of rights under the law to encompass the economic and social realities of women’s daily lives.” (United Nations 1996: 4) In the subsequent United Nations Decade for Women (1976-1985), the international community’s understanding of women became profoundly transformed: they were no longer seen as a particular group that had to be treated separately, but as essential
contributors to each society’s development process. The fourth period (1986-1996) was shaped by the ongoing attempt to implement the visions formulated during the UN Decade for Women, for example the mainstreaming of gender equality into all activities of the UN, and by developing increasingly complex standards for the achievement of gender equality.

Following this organizational self-construction, this section sheds light on the political actors who pushed the "women's agenda" forward and on those who opposed more far-reaching changes. In this view, it is not the UN as a whole that has played a unique role in advancing the status of women, but specific organs and individuals within the organization's framework whose claims often encountered ignorance and even resistance.

4.1.2.1 Early consciousness-raising regarding the "woman question"

In the early stages of the United Nations' existence, there was not much awareness on gender hierarchies. The main achievements at this stage were consciousness-raising and standard-setting concerning basic legal rights for women. According to a female long-time diplomat from Mexico, the proponents of such activism were a few committed female delegates from different nations in an organization with little genuine interest in advancing the status of women:

“The creation of consciousness on the international level emerged because a few women started to plead for the establishment of a Commission within the United Nations that would take care of women's rights issues and that would create the consciousness of equality between men and women. If it was not on the initiative of these women, the member states would not have gotten that consciousness. I believe that in reality there was not genuine intention, but the principle of equality was accepted because these women put strong pressure.” (Interview 7)

These "few committed women" engaged in the foundation of the Commission on the Status of Women (CSW), which became an important public space for the articulation of women's issues (Connors 1996a: 152; Galey 1995: 24). They also influenced the drafting processes of core documents, in particular the UN Charter and the Universal Declaration of Human Rights.

53 “(L)a creación de conciencia del nivel internacional … surgió porque unas cuantas mujeres empezaron a propugnar que se estableciera en las Naciones Unidas una Comisión que atendiera los asuntos de los derechos de las mujeres, y se creara esa conciencia de la igualdad de la mujer y el hombre. Si no ha sido por ellas, los Estados miembros no tomaran conciencia. Yo creo que en realidad no había una intención genuina, pero aceptaron el principio de la igualdad porque … hubo una fuerte presión de las mujeres.”

54 The UN Charter contains references to "equal rights of men and women and non-discrimination on the basis of sex" in five articles (Connors 1996a: 150f). Most importantly, Article 1 states that one goal of the United Nations
In the first General Assembly of the United Nations in 1946, only a handful of women participated as official delegates. This obvious gender bias stirred the need to establish a place for women within the organization among those "pioneers". The clear statement of the UN Charter on the prohibition of sex-based discrimination was a powerful instrument that the female delegates could use to make their claim heard. In the 1946 General Assembly, Minerva Bernardino from the Dominican Republic asked for a Committee on Women’s Rights under the Commission on Human Rights. The proposal of a sub-commission on the status of women was approved by ECOSOC Resolution 5 due to the “persuasiveness of UN women delegates and NGO leaders” (Galey 1995: 13). At its first meeting in 1946, lasting two weeks, the sub-commission set up its principles and concrete tasks, among them the realization of a worldwide survey of laws on women and the organization of a women’s conference. Partly because the Commission on Human Rights did not fully support this program, the sub-commission chaired by Mrs. Begtrup (Denmark) preferred to become an independent Commission under the ECOSOC, because, in the words of Mrs. Begtrup, “women did not want to be dependent ‘on the pace of another commission’” (Morsink 1991: 230). This was approved the same year, and the sub-commission became the Commission on the Status of Women (CSW) in 1947 with ECOSOC Resolution 2/11. Its basic functions are to prepare recommendations for the ECOSOC on promoting women’s rights and on urgent problems requiring immediate action in the field of women’s rights (United Nations 1996: 13). Initially the CSW focused on fact-finding activities to elucidate the scope of sex-based discrimination. A global survey on the status of women’s rights conducted by the CSW in 1947 “revealed that of 74 sovereign states (…), 25 had not granted full political rights to their female citizens, including the right to vote or hold public office. … (I)n countries where women were denied equal access to educational opportunities these practices were most often based on custom and religion, not legislation.” (United Nations 1996: 17) Subsequent reports over the next two years offered further evidence about sex-based discrimination in fields such as literacy, education and development.
When it came to the drafting of the Universal Declaration on Human Rights (UDHR), a coalition of representatives of the CSW, many of them being delegates from the Soviet Union and other socialist states, pushed for integrating a gender perspective. From within the UN, the CSW was seen at that time as “a kind of lobby for the women of the world” and as the most “independent body in the UN.” (Humphrey 1983: 405) It opened a door for women's organizations' influence in the drafting process, also because many official members of the CSW headed women’s organizations in their home countries (Connors 1996a: 152). The declaration – a document of paramount importance for the last sixty years of standard setting in Human Rights Law – is "from the point of view of the rights of women … a remarkably progressive document.” (Morsink 1991: 255) Yet this gender-sensitivity was not "arrived at without struggle. For there was a struggle, especially in the case of women’s rights.” (Morsink 1991: 230)

The gender-sensitivity of the Declaration finds its expression in three ways: first, it contains some, if only few, direct references to women’s rights\(^{56}\). Article 16 on the equal rights of men and women “as to marriage, during marriage and at its dissolution” caused the most controversial debate. It underscores the “free and full consent” of both intending spouses to get married. The reference to the dissolution of marriage was deemed unacceptable by many religiously oriented delegations and also by Christian women’s organizations, yet was adopted in the Third Committee of the General Assembly with a slim majority\(^{57}\). Second, in almost the entire document, gender-neutral terms such as “everyone” and “no one” are used. For example, the wording of article 1 - “All men are born free and equal in dignity and rights …and should act towards one another like brothers,” was changed into “All human beings” and “in the spirit of brotherhood” after controversial negotiations. The women’s lobby proposed the expression “all people, men and women,” because they felt that the omission to explicitly mentioning women would enhance gender-based discrimination. On the other hand, the chairperson of the Commission on Human Rights maintained the point of view that the expression “mankind” had become customary to mean men and women alike\(^{58}\). Third, some articles of the Universal Declaration reiterate the prevention of discrimination in general, be-

\(^{56}\) Art. 2 confers the enjoyment of the rights spelled out in the declaration “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”; art. 16 (1) guarantees the right to marry and to found a family to “men and women of full age, without any limitation due to race, nationality or religion”; art. 25 (2) entitles “motherhood and childhood … to special care and assistance.”

\(^{57}\) A range of Christian and Muslim countries protested against the adoption, with eight states abstaining from adopting the Universal Declaration as a whole (Morsink 1991: 247).

\(^{58}\) The chairperson was Mrs. Eleanor Roosevelt, who is usually attributed an outstanding role in the fight for women’s rights. However, in questions of gender-sensitive language, she had a "blind spot…, as did many other, less powerful delegates" (Morsink 1991: 256).
cause female delegates insisted in mentioning sex-based discrimination specifically, but did ultimately not succeed. This applies to article 21 (3), on “free and equal suffrage” and to article 23 (2), conferring the right to equal pay for equal work to “everyone, without any discrimination.” Considering these achievements, the women’s lobbying was not only extremely successful from the point of view of women, but has also significantly contributed to the authority the Declaration still represents today: “Imagine the loss of status the document would have suffered had it started out saying – as the earlier drafts did – that all men are born free and equal. Instead it says that all human beings are so born.” (Morsink 1991: 256).

Operating within its mandate, the CSW soon tried to make the Universal Declaration’s intention enforceable. It initiated conventions in fields identified by the Commission members as the most important for improving the status of women. Each of these attempts met with serious objections by several UN members. To give just two examples: the Convention on the Political Rights of Women, which was adopted by the General Assembly in 1952 and came into effect in 1954, actually reiterated the spirit of the Universal Declaration, yet many states opposed parts of this Convention. The provision “that women may hold public office and exercise all public functions established by national law” (United Nations 1996: 18) was particularly contentious. It was finally adopted with a vote of 46:0:11, but 40 states subsequently submitted reservations. The Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages was adopted in 1962 and entered into force in 1964. In its drafting process agreement was reached on demanding the “full and free consent” of both intending spouses, yet it was not possible to include a minimum age provision. This was one of the important intentions of the CSW because of the low marriage age of girls in many countries.

In sum, this first period was successful in international consciousness raising and standard setting, with the CSW being the body of paramount importance (Connors 1996a: 152; Galey 1995: 24). Two factors helped the CSW to develop such a powerful position in a sometimes hostile organizational environment: first, the establishment of a separate women’s place within the UN framework that enabled the delegates to define, elaborate and advance “women’s rights, responsibilities, and contributions as citizens.” (Galey 1995: 24) The second

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59 In other fields of women’s rights, the resistance of member states was even stronger and blocked any joint agreement, especially regarding female genital mutilation, dowry-related violence, and widow burning. When the CSW asked the WHO to undertake a study on traditional harmful practices, such as female circumcision, the WTO refused this request and “responded that the ritual operations in question involved social and cultural elements whose study was beyond its sphere of competence.” (United Nations 1996: 23; Galey 1995: 19). This statement elucidates the understanding of "health" in the late 1950s as constructed in an intergovernmental organization: its function - the protection of health - is certainly subordinated to the respect of cultural traditions controlled by sovereign states.
factor is the affiliation of the CSW within the UN and its simultaneous connection to non-governmental women’s organizations. NGO participation in CSW sessions was relatively high. They made CSW decisions heard among their membership in various countries. Also, most CSW members in the early years were themselves part of the international or national women’s organizations, and thus, were sensitive and highly committed experts for women’s concerns. Over the years this double identity of the CSW changed. From the 70s onwards, “as women moved into government officialdom …, members were appointed from government ministries, and CSW became more purely political and less of an expert body.” (Galey 1995: 14)

4.1.2.2 From legal status to socio-economic rights for women

Despite the progress made in codifying women’s rights in law, “it became clear during the 1960s that the legal status of women was only one element of a larger theme: the advancement of women within a broader social and economic context.” (United Nations 1996: 26) The CSW started to discuss ways to grant women equal access to education, employment opportunities and health care, and analyzed the specific needs of women in community and rural development, agricultural work, and family planning. This change of perspective was, among other factors, due to the promotion of economic rights by Eastern European countries and the emphasis that newly independent African and Asian countries entering the UN put on the needs of poor women (Galey 1995: 15f). The debates on the socio-economic status of women within the CSW were influenced by the UN development decades starting in the 1960s (Braunmühl 1998). While the first decade ignored the specific needs of "underdeveloped" states and assumed they had to follow the path of modernization taken by “developed” countries, the second decade of the 1970s focused on the satisfaction of basic needs and self-reliance both of developing states and of the poor themselves. It was in this context that women were first discovered as part of the development process (Boserup 1970). Women from the Global South received international attention for the first time as key promoters of

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60 In 1950, 14 NGOs were accredited to the CSW and attended its sessions (Galey 1995).
61 Before the 1960s, the CSW was dominated by “Western and pro-Western members from Latin America, Asia and the Middle East,” while countries from Africa – most of which had not gained independence – and Eastern Europe were largely absent (Galey 1995: 15).
socio-economic development and, as a consequence, as specific targets of "Women-in-development" programs.²

Exploring the role of women in socio-economic development led to the reconstruction of what development actually meant; issues that had previously been detached from each other were connected, such as the debate on the reduction of population growth and the status of women. Within several UN bodies, population growth had been discussed as one major obstacle to development, and family planning programs were considered adequate measures to stop the growth, yet the role of women in family and society was not deemed a relevant factor in this debate. The CSW started to address family planning in the 1960s, but it took a while until the issue was accepted a part of the Commission’s mandate. The first Conference on Human Rights, held in Teheran 1968, mentioned family planning for the first time as a basic human right, yet it was not yet understood as an issue of particular concern for women (Interview 13).

Shortly after the Teheran conference the ECOSOC requested a report on the interrelation of the status of women and family planning, which was finalized in 1973 (UN Doc. E/CN.6/575/Rev. 1). It concluded that "(f)amily planning offers obvious benefits to women as individuals, especially with regard to their health, education or employment and their roles in family and public life" and that the status of women, specifically their education, employment or occupation, and position in the family and community "have a marked, and even decisive, influence both on family size and on the success of family planning programmes." (UN Doc. E/CN.6/575/Rev. 1: 109f) Nonetheless, it emphasized that family planning alone would not solve the problems of poor countries.

The Special Rapporteur appointed to submit the report recalls the ignorance she encountered while conducting the study:

"I worked in that position for four years. I was traveling a lot and talked to governments and ministers and finally tried to make them understand what the situation was. I asked them ‘Do you want your children to die? Do you want your women to die because of too frequent childbirth?’ I was very astonished about WHO, I had always been wondering why WHO was not present at our (the CSW’s, S.Z.) meetings. (…) Health should have been one of our main items, but WHO didn’t even think of it. (…) In many ways, we saw that men had not purposefully done something harmful to women’s health, but they had not understood the relations between health and family planning. … (T)his study … had convinced many people that there is a lot that good family planning could prevent, especially for women.” (Interview 13)

² The gender-sensitivity of the "Women-in-Development" approach has been fiercely criticized as perpetuating a perception of women as deficient in comparison to men and as being uncritical towards the structural subordination of women (Braunmühl 1998: 89; Braunmühl 2001).
Despite these considerable discursive changes on the international level in understanding the role and status of women, the underprivileged status of women was hardly challenged in practice. A working paper commissioned by the CSW portrayed the existing Conventions dealing with women's issues as having low impact, because “(i)nequality of the sexes is, in fact, still 'part if the idealized heritage of a large part of public opinion which sees in this nothing that is odious or persecutory’.” (quoted in Cook 1995: 441) However, the women’s movements emerging during the 1970s in different parts of the world created unprecedented attention for women's rights, a dynamic that also strengthened the work of the UN in this field.

The second phase of the UN's engagement to improve the status of women was more comprehensive than the first one: the debate went beyond women's legal equality and recognized their disadvantaged socio-economic position. At the same time, it was recognized that women were performing manifold tasks to hold their families and communities together, and that the improvement of their social status would benefit societies more generally. Particularly women delegates from Socialist and newly independent Asian and African states underlined this perception. Nonetheless, the international discourse on women's rights had only started to unfold and was far from being fully understood and accepted within the UN's multilateral context.

4.1.2.3 Transforming the "woman question" - consequences of the United Nations Decade for Women

The year 1975 was declared International Women’s Year by the United Nations. Originally a proposal of an NGO, the Women’s International Democratic Federation, the idea was taken up by the CSW and finally adopted by the GA despite some doubts "as to the wisdom of singling women's issues out for special attention" (Pietilä and Vickers 1995: 76). The same year, the first World Conference on Women took place in Mexico – and probably became "the most successful of the many theme years the UN had held thus far" (Pietilä and Vickers 1995: 77). As a consequence, the GA followed the conference's world plan of action and declared the subsequent ten years the United Nations Decade for Women with a thematic

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63 The Women's International Democratic Federation was founded out of the first world congress of women held in Paris in 1945. Most of its national branches were located in Socialist or nonaligned states and it was financially supported by the Soviet Union (Alonso 1993: 185f). While it took a strong feminist stance in its mission, it arguably contributed to the atmosphere of hostility so typical for the Cold War as it challenged the right of bourgeois women's organizations to speak at the UN (Rupp 1997: 47).
focus on equality, development and peace. These dynamics were, on the one hand, triggered by NGO initiatives and developed “into a process with dimensions and repercussions such as the initiators had hardly dared to dream of.” (Pietilä and Vickers 1995: 76) On the other hand, the Decade was “a watershed both for placing women on the international intergovernmental agenda and for facilitating women’s cooperation.” (Friedman 1995: 23) In this period, the international discourse on women's issues became profoundly transformed, both due to new perspectives and priorities adopted within the UN and other international institutions and due to the new international activism of women’s organizations and the transnational ties they established.

The three international women’s conferences initiating and a part of the Decade – Mexico in 1975, Copenhagen in 1980, and Nairobi in 1985 - became the global platforms for dialogue and for the discussion on concrete measures. In Mexico, delegations adopted the World Plan of Action that contained actions to be taken to promote the advancement of women for the next decade (United Nations 1975). One of the measures was to establish new institutions to support gender equality. The Voluntary Fund for the United Nations Decade for Women, founded in 1976, was later converted into the United Nations Development Fund for Women (UNIFEM), a permanent development agency within the United Nations Development Program (UNDP) specifically dedicated to women. The need for an autonomous research and training institute for women identified at the Mexico Conference was made real in 1982 with the establishment of INSTRAW (International Research and Training Institute for the Advancement of Women). Likewise, the adoption of the CEDAW Convention in 1979 was an element in institutionalizing international engagement for the rights of women. While the intention of having a legally binding convention on women’s rights dated back to the late 1960s, the dynamic of the Decade doubtlessly influenced and accelerated the CEDAW drafting process (Pietilä and Vickers 1995: 80).

The most influential process to emerge from the women’s conferences was not intergovernmental; it was the establishment and strengthening of a transnational non-governmental women’s movement (Friedman 1995; Meyer and Prügl 1999; Naples and Desai 2002; Ruppert 2001). Taking advantage of the space created by the UN conferences, women’s organiza-

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64 The strengthening of institutions dealing with women’s issues continued after the decade. In 1987 the meeting time of the CSW was increased and its mandate extended to monitor the implementations of the Nairobi Forward Looking Strategies. In 1988 the Secretariat responsible for women’s concerns within the UN was upgraded from the status of a Branch to that of a Division for the Advancement of Women (Pietilä and Vickers 1995: 101f). From the 1990s on, the UN has implemented a gender mainstreaming policy in all its institutions (Braunmühl 2001).
tions from all parts of the world established transnational solidarity networks. This process of transnational cooperation has not been free of frictions. According to Braunmühl's (1998) observations, the gross lines of conflicts as well as of common grounds changed during the course of the conferences: if the views of Western women were somewhat over-represented in Mexico, five years later in Copenhagen, women from the Global South made their differing priorities very clear. For example, they criticized the concept of "global sisterhood" that was introduced by women from Western states as ignorant and patronizing (Morgan 1984). The idea was initially commended by many women from all world regions as source of solidarity, yet it ultimately implied that women around the world agree on gender as the primary basis of oppression and did not reflect on other forms of discrimination equally or even more detrimental to women from developing countries (Mackie 2001; Mohanty 2003: 106f). While Western feminists claimed "the personal is political," women from developing countries talked about the eradication of poverty and necessary changes in the international economic order. The 1985 Nairobi conference was shaped by the visions of Southern standpoints as well as by a constructive climate of recognizing differences and finding common ground from which to engage in joint transnational activities (Braunmühl 1998: 97; Desai 2002).

The dialogue among a growing number of women’s organizations brought about new perspectives that had been marginalized. These voices ultimately influenced the multilateral context of the United Nations. An excellent example is the organization Development Alternatives with Women for a New Era (DAWN), a network of women from the South, which was groundbreaking in the analysis of female poverty and in developing alternative visions. DAWN rejected the idea of “development” on the grounds that it would not alter the discriminating structures of the international economy and would therefore be of little use for the fundamental improvement of the situation for women in developing countries. Instead, DAWN introduced the concept of women's empowerment, which means not only an increase of individual autonomy, but also the transformation of oppressive gender relations and economic structures (Braunmühl 1998: 90; Sen and Grown 1988). Interestingly, this criticism was taken up within the UN and lead to several adjustments in the organization's development policies (Braunmühl 1998; 2001).

In the third phase, the discussion on women's status and rights gained new momentum within the UN. The Decade on women, including the World Women's conferences, increased the knowledge on gender in intercultural comparison as well as the publicity of gender issues and triggered institutionalization of the UN's gender policies in a variety of ways. At the same time, the rise of transnational non-governmental women's organizations brought about new
interpretations and proposals on how to improve the situation of women. These impulses had significant repercussions within the UN and its intergovernmental debates because they represented the interests of women from different world regions that had not previously been taken into consideration.

4.1.3 The development of human rights standards: a gender-blind project?

The process of standard setting in international human rights unfolded simultaneously to the growing awareness of women’s concerns within the UN. While human rights law decrees a life in freedom and dignity for women to the same extent as men, the rights discourse within the UN remained "gender-blind" for a long time. Most of the human rights violations specifically affecting women were not yet recognized as such, rather they were seen as cultural and traditional patterns. The missing link between the discourses on women's issues and human rights within the UN is partly due to the strong development focus of women’s rights experts from the 1960s on. It was not their priority to engage in legal debates and to promote women’s rights as integral part of human rights (Connors 1996a). On the other hand, human rights experts engaged in setting up a universal system of human rights promotion and protection were not prepared for a gendered interpretation of the meaning of human rights. Accordingly, human rights violations specifically affecting women were regarded as beyond the scope of human rights instruments, and within the responsibility of the CSW.

As chapter 4.1.2 shows, it was a necessary strategy to create a "women's place" within the UN to put women's issues on the organizational agenda (Brautigam 2002: 4; Galey 1995: 24). However, the existence of the CSW has also had the effect of marginalizing women’s concerns within other UN organs (Charlesworth 1994; Connors 1996a; Reanda 1981; Stamatopoulou 1995; Tomasevski 1995). This exclusion has been particularly detrimental in the fields of human rights:

“(I)t's (the CSW's, S.Z.) existence has, ironically, contributed to the neglect by … the traditional UN human rights framework … of issues of concern to women. These bodies point to the Commission as the body responsible for such questions. At the same time, … the Commission itself, and those NGOs who have allied themselves to its work, have been able to avoid human rights concerns by pointing to the traditional human rights framework.” (Connors 1996a: 152)

Thus, the concept of human rights was not a priority for many organizations concerned with women’s affairs, as most of them devoted their attention to social, humanitarian, and peace issues, and later to development issues. Only a few women's organizations – e.g. the Women's
International League for Peace and Freedom (WILPF)\textsuperscript{65} - participated in human rights standard setting, such as the drafting of the Covenants (Connors 1996a: 153).

This division was also reflected in the administrative separation of women’s issues from human rights within the UN. In 1973 the CSW ceased to be served by the Division of Human Rights and was attached to the Centre for Social Development and Humanitarian Affairs. “From then on United Nations bodies (including the General Assembly) examined women’s issues under the economic and social development agenda, and the human rights angle was marginalized.” (Stamatopoulou 1995: 43) Some years later, this perception also affected CEDAW, which was initially viewed by many as a tool for development, not as a human rights instrument.

The process of international human rights standard setting started with the establishment of the United Nations and has been a delicate task due to different philosophical and political understandings of the scope and meaning of human rights\textsuperscript{66}. Hence, it has not been possible to strengthen human rights standards sufficiently to go beyond the declaratory promotion to the effective protection of human dignity (see 2.1.2). In spite of this weakness, human rights law has been a fundamental challenge to the traditional scope of international law: it defines individuals and groups as subjects, and not only objects of international law, and thus endows them with the ability to make international legal claims and to be internationally responsible actors. These norms confront state sovereignty as the most important principle of international law, as the status of international subjects was previously reserved exclusively for sovereign states (Paech and Stuby 2001: 631f).

It might be this “comparatively radical, and vulnerable, nature of human rights law within the international legal order (that) has protected it from internal critique,” (Charlesworth 1994: 63). However, not only did human rights law lack gender sensitivity for a long time, but in the view of feminist lawyers, “the current international human rights structure itself … creates obstacles to the advancement of women” (Charlesworth 1995: 103). In the following, the theoretical development of human rights law (4.1.3.1) as well as its implementation within the UN (4.1.3.2) is illustrated. The focus is on the development prior to the creation of CEDAW that marks the first important step in bringing a gender dimension into

\footnotesize{\textsuperscript{65} The WILPF is one of the international women's organizations that were founded in the first half of the 20\textsuperscript{th} century and that contributed to what Rupp calls an "international identity" among women peace activists (Rupp 1997). From the inceptions of the UN, it engaged strongly in UN debates on the "woman question" and supported the organizations efforts concerning disarmament and peaceful settlements of international disputes (Alonso 1993: 163). Thus, it disposed of a long established organizational structure to lobby UN negotiations.\textsuperscript{66} Incompatible positions were, among others, those between socialist and capitalist states during the Cold War and those between de-colonized and former colonial states.}
human rights law. However, the development of subsequent years has lead to further integration of a gender dimension into human rights law both in theory\textsuperscript{67} and in practice\textsuperscript{68}.

4.1.3.1 The discursive gender-bias of human rights

Discrimination on the basis of sex is explicitly named as a violation of human rights in the core human rights documents such as the UN Charter and the Universal Declaration on Human Rights. Furthermore, it is repeated in both the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights adopted by the General Assembly in 1966. It seems unmistakable, therefore, that “from the point of view of international law, women’s rights are human rights. However, dominant legal theory is only just beginning to recognize as human rights some rights claimed by the women’s movement.” (Stamatopoulou 1995: 39)

The gender-bias of international human rights law lies in the fact that

“issues traditionally of concern to men are seen as general human concerns; ‘women’s concerns’, by contrast, are regarded as a distinct and limited category. Because men are generally not the victims of sex discrimination, domestic violence, or sexual degradation and violence … these matters are often relegated to a specialized and marginalized sphere and are regulated, if at all, by weaker methods. Unless the experiences of women contribute directly to the mainstream international legal order, … international human rights law loses its claim to universal applicability” (Charlesworth 1995: 105).

As many feminist scholars have stated, the social roles of men and women are constructed along the division of the public and the private sphere (Binion 1995; Bunch 1990; Chinkin 1996; Cook 1995; Hosken 1981; O’Hare 1999; Peterson 1990; Schmidt-Häuer 2000; Zalewski 1995; Zwingel 2002); yet while the private is by definition protected from public control, it is at the same time the sphere where most violations of women’s rights occur. The theoretical construction of human rights law, which is usually divided into three “generations”\textsuperscript{69}, is based on this division and is thus insensitive to harmful private practices affecting women.

The first generation of human rights, the civil and political rights, emerged with the French and US-American revolutions over 200 years ago. The core construction of this generation of rights is the freedom of expression for autonomous citizens and their protection from governmental arbitrary action such as detention or torture. Into the present, these found-

\textsuperscript{67} The recognition of violence against women as a human rights violation is but one example for the conceptual integration of a gender dimension (Brautigam 2002).

\textsuperscript{68} For example, the appointment of a UN special rapporteur on violence against women or the increasing gender sensitivity in human rights Treaty Bodies other than CEDAW (see 5.2.2).

\textsuperscript{69} The division into human rights generations is problematic to a certain extent, "insofar as it suggests inevitable progress," but it is useful to show that "the different generations were consolidated at different historical moments and through different ideological projects." (Nash 2002: 417).
ing principles of Western democracy have often been referred to as the "core" or "most privileged part" of human rights (Risse and Sikkink 1999; Nash 2002), even if the second generation on socio-economic rights has the same normative status in principle. The most important right of this first generation is the prevention of arbitrary deprivation of life through public action. While this is without doubt an important basic right, it does not incorporate many forms of arbitrary deprivation in women’s lives committed by private actors, such as so-called “honor killings” of women, abortion of female fetuses, female infanticide and, more indirectly, the neglect of girls’ health and nutrition, which causes millions of "missing girls" in some world regions (Sen 1992). The same bias is inherent in the concept of torture: it does not envisage the widespread forms of physical and mental violence committed against women, as long as it is carried out by non-state actors. Indeed, most such crimes are committed within the family and by family members, and often this “intimate terror” (Copelon 1994) ends in the death of the mistreated woman. In sum, “(t)he traditional construction of civil and political rights … obscures the most consistent harm done to women.” (Charlesworth 1995: 107)

The second generation of human rights spells out the social, economic and cultural rights indispensable for a life lived in dignity. More than the first generation, it includes the situation of women in principle, since it deals with the rights that “affect, define and limit the lives of women” (Hosken 1981: 3) to a large extent. Those rights include the right to food, shelter, health care, gainful employment, education, reproductive health and equal socio-economic status within the family, and cultural self-determination. This set of rights was placed on the international agenda by Socialist states that deemed the fulfillment of basic socio-economic needs a necessary prerequisite to enjoy the liberal rights of the first generation. However, this set of rights was also constructed along the public/private fault line and thus not sensitive to the living conditions of women. For example, in terms of economic rights, the claim for decent working conditions focuses on paid labor only, while unpaid work - over-proportionally performed by women - goes unrecognized. Also, the specific economic situation of women, in many cases their economic dependence on others, particularly in marriage, was not considered (Charlesworth 1995; Nash 2002).

Similarly to the second, the third generation claims the right to cultural self-determination, stressing the rights of groups or collectives instead of concentration on the individual. This set of rights has an inherent danger for women in that "the precedence of

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70 The Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights were simultaneously adopted by the General Assembly and represent the same degree of codification of both sets of rights.

71 As a consequence, Copelon constructs domestic violence against women as torture (Copelon 1994).
group rights over individual rights is likely to make women's subordination within collectives more difficult to challenge” (Nash 2002: 418). This is particularly problematic because cultural self-determination, protected from legal regulation as a private matter, has often been invoked to justify traditional cultural practices that discriminate against women. At the same time, women are not understood as a group to which self-determination would be applied (Charlesworth 1995; Nash 2002).

Feminist lawyers have been trying to confront this gender bias since the 1970s, and the CEDAW Convention is the first concrete manifestation of gender-sensitivity in international human rights law. The text of the Convention is shaped by an understanding of gender equality that aims to eliminate discrimination against women in order to achieve a situation of “sameness” between men and women. In the progression of the global women’s movements of the 1980s and 1990s, this approach was criticized as not being “adequate to address the subordination of women worldwide.” (Charlesworth 1994: 59). Feminist voices in legal theory got more radical and did not deem “the promise of equality as ‘sameness’ as men” sufficient, as it “only gives women access to a world already constituted” (Charlesworth 1994: 64) and is unable to transform the existing system according to women's needs. From the mid-1980s on, a growing body of feminist legal theory has engaged in redefining human rights to include the perspectives and needs of women (Cook 1994a; Peters and Wolper 1995). These new theoretical perspectives have allowed earlier legal norms on gender equality to be re-interpreted, and in doing so have further developed the meaning of the CEDAW Convention (Nash 2002).

4.1.3.2 The operational gender-bias in the UN human rights system

The existence of specialized women’s bodies within the UN “has had the negative effect of ‘allowing’ the mainstream human rights bodies to absolve themselves of this responsibility, resulting in the treatment of women’s human rights as ‘lesser’ rights” (Stamatopoulou 1995: 45). If discrimination against women was recognized as a social problem at all, UN member states did not understand those discriminatory practices as a violation of rights, but as culturally significant traditions or developmental deficits, which had taken a long time to change (Reanda 1981). Obviously this understanding was utterly incoherent: most economic, social and cultural rights as well as some political rights have a procedural character as well, that is to say, they require long-term social change beyond mere state action. In their cases however, this was not a hindrance to defining them as human rights, while discriminatory practices against women were long kept out of the rights framework.
Accordingly, UN institutions clearly reflect the lower priority given to women’s rights than to human rights “in general,” especially in the remarkable disparities between the CHR and the CSW in respect to their resources: Starting from similar mandates, the CHR “has developed into a high-profile decision-making body” while the CSW “has often been placed in a precarious situation by its parent body, the ECOSOC” (Stamatopoulou 1995: 41). The CHR has expanded its agenda and its meeting time and established subordinate organs to investigate different forms of human rights violations (see 4.1.1). An individual complaint procedure, the so-called 1503-procedure\textsuperscript{72}, was introduced in 1970. In contrast, the CSW has tended to concentrate on the promotional aspect of its mandate, especially in the field of studies and standard setting (Reanda 1981: 25). In 1982, the CSW set up a complaint procedure of its own, but its mandate is of little practical use for individuals. The Commission receives complaints by individuals or organizations and identifies those that reveal a “pattern of reliably attested injustice and discriminatory practices against women” (ECOSOC Res. 1983/ 27, May 26, 1983). The accused government is informed thereupon and is requested to respond to the complaint. A working group\textsuperscript{73} then examines both the complaint and the answer. Based on the examinations, the CSW cannot do more than describe trends in women’s rights violations and make recommendations to the ECOSOC. For example, in 1986 the CSW noted the trend of proliferation of acts of violence against women under detention and requested the Secretary General to obtain information from states on women detainees (Jacobson 1991: 449). Since “(d)iscrimination happens on the individual level, (but) the procedure focuses on the global level” (Tomasevski 1995: 107), few individuals and organizations have made use of it. A report of the Secretary-General from 1990 on the Commission’s complaint procedure found that it was inadequate and needed to be modified (UN Doc. E/ CN.6/ 1991/ 10).

Apart from the activities of the CSW, other instruments concerned with human rights have failed to adequately address violations of human rights specifically affecting women, even if this is part of their mandate (Reanda 1981: 12). One telling case shows how the Commission on Human Rights failed to understand the gender dimension of a particular violation of rights: it discussed the case of

\textsuperscript{72} The name is derived from the number of the ECOSOC resolution that established the complaint procedure. While the procedure is confidential, the CHR has established the practice of announcing those states subject to examination, which has caused a considerable degree of publicity (Boekle 1998).

\textsuperscript{73} According to the intergovernmental character of the CSW, this working group consists of governmental delegates, not of independent experts. All states that are member of the CSW may volunteer to join the working group, including those states that are accused of rights violations. Thus, the assessment of the complaints is dependent on their interests.
"a virginity test required of an Indian immigrant woman by British authorities. The issue was dealt with as part of an item on racial discrimination, and the resolution eventually adopted … referred to 'indignities and hardships suffered by nonwhite immigrants' without any mention of women." (Reanda 1981: 26)

Likewise, the work of human rights Treaty Bodies in place before CEDAW was of extremely limited use to women. While the HRC at least occasionally noted that the rights of women were violated in the context of family law or voting rights, the structural subordination of women has not been a priority in the focus of the Committee's work (Reanda 1981).

In sum, while the UN system of human rights protection recognized the need for non-discrimination on grounds of sex, there was no adequate organizational expression to address rights violations specifically suffered by women. In this unsatisfactory situation, the adoption of the CEDAW Convention gave rise for new hope. Its adoption was seen as a turning point because “separate concepts of ‘women’s rights’ were recast in a global human rights perspective, and supervisory machinery with terms of reference similar to those of existing human rights organs was provided for.” (Reanda 1981: 12).

4.2 The emergence of CEDAW: linking "women" and "rights"

The CEDAW Convention can be seen as the outcome of a long process to bring the concerns of women into the human rights framework. It has often been called a milestone for the rights of women due to its unprecedented comprehensiveness and legally binding character (Bunch 1990; Cook 1995; Fraser 1995; Pietilä and Vickers 1996; Tinker 1981). Embedded in the ambivalent context of the UN explained in the previous section, CEDAW is the result of years of complicated and highly controversial inter-governmental negotiations. In this section, these negotiations are described with a special focus on the widely differing positions and the compromises and agreements that were reached under these circumstances. The process is divided here in two segments: first, the drafting process of the Declaration on the Elimination of Discrimination against Women (DEDAW) between 1963 and 1967, the predecessor and "seed" of CEDAW (4.2.1), second, the drafting process of the CEDAW Convention itself dating from 1973 to 1979 (4.2.2)74. Finally, the text of the Convention as the outcome of this intergovernmental process is critically assessed (4.2.3).

74 The main method used to capture the dynamics of these processes was the analysis of documents reporting on the negotiations within concerned UN organs. In addition, a few interviews with experts who were involved in either of the drafting processes were included.
4.2.1 Starting the debate: The drafting process of the Declaration on the Elimination of Discrimination against Women

At the beginning of the 1960s, the CSW had managed to create awareness concerning the underprivileged status of women. In this context, 22 mostly Eastern European, Asian, African and Latin American states made the proposal to the General Assembly to request the CSW to draft a Declaration on the Elimination of Discrimination against Women. This Declaration was to be a comprehensive document following upon some "single issue" Conventions regarding women's rights. The proponents “tied the aim of the Declaration to development, arguing that women’s participation in the development of nations was essential and that discrimination impeded that development.”\(^{75}\) (Connors 1996a: 155) During the examination of this request, the Third Committee of the General Assembly\(^{76}\) expressed some doubts as to “whether the Commission (on the Status of Women, S.Z.) should tackle practical, programmatic questions of women’s integration in the development process or deal with law and policy reform to eliminate discrimination.” (Fraser 1995: 79) The doubts regarding the Commission's competence for drafting a Declaration was finally overruled and the GA requested the CSW to prepare a draft declaration and invited governments, specialized agencies and appropriate non-governmental organizations to submit their comments and proposals to the Secretary General (GA Resolution 1921 (XVIII)).

The CSW started working on the draft at its 1965 meeting in Teheran based on the suggestions and comments of 33 governments, 15 NGOs and 4 specialized agencies. While there was a strong consensus on the priority to be given to the education of women, other areas were more controversial, above all the provisions on family law. While many delegations saw cultural traditions as expressed in marriage and family laws as the major constraint to women’s equality, others prioritized the protection of these traditions and especially the unit of the family (Fraser 1995: 79; United Nations 1996: 29). Another matter of disagreement was the question of liability: while some delegations preferred it to be a “yardstick to measure the progress achieved and help to educate public opinion,” others expressed their wish that it should be followed by a legally binding Convention as soon as possible (McKean 1983: 183). After a general debate, the CSW started drafting the Declaration based on a working document submitted by Poland. While the CSW had no previous experience in drafting legal texts,

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\(^{75}\) The provenience of the initiating states and the thematic connection of women's rights with the discourse on development suggests that the initiative aimed strengthening socio-economic rights at a historic moment in which the world community was divided on the "real character" of human rights covering either civil and political or social and economic rights.

\(^{76}\) The Third Committee deals with social and humanitarian questions. A request in this field is pre-negotiated in the Committee, which then makes a recommendation to the GA as a whole.
the chairperson of the CSW at that time describes the process retrospectively as "a truly inspired show of collaboration" with the participation of many skilled lawyers both among the members of the Commission and NGO representatives (Sipilä 1999: 12).

The final version of the Declaration consists of 11 articles dealing with the elimination of discriminatory laws and practices (art. 2), the education of public opinion (art. 3), the right to suffrage and to hold public office (art. 4), nationality rights and civil rights on equal terms with men (art. 5 and art. 6), the elimination of discrimination in penal codes (art. 7), the abolition of trafficking in women and exploitation of prostitution (art. 8), equal rights in education (art. 9) and equal rights in economic and social life, especially in gainful employment (art. 10). It does not contain a definition of “discrimination,” but in the view of the drafting delegations, “the principle of non-discrimination required that there should be no ‘arbitrary differentiation based on sex’” (McKean 1983: 186). This means that non-arbitrary distinctions made between men and women were considered legitimate. According to the understanding of the Commission, the primary differences between men and women were their physical characteristics including and exceeding the capacity of women to giving birth. Accordingly, protective measures for women, e.g. concerning certain types of work that could do them physical harm “for reasons inherent in their physical nature” (art. 10, 3) were not seen as discriminatory, but as reasonable and justified distinctions (McKean 1985: 186).

In 1966, the CSW submitted its draft Declaration to the ECOSOC to recommend it for adoption to the GA. In the debate within the ECOSOC on the proposal, the importance of the document was emphasized, but Council members also expressed a range of considerations and disagreements: “It was said that in many countries implementation of the various provisions of the draft declaration and especially those concerning family law would require time; such matters were often closely linked with customs and traditions which it might not be possible to change over night.” (UN Doc. A/ 6303, para. 499) Some delegations found the draft to be to “mandatory,” while the supportive council members emphasized that the declaration, instead of representing the lowest common denominator among existing legislation, “should rather look to the future and aim at setting standards to be achieved in all countries with the least possible delay.”(United Nations 1996: 72)

The ECOSOC passed on the draft declaration to the General Assembly, but added a list of amendments council members had proposed (UN Doc. A/ 6303). For the CSW chair-

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77 In the time between the debates on the Declaration and on the Convention, this notion of physical distinction between the sexes changed considerably. Several pioneering ILO studies conducted in the 1970s drew attention to the fact that special treatment of women based on physical differences reinforced discrimination against women, if they were not related to childbearing and reproductive capacities (McKean 1983: 187).
person, these amendments indicated that the draft needed lobbying to be adopted in the GA: “I realized that I had to go to the General Assembly, because it didn’t matter if we in the Commission had decided anything, it could be voted down in the GA, especially by men.” (Interview 13) It turned out, however, that there was little time in the 1966 General Assembly to discuss the declaration, as delegates spent a lot of time getting the Covenant on Civil and Political Rights and on the Covenant on Economic, Social and Cultural Rights adopted. It was therefore decided to postpone the final debate on the Declaration and just have an initial general discussion on it, with amendments to be considered by the CSW for a revised draft. Despite this postponement, the general debate was important because it clearly demonstrated what kind of resistance the declaration would face, and it also “clarified the goals of our own commission and accelerated the future activities. So while I was the President, we already were aware of all the tens of amendments to be moved by the next general assembly.” (Sipilä 1999: 11)

In its 1967 session, the CSW set up a working group to consider the 66 amendments that had been submitted by the GA and the ECOSOC. Of these amendments, eleven were incorporated because, in the opinion of the working group, they improved the text. In some cases the Commission could reach consensus could only by omitting paragraphs, e.g. regarding equal inheritance rights for men and women, a provision that was unacceptable for some delegations of Muslim states:

“They proposed that we should change it and use the phrase “where available” or “where suitable.” We said we couldn’t do it that way, because then everybody who is against it would say it is not possible. We finally had to make a decision: would it be better to be clear and at the same time accept that countries which say the Koran is contradictory to this Declaration would refuse ratification? So we decided to leave out any straightforward statement about equal inheritance rights.” (Interview 13)

Negotiations took place as the draft Declaration was put on the agenda of the Third Committee of the General Assembly in October 1967. The debate gives an impression of the diverse ideas about women’s rights at that time. For example, the delegate of Peru voiced his concern that in the desire to protect the rights of women, the draft Declaration had gone too far. He had been struck by “such absurd and inappropriate questions” as to provide men and women with equal rights in disposing of property acquired during marriage. This was inappropriate because “under most legal systems, the husband was the administrator of the com-

78 In the memory of the CSW chairperson, the Ambassador of Saudi Arabia was one of the outspoken opponents of the Declaration: “For the first time in my life I heard an earful of what the gentleman thought of the status of women and how little the UN had right to adopt such papers as represented by the declaration forbidding discrimination against women.” (Sipilä 1999: 11)
mon marital estate.” He concluded in stating that in Peru, absolute equality of rights between men and women had been achieved (UN Doc. A/ C.3/ SR 1468, paras. 20-21).

On some general provisions, delegations expressed very divergent views and it required long negotiations to reach a compromise acceptable to all parties. For example, many delegations expressed the view that the wording of art. 2 – “All appropriate measures shall be taken to abolish existing laws, customs, … which are discriminatory against women” - was inappropriate, because customs could not be “abolished,” but only “modified” over time. Delegations\(^{79}\) therefore suggested changing the wording of art. 2, but did not succeed, because some other delegations expressed their firm opposition to any amendment that would restrict the Declaration’s scope\(^{80}\). Another amendment that received considerable support but was finally rejected by vote was the proposal of Morocco to change the order of the articles and put art. 9, dealing with education, before art. 6 on political rights, therewith indicating that education was a matter of higher priority and a necessary prerequisite to exert political rights. The opponents to this proposal didn’t want to accept any implicit hierarchy between the provisions and explained that the proposed order would follow the rationale of other documents of that nature (UN Doc. A/ C.3/ SR 1484, paras. 36-46). One of the accepted amendments was proposed by Chile, Costa Rica and Uruguay. It contained an additional paragraph on article 10 on economic and social life that explicitly dealt with the prevention of discrimination against women on account of marriage or maternity in the field of work.

On November 7, 1967, the General Assembly unanimously adopted the first comprehensive Declaration on eliminating discrimination against women. The session coincided with the 50\(^{th}\) anniversary of the Soviet revolution of 1917 and was therefore attended by many delegations wanting to express their congratulations. Arguably, this gave great publicity to the Declaration, however, many delegates referred only shortly to the Declaration and talked at great length about the Soviet revolution or adjacent topics, e.g. the special relationship between their country and the Soviet Union or the special meaning of revolutions and socialism for their country or region. The Soviet Union itself took a long time praising the just and equal society it had been creating. Interestingly, no delegation used the opportunity to link the idea of gender equality as enshrined in the Declaration with the socialist vision of an equal society, except Tunisia and the USSR in two anecdotic references (UN Doc. A/ PV. 1597, para. 63; 117). The references made to the Declaration itself reflected by and large the previ-

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\(^{79}\) Among others, this amendment was voiced by United Arab Republic, Nigeria, and Iraq (UN Doc. A/ C.3/ SR 1468, paras. 11; 28; 30).

\(^{80}\) See the Netherlands, Austria, and Poland (UN Doc. A/ C.3/ SR 1484, paras. 29; 42; UN Doc. A/ C3/ SR 1485, para. 6)
ous debates. Some delegations indicated that a Declaration was not far reaching enough and that a Convention with obligations should soon follow, while others pointed to the slow change of customs and traditions. Some of the statements inadvertently showed the lack of linguistic sensitivity regarding gender equality\textsuperscript{81}, others revealed a substantive lack of understanding regarding gender-based discrimination\textsuperscript{82}. In the following year, the ECOSOC initiated the voluntary reporting system on implementation of the Declaration (ECOSOC Res. 1325 (XLIV)). As only a few governments reported, the need for a binding instrument became more apparent.

4.2.2 “A cautious negotiation”\textsuperscript{83} or “agonizing over each article”\textsuperscript{84}: The drafting process of the Convention

4.2.2.1 Chronology of drafting

Despite the obvious failure of the Declaration in producing any effect, initial attempts to create a more binding instrument were made only in 1972. The process of creating the CEDAW Convention developed in three stages: first, the CSW worked on a draft from 1974-1976, second, from 1977 to 1979 three Working Groups of the Third Committee to the General Assembly continued. Third, in a few sessions in December 1979, the Third Committee as a whole came to a final agreement that was followed by immediate adoption in the General Assembly.

In 1972 the CSW suggested a working group to consider government proposals concerning effective instruments to promote the rights of women. The working group first met in 1974 to discuss government replies and possible substantive and implementation provisions (Fraser 1995: 84). As a member of the CSW at that time recalls, the enterprise had to face a lot of obstacles from its very beginnings, not only in part from “male sectors, but there were also some female opinions hardly favorable to the idea of preparing a Convention of that nature. Also, the proposal to establish a supervising or 'executive' mechanism was openly op-

\textsuperscript{81} Turkey referred to the “needs of men” instead “human beings” (UN Doc. A/ PV. 1597, para. 30); Tunisia addressed “those who have dreamt of ending the exploitation of man by man … put their faith in the liberation of man” (UN Doc. A/ PV. 1597, para. 67)

\textsuperscript{82} For example, Kuwait stated that “in Arab and Islamic society, women had no need to wait for any such declaration before becoming emancipated; they were emancipated from the day when Islam first addressed its sacred message to all mankind” (UN Doc. A/ PV. 1597, para. 91). Similarly, the USSR expressed its appreciation from a position of imagined perfection regarding gender equality: “We are especially happy that this important document was adopted on the day of the fiftieth anniversary of the Soviet State, in which the problem of the equality of women has been fully resolved.” (UN Doc. A/ PV. 1597, para. 117)

\textsuperscript{83} “Una cuidadosa negociación,” Gonzalez 2000.

\textsuperscript{84} Jacobson 1991: 445.
posed.” (González 2000: 6). Thus, CSW members were aware that "a cautious negotiation process" was necessary to achieve a legally binding document. The outcome of the 1974 session was circulated for comments among governments, Specialized Agencies and NGOs. Based on these comments the CSW continued to work on the draft Convention in its 1976 session. By then negotiations had become more politicized than on previous occasions – “politicized” especially in the context of the cold war block confrontation (Fraser 1995: 85) – which is most noticeable in the preamble of the Convention. The CSW managed to approve a draft Convention. Since no consensus was possible for some issues, the document was adopted without a vote and alternative proposals on the controversial issues were included. The draft went via the ECOSOC to the General Assembly for consideration.

From 1977 to 1979, a “Working Group of the Whole” of the General Assembly’s Third Committee continued to consider the draft. “Although the Working Group began with what amounted to a finished draft its deliberations were nevertheless long and painful.” (Jacobson 1991: 446) The most contentious and time-consuming discussions concerned the preamble, the protection of women workers, nationality rights and the concept of equality before the law covering equal legal capacities and equal rights within marriage for women and men. Also, there were sharp disagreements on questions of implementing and monitoring provisions (Burrows 1985; Fraser 1995; Jacobson 1991). Until late 1979, the Working Group had not managed to reach a compromise on all controversial issues. Thus it handed a draft document to the Third Committee that included irreconcilable passages “in brackets.”

In the Third Committee debate on the draft was concluded in just four sessions. Jacobson attributes this “uncharacteristic speed” somewhat sarcastically to either “the comprehensiveness of the preparatory work or (to) the Third Committee’s relative lack of interest in the issue, or both.” (Jacobson 1991: 446) Commentators, as well as Committee members themselves, saw the major reason for the fast treatment as the desire to have the document ready and open for signature at the time of the 1980 World Women’s Conference in Copenhagen. Not all delegations supported this speedy proceeding because they were not yet satisfied with

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85 “sectores masculinos, sino también se hicieron oír algunas opiniones femeninas poco favorables a la idea misma de preparar una Convención de esa naturaleza, y más abiertamente contrarias a la propuesta de establecer un mecanismo de supervisión o de ‘ejecución’”.

86 40 governments, 4 specialized agencies and 10 NGOs had submitted suggestions for changes (United Nations 1996: 43).

87 Non-governmental organizations did not play and important role in the drafting process. It was “by and large, the work of member states … (Just some) established non-governmental organizations dedicated to issues of concern to women contributed,” namely the Council of Social Democrat Women, the International Federation of University Women, the World Young Women’s Christian Association, the International Planned Parenthood Federation, the All African Women’s Conference, and the International Confederation of Free Trade, a non-gender specific organization that contributed to the article on equal employment. (Connors 1996a: 160f) These organizations only had access to the negotiations in the CSW, not in the Third Committee.
the text. Accordingly, the Mexican delegate proposed that the draft should be circulated to governments for comments, and that adoption should be postponed to the 35th General Assembly session in the following year (UN Doc. A/ C.3/ 34/ SR. 71). Some delegations supported Mexico arguing that the Convention should not be “hastened.” The majority of delegations, however, pointed to the extended compromise building around the document. Canada recalled that governments had already been consulted twice to give their views on the document; the Canadian delegate stated that even if the Convention was “far from being a perfect legal instrument,” it had to be borne in mind that it was “a compromise text, and it would be hardly possible to improve it further at the next session.” (UN Doc. A/ C.3/ 34/ SR. 73: 6). Thus, the Mexican proposal was rejected and the draft Convention was sent to the General Assembly the same year, that is in December 1979.

The disapproval carried over into the General Assembly. While most delegations showed enthusiasm on the importance of women’s rights, the Convention as such was essentially criticized (UN Doc. A/ 34/ 107). Some delegations, e.g. the United Kingdom, repeated their concern on the “precipitate manner in which the Working Group of the Third Committee hastened through many important aspects.” In the delegation’s view, this would have the effect that states might be compelled to enter reservations or refuse to ratify altogether (UN Doc. A/ 34/ 107, paras. 10; 13)\(^88\). Morocco declared its intention to abstain from the vote. Its representative regretted “that delegations failed to understand how vital it is that this Convention strike a fair balance among all existing legal systems. Extremism will never lead to the desired results and goals.” (UN Doc. A/ 34/ 107, para. 41) Other states justified their abstentions with incompatibility between the Convention and national laws or announced that despite their approval, the Convention still had to be scrutinized by their governments and might be subject to reservations.

The Convention was adopted by a vote of 130 states in favor, 0 against, and 11 abstentions\(^89\). Given that the balloting had been preceded by separate votes on a number of controversial paragraphs and that a huge number of countries had expressed reservations to specific provisions, “it was clear that the overwhelming vote in favour did not reflect general satisfaction with the agreement.” (United Nations 1996: 41) However, a considerable rapprochement between widely differing convictions had taken place. As the Secretary General at the time, Kurt Waldheim praised this process in his opening statement of the World Women’s Confer-

\(^{88}\) Similar arguments were made by Mexico, Brazil, Mauritania to explain their abstention in the vote (UN Doc. A/ 34/ 107, paras. 40, 50, 68).

\(^{89}\) The abstaining states were Bangladesh, Brazil, Comoros, Djibouti, Haiti, Mail, Mauritania, Mexico, Morocco, Saudi Arabia, and Senegal.
ence in Copenhagen 1980 saying: “Considering the enormous diversity of cultural traditions and social systems in the world, the achievement of the common understanding which this Convention reflects is truly remarkable.” (Tinker 1981: 43)

4.2.2.2 Crucial actors and general lines of conflict

From a state-centered angle, the Convention is the product of ideological differences between states:

“(T)he Convention was born in an era of superpower confrontation and of battles between different ideologies (…) and also (of) the religious-ideological confrontation (…) between Islamic conceptions of the relationship between religion and law and the role of women in society and in the family, and western emphasis on individual and enforceable rights belonging to women.” (Rehof 1993: 2)

If the interpersonal dynamics of the drafting process are taken into account, CEDAW appears to be a success for committed female delegates within an inherently androcentric organization. In the view of one participant in the process, the CSW was the only space where the relevance for such a document was understood, and where committed women came together to fight for it:

“The convention and its predecessor, the Declaration on the Elimination of Discrimination against Women, resulted from initiatives and long negotiations within the political organs of the UN, but with a unique difference. Women drafted these instruments. The Commission on the Status of Women (CSW) afforded women members, NGOs and female UN staff what feminists term a free space.” (Fraser 1995: 77)

There were doubtless a number of women delegates who pushed for a better representation of women's concerns in the human rights framework. However, not all female delegates fought for the same cause; depending on their national, political, cultural and religious backgrounds, they had widely differing opinions on what women's interests actually are. Therefore, it is more precise to interpret the Convention as a success of a specific sector of women delegates, namely those with secular backgrounds, coming predominantly from Western and Socialist, and to a lesser extent, from developing states.

Both aspects – governmental ideologies and personal commitment to gender equality – shaped the negotiation process, and standpoints sometimes became truly irreconcilable. At the time, the role and the rights of women were a very sensitive issue per se, “possibly one of the most contentious topics on the international level.” (Rehof 1993: 2) The provisions on women’s rights touched on deeply entrenched social traditions – traditions that were seen as
culturally legitimate practices and by no means as human rights violations. Accordingly, it was unacceptable for many states that international norms should have the power to override their sovereign national regulations. The dynamics of the Women's Decade were another factor that caused heated negotiations, and the resulting increase in public awareness for women's issues that paralleled the drafting process. As some parts of the Convention were more influenced by socio-political programs than by legal norms, CEDAW became "in several ways, a new territory in the codification of human rights" (Delbrück 1981: 254).

Five significant lines of conflict can be identified in the drafting process: First, different understandings concerning the strength of the enforcement mechanism. Arguably, the delegations that tried to keep the mechanism weak succeeded (see 4.3). Second, the conflict between religious and Western secular notions of society and gender relations. Religious concepts ascribe women a specific role in family and society and derive the concept of women's rights from that role. The Western perspective constructs women as individuals endowed with enforceable rights. This opposition was the cause of most heated debates in the drafting process. The secular position succeeded more often in the final wording, which later provoked manifold reservations of States Parties, especially concerning the articles dealing with marriage and the family (see in more detail chapter 6).

The third line of conflict was the understanding of discrimination against women versus discrimination based on gender – this was not antagonistic and actually nurtured the discussion on core issues during the drafting process. While the first position superseded in principle, the proponents of gender-based discrimination were successful in incorporating their point in several articles. Their main concern was that the living conditions of both women and men had to be changed to eliminate discrimination against women. While many articles do contain the idea of women being equal with men, the majority of delegates preferred to have an instrument that focused on women and their rights, not on both sexes.

Fourth, it was inevitable in the context of the cold war that a confrontation between capitalist and socialist views on women's rights was part of the negotiations, yet the positions of the two blocks were not antagonistic in this field. Arguably, different priorities of East and West made the final document more comprehensive: The Western states laid more emphasis on civil and political rights, Eastern states on economic and social rights and on protective measures especially in the field of work.

Fifth, the different priorities of industrialized versus developing countries. Again, this was not an antagonistic, but rather a complementary process: some provisions concerning

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90 “in mehrfacher Hinsicht ein Stück Neuland in der Kodifikation der Menschenrechte”
women in developing countries were inserted based on the broader debate on women and development, and this did not cause discord. Other areas of high importance for developing countries, especially in the field of socio-economic rights, were given high priority in the process and were put forward by a broad coalition of developing and socialist states.

Apart from openly voiced positions, there were other concerns of implicit importance, such as the fear that implementation would be too costly if provisions were worded precisely enough to derive concrete obligations (Rehof 1993: 2). Thus, the vagueness of some passages in the text may be intentional to leave obligations unclear, because “the wording of such a convention is never a result of chance. It may be inconsistent and vague and it may create significant problems for lawyers trying to interpret and apply the Convention – but this may be precisely the effect envisaged by its framers.” (Rehof 1993: 3)

4.2.2.3 Summary of the Convention’s content

The Preamble enumerates the existing international human rights instruments relevant for the status of women and expresses the need to go beyond them, since discrimination against women continues to exist. It underlines the crucial contribution of women to the well-being of family and society that is not fully recognized, and calls for a change in the traditional role models for men and women, especially concerning the upbringing of children. Further, it makes a connection between the elimination of discrimination against women and the establishment of a new international economic order, the eradication of racism and colonialism, and the strengthening of international peace and security.

The following 30 articles of the Convention are organized in six parts: sections 1 – 4 enclose the substantive provisions, sections 5 and 6 regulate implementation and ratification of the Convention. Part one conveys the general provisions, starting with the definition of “discrimination against women” in article 1. Article 2 enumerates the obligations the contracting parties should undertake to reach equality between men and women. It is reinforced by article 3, which stipulates that states should ensure the full development and advancement of women, and article 4 allows temporary special measures for positive discrimination in order to reach equality between men and women. Article 5 obliges state parties to modify social and cultural patterns based on inferiority or superiority of either sex, and calls for responsibilities within the family to be shared fairly. Article 6 calls for the state parties to suppress trafficking

91 For the entire text of the Convention, see Appendix 3 or the Division for the Advancement of Women's website: http://www.un.org/womenwatch/daw/cedaw/cedaw.htm (last accessed October 21, 2005).
in women and exploitation of prostitution. Part two covers political rights: It grants women the same political rights as it does to men and encourages their political participation on the national (art. 7) and the international level (art. 8). Article 9 confers the same nationality rights to women and to men. Part three draws together the social and economic rights of women: the right to educational equality (art. 10), equal employment (art. 11), equal treatment in issues concerning health (art. 12), and equal access to financial benefits and cultural activities (art. 13). Article 14 deals with the special needs of women in rural areas. Part four consists of two articles and stipulates matters of civil law: Article 15 grants women equality before the law and in legal proceedings, and article 16 decrees that marriage and family relations have to be based on the equality of women and men.

Part five regulates the implementation procedure of the Convention. According to article 17 an independent monitoring Committee has to be installed. Article 18 specifies the reporting obligations of the state parties. The Committee has the right to adopt its own rules of procedures (art. 19), and its mandate is to report to the General Assembly and to make suggestions and general recommendations to the states (art. 21). The time and place of Committee meetings are laid down in article 20. Article 22 allows specialized agencies to participate in the reporting procedure. The sixth part contains modes of ratification and entry into force (articles 25, 27, 30), of revision of the Convention (art. 26), reservations (art. 28), and dispute settlement (art. 29). It also provides that no national regulation “more conducive” to achieve gender equality should be affected by the Convention (art. 23) and that states should undertake “all necessary measures” to the full realization of rights recognized in the Convention (art. 24).

4.2.2.4 Struggling for words: Debates on the preamble and substantive and procedural articles

The final text of a document tells very little about the foregoing wrestling over each phrase. Negotiations regularly start with one or several draft proposals that are submitted by a state or a group of states. While the working group usually takes some time for a general debate on the topic at hand, delegates strive to work on a concrete draft. They discuss article per article, whereas delegations have the chance to express disagreement, submit amendments or propose entirely new provisions. Often, the delegations that have conflicting opinions build a sub-group and elaborate a compromise proposal. Once an article is agreed upon, it is not taken up anymore and can only be amended anew in a higher instance. At the end of the draft-
ing process, the text is submitted to a “style committee” that brushes up the linguistic flow of the document in each of the official languages of the UN.

The Preamble

The debate on the Preamble took a considerable amount of time in the drafting process, yet its wording has not had much influence on the work of the CEDAW Committee. The preamble of the 1976 draft proposal of the CSW was altered substantially by the Third Committee Working Group (Rehof 1993: 32f). The first eight paragraphs were uncontroversial. They make reference to the principle of equality between men and women as spelled out in the Charter, the Universal Declaration on Human Rights, and further relevant UN conventions, declarations and resolutions. Further, it is observed that discrimination nevertheless continues to exist, a phrase that Socialist states wanted to change to make clear that discrimination was already eliminated in their countries, but the original version was retained (Rehof 1993: 36). The harmful consequences of discrimination on women themselves, but also on the prosperity of society and the family, are underlined and finally, the particularly harmful situation of women in situations of poverty is mentioned. This last paragraph was proposed by Bangladesh, Indonesia, Pakistan, Singapore and Somalia and accepted without opposition.

Final paragraphs 9-11 caused severe disagreement between socialist and capitalist states and between former colonial powers and former colonies. The German Democratic Republic proposed a paragraph stating that the strengthening of international peace and security, the friendly cooperation of all States, disarmament, elimination of colonialism and racism and the implementation of the right to self-determination were indispensable prerequisites for the fulfillment of the rights of women. This proposal was further developed into the three final paragraphs emphasizing that the new international economic order (9), the eradication of apartheid and other forms of racism (10), and the strengthening of international peace and security, including (nuclear) disarmament and the self-determination of peoples under alien or colonial domination (11), were all necessary for the attainment of the full equality between men and women.

These provisions were backed by the socialist and some newly independent states, but opposed by a range of others, most explicitly by the Netherlands, Portugal, the United Kingdom, France, New Zealand, Australia, and the United States. The opponents argued that the paragraphs dealt with matters alien to the objectives of the Convention and should therefore be deleted. In the final round of negotiations in the 3rd Committee, the United Kingdom and France even submitted an entirely new Preamble proposal because, as they put it, “in a legal
instrument of that kind the preamble should be legally correct” (UN Doc. A/ C.3/ 34/ SR. 70, para. 18). This proposal was later withdrawn, but the UK and France requested a separate vote on paragraphs 10 and 11 (UN Doc. A/ C.3/ 34/ SR. 72, para. 67). While both paragraphs were adopted in Third Committee\(^92\) as well as in the final vote in the General Assembly\(^93\), the considerable opposition to the paragraphs was made explicit.

Paragraph 12 on the role of women in development is based on the principles of the Women’s Decade and was therefore uncontroversial. Paragraph 13 is devoted to the recognition of the social significance of maternity and the role of both parents in the family. The Nordic states, the Netherlands and the United States were strong proponents for stressing the role of both parents in the upbringing of children and were unhappy with the strong emphasis on maternity. Yet the proposal to replace “maternity” with “child-bearing” was not accepted. Sweden then proposed an additional paragraph (14) to emphasize the need for change in the roles of men in society and the family.

The political controversy on the preamble originated from its length and the fact that it did not exclusively refine the scope of the Convention to the protection of human rights, as all other human rights instruments. It puts the realization of women’s rights in the context of development and peace, that is, in a broad socio-political context. However, this contextualization remains rhetorical because it is not reflected in the substantial articles (Burrows 1985; Delbrück 1981).

The substantial articles 1-16

Of the substantial provisions, articles 1, 2, 4, 5, 6, 9, 10, 11, 15 and 16 were heatedly debated, whereas articles 3, 7, 8, 12, 13 and 14 were largely unanimous.

The debate on the definition of “discrimination against women” arose predominantly within the CSW. Opinions were

“divided between those who felt that the convention should deal only with discrimination against women (stressing women’s position in society, their dual role at home and at work and their maternal functions) and those who felt it should deal with discrimination on the grounds of sex as a whole.” (Rehof 1993: 44)

\(^92\) The vote on paragraph 10 resulted in 88: 1: 23, the vote on paragraph 11 in 85: 1: 23. The USA voted against, while all other opponents confined themselves to abstain.

\(^93\) The separate vote was taken on both paragraphs together and resulted in a 108: 0: 26.
While the first opinion succeeded, the text reads like an attempt to compromise between both positions: “discrimination against women” was kept in the beginning, but the later passage “on a basis of equality with men” was inserted. Especially the Nordic countries, but also Canada and the United States repeatedly tried to strengthen the notion of sex-based discrimination during negotiations.

The first proposal to define discrimination was worded after the Convention on Racial Discrimination and included “any distinction, exclusion, restriction or preference on the basis of sex.” The inclusion of “preference” was supported by delegations that wanted to avoid “reverse discrimination” (McKean 1983: 190). Yet in the opinion of the majority, this would have prohibited preferential treatment of women, which was deemed a necessary tool to eliminate discrimination against women, especially in matters of maternity protection. In the end “preference” was left out of the definition to avoid confusion94. While the Convention does not contain any definition of gender equality, most substantial articles are based on a notion of equality that requires same treatment, unless in fields where women need to be protected from discriminatory treatment, especially on grounds of pregnancy or maternity. It should be noted that many delegations couldn’t accept this understanding of equality as sameness especially in the field of marriage and family, because they regarded the roles of women and men in the family as complementary. Thus, in their view, equal treatment could not be same treatment (McKean 1983).

The scope of discrimination first included “the political, economic, social, cultural or any other field of public life.” UNESCO, Portugal and the International Federation of University Women suggested deleting “public life,” because it was not addressing the family as sphere of importance (Rehof 1993: 49). For the same reason, “civil” was added after “cultural.” Thanks to this fairly consensual change the scope of the document was significantly widened. The drafting bodies seemed to be well aware of the high relevance of the civil or private sphere for the status of women. This awareness is also reflected in the definition of discrimination that explicitly includes all women “irrespective of their marital status.”

Article 2 defines measures States Parties should undertake to eliminate discrimination and specifies a range of legal and other measures. In short, it con-

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94 Some commentators (Burrows 1985; Donner 1994) deem this omission disastrous, because preferential treatment of men based exclusively on their sex, e.g. in a job appointment, would not be covered by the definition. However, this kind of preferential treatment could also be interpreted as a restriction of female candidates based on their sex and, hence, would fall into the scope of the definition; article 2, especially in paragraphs (d), (e), (f) also bars this kind of treatment.
tains instructions for states on how to implement the Convention.

Delegations agreed that elimination of discrimination “should have legal ramifications at national and international level, involving the abolition of existing discriminatory laws, customs, regulations and practices and providing legal protection of equal rights for men and women.” (Rehof 1993: 54) However, there were differing ideas about how concrete these provisions should be formulated. An early joint draft of the USSR and the Philippines of the article did not explicitly mention any legal and legislative responsibilities, and left the states’ obligations quite vague. A new draft submitted by Belgium in the CSW working group was more action-oriented and therefore preferred by most governments and also by NGOs. The Belgian version was agreed upon despite concerns of it being too detailed - which the Danish delegation feared might cause problems in its interpretation - and causing “interference in the internal affairs of countries” in the view of Ecuador and Indonesia (Rehof 1993: 52).

Some important amendments were made: first, the original provision that states should insert the principle of non-discrimination into their constitution was widened. The final wording of article 2 (a) calls for the embodiment of “the principle of equality of men and women in their national constitutions or other appropriate legislation,” which made it easier for many delegations to support the paragraph. Second, the delegations of Singapore and Iran were concerned if article 2 would harmonize with their cultural traditions and stated that it did not recognize principles of Muslim law. Paragraph (f) on the elimination of discriminatory laws, regulations, customs and practices was therefore weakened, as the term “nullify” was replaced by “modify” (Rehof 1993: 59). Third, the draft article 2 contained one of the few provisions addressing non-governmental organizations. It read that states should promote „organizations and movements whose purpose is to advance the status of women.” This was supported by the CSW, but later rejected in the Third Committee (Gonzalez 2000: 6). Some requests for amendments did not get through, in particular Sweden’s proposal to include measures that aim to change the traditional role of men, which was deemed necessary by Sweden and a few other delegations to bring about true equality between men and women.

Article 3 contains a general call for states to take “all appropriate measures” to ensure the full development and advancement of women in all fields. Already proposed in 1974 by the Philippines, it was only slightly amended during the course of negotiations. The only opposition to it was voiced by the Finish delegation who found the article redundant in the light of articles 10-14 (Rehof 1993: 63).
Article 4 allows temporary special measures to accelerate the achievement of de facto equality as long as they do not prolong or reverse inequality. Special measures to protect maternity are not considered discriminatory. The debate reflects the general discord among delegations as to whether the focus of the Convention should be exclusively on discrimination against women, or on the broader concept of gender-based discrimination.

The provision for temporary special measures was almost uncontroversial at the drafting stage – the suggestion of Benin to delete it, arguing that it should be left to each state to take appropriate measures, did not carry (Rehof 1993: 71). The support was based on a number of ILO Conventions in this regard. Protection of maternity was more controversial. Originally, the joint draft of the USSR and the Philippines included special measures to protect women in certain branches of work due to their physical nature, but this concept was omitted. Western states voiced disagreement on including maternity protection in the general part of the Convention, since they understood it as a special provision that was covered in later articles, especially article 11. They also raised the concern that protective measures on the grounds of motherhood could result in the reinforcement of discrimination. Sweden argued that “measures to protect the social functions of reproduction should cover both men and women” (Rehof 1993: 73), and UNESCO proposed to substitute the words “aimed at protecting maternity” by “aimed at protecting the social function of child-bearing” (Rehof 1993: 76), but the first version was retained.

Article 5 calls for measures to overcome social and cultural patterns of discrimination and ensure family education in a non-discriminatory way. While the general concept of this article was consensual, delegations had many different opinions on enforcement. In the joint draft of the USSR and the Philippines, article 5 contained a paragraph stating “any advocacy of the superiority of one sex over the other and of discrimination on the basis of sex shall be prohibited by law.” The delegations of Columbia, Finland and the United States found that this provision would restrict the freedom of speech (Rehof 1993: 79f). The final wording was therefore softened.

The proponents of an equal share of family responsibilities tried to anchor this concept in the article. Two ideas were important in the debate and finally found resonance in the text: One, the notion of motherhood as a social function should be recognized and propagated through “public education,” and two, the “common responsibility of men and women in the upbringing and development of their children” was stressed (Rehof 1993: 82f). Morocco out-
spokenly opposed this understanding of maternity and family relations. In a fervent speech in the Third Committee, and certainly speaking for many other delegations, the Moroccan delegate expressed the conviction that

“The family was the foundation of society and that within it the mother had a privileged role. Therefore, the right which mothers had with regard to their children, particularly in the field of education, could not be sacrificed in the name of equality of the sexes. That right should never be handed over to extremist feminists who rejected motherhood.” (UN Doc. A/ C.3/ 34/ SR. 70, para. 7)

Morocco also proposed to add to paragraph (b) the provision that “the interest of the children is the primordial consideration in all cases.” While this insertion was questioned, because the interests of children were not subject of the document, the proposal was adopted with a slim majority (60: 1: 54).

Article 5 is one of the problematic articles of the Convention in terms of implementation. It contains an obligation for states – the modification of social and cultural patterns of conduct with a view to achieving the elimination of prejudices and practices based on gender discrimination. Yet it does not define which patterns need to be modified, therewith leaving the identification of discriminatory patterns to the states, neither does it clarify how the modification should be carried out. Thus, if a state does not define complementary male and female roles in the family as discriminatory cultural patterns – a perspective that is clearly expressed in the Moroccan statement - it would not have to act to modify them, and should modification be deemed necessary, it is up to the state to decide what measures are most appropriate (Burrows 1985). However, article 5 is also visionary, as it is the only one in the whole Convention that touches on female and male social roles and thus, allows fundamental changes not only regarding women, but gender relations generally speaking (Nash 2002).

Article 6 on trafficking and exploitation of prostitution was based on the Convention on the Elimination of Trafficking in Persons and Exploitation of Prostitution from 1949 and was therefore not controversial in principle.

Two substantial amendments were proposed, yet in the end none was accepted: First, Belgium suggested including after “all forms of traffic in women and exploitation of prostitution of women” the supplement “and attacks on the physical integrity of women.” At the time, the proposal did not receive support and was withdrawn by the Belgian delegation. The problem of widespread forms of violence against women came to be understood as a human rights
violation only much later. Second, Morocco wanted to suppress not only the exploitation of prostitution, but prostitution as such. Most delegations found this an unacceptable change of the article, and the amendment was rejected by vote in the Third Committee (Rehof 1993: 91).

Based on the Convention on the Political Rights of Women, article 7 on the participation of women in political and public life was not controversial. Contrary to some other articles, in this case the final wording was stronger than in the first proposals: For example, states shall “ensure” political rights instead of “give women the opportunity to participate....” Further, the rights to be ensured are enumerated in detail, while the former reference was rather unspecific. It was within the discussion of article 7 that delegates expressed the need for an additional provision on the right to hold public office at the international level. The result was Article 8 on the international representation of women. It is also important to note that both articles present an additional element in comparison to the earlier Convention on the Political Rights of Women, as they strongly and explicitly encourage women to participate in governmental and non-governmental organizations (Burrows 1985).

Article 9 grants equal nationality rights to men and women irrespective of the nationality of their spouse, and it concedes equal rights to men and women with respect to the nationality of their children. Both provisions were highly controversial among delegations.

Within the CSW, many states declared that neither their nationality laws nor their marriage laws were in accordance with article 9 (1), e.g. Afghanistan, Argentina, Iraq and Ethiopia. Nonetheless, the working group adopted a version similar to the final article, with the difference of gender-neutral wording (“woman” was replaced by “person,” “husband” or “wife” by “spouse”). These terms were rephrased in the Third Committee, because some delegations feared that the privileges of women as spelled out in the Convention on Nationality of Married Women would be jeopardized by the gender-neutral terms (Rehof 1993: 105). In general, however, article 9 (1) goes beyond the Convention on Nationality of Married Women, because that document did not stipulate equal rights for married men and women as

95 In the 1990s, the failure to address violence against women in the Convention caused the Committee experts to adopt a general recommendation on the issue (see 5.1.2.4).
to nationality. It had only set a certain standard for married women irrespective of the rights of married men (Burrows 1985).

Article 9 (2) faced even stronger resistance. Some delegations, e.g. Libya and Syria, declared it incompatible with their national law, since the nationality of a child was automatically that of the father, while others, e.g. Denmark, felt that the welfare of the child should have a higher priority than the right of the mother to transmit her nationality to her child. Another opinion voiced by Pakistan was that the provision would increase the number of people with double nationality, which was not deemed desirable (Rehof 1993: 103f). The Third Committee did not reach a consensus, so article 9 (2) was put to a separate vote in the General Assembly. The paragraph was included with 92 votes in favor, 13 against and 28 abstentions.

Education without discrimination had been one of the priorities in improving the status of women for a long time. Article 10 of CEDAW is based on Article 9 of UDAsW and was unanimous in principle. It is unequivocal in granting men and women and boys and girls, respectively, the same rights to education. Nonetheless, the debate was lengthy because of the comprehensiveness of the article and the diverse ideas of what should be part of education and what not. “Education” was finally defined very broadly: it doesn’t only contain schooling and higher education, but also education in family planning and to eliminate gender stereotypes. Delegations made an effort to explicitly enumerate all areas for which the article should apply, even if some were subject to other articles as well, such as vocational training. The aspect of guaranteeing equal access to education for married and unmarried women was discussed, but not included in the text.

A lively debate took place on the relevance of co-education to diminish gender stereotypes. The CSW clearly favored it and included the need for “speedy implementation of co-education” in the draft article. However, in many states co-education was not the norm, and many delegations were not comfortable with the notion that the dismantling of stereotypes was directly linked to one specific educational system. The Third Committee therefore changed the wording to a more general “all forms of education that eliminate gender stereotypes, among them co-education.”

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96 It should be noted that the transmission of nationality is not exclusively a right of any of the parents – a notion that the wording of the article might insinuate. “The best interpretation of paragraph 2 would therefore be that where a choice is to be exercised as to the nationality of the child the decision maker can take into account the nationality of both parents and potentially the child can acquire either.” (Burrows 1985: 434)

97 This consensus gained importance during the 1960s and even more during the 1970s. Still, in 1960, the UNESCO Convention on the Elimination of Discrimination in Education only grants the right to “equivalent” education for boys and girls, a term that allows gender-segregated educational systems (Burrows 1985: 437).
Education in family planning was included in this article because of the importance family planning had gained before and during the Women’s Decade. In the discussion, it was critically reflected upon in two ways: on the one hand, delegations felt that family planning should be the responsibility of men and women, yet the inclusion in this article would run the risk of reinforcing the understanding that family planning was the responsibility of women alone. On the other hand, delegations had different views on the form in which states should provide for education on family planning. The International Planned Parenthood Federation and Denmark found it insufficient just to mention “information” about family planning, and proposed to include “advices and services.” Many delegations, however, deemed the inclusion of family planning services unacceptable for their countries. Thus, in the final version, the “services” was omitted and “information and advice” retained (Rehof 1993: 112f).

Article 11 grants women the right to work on equal footing with men, and at the same time guarantees protective measures for women related to their childbearing functions. Even if the “right to work” stands unspecified in CEDAW, it is based on the principles of the Covenant on Economic, Social and Cultural Rights, where the right to work means the right to freely-chosen and remunerated work (Burrows 1985).

The controversies around article 11 were most unequivocally shaped by the East-West conflict. From the beginning of the drafting process, the USSR had taken a leading stance in equal employment provisions. It came up with a very detailed proposal that included several articles. In short, women should have the right to free choice of occupation and to continue occupation after marriage; to equal pay for equal work and equal vocational training; to equal rights with men to annual paid leave, social security, and old-age pensions, with the establishment of a lower pension age for women; the rights of female part-time workers should be identical to those of full-time workers; and states should guarantee the protection of women workers on account of their physical characteristics and their childbearing role, as well as enable women to combine the fulfillment of family obligations with activity in the labor force (Rehof 1993: 125).

While most of these provisions were relevant to the final version of article 11, many delegations considered the detailed obligations enumerated by the USSR draft too far-reaching and preferred more general and flexible guidelines. Japan pointed out that many provisions in the field of work couldn’t be dealt with by states alone, but needed the participation of employers’ and workers’ representatives. Therefore, the ILO with its tripartite structure
would be a better forum to deal with working women’s problems. The ILO itself considerably
influenced the debate by drawing attention to the standards that had already been established
by the ILO. For example, it expressed concern towards protective provisions for women that
were not directly linked to maternal functions, and stressed the importance of protection of
workers irrespective of their sex. Since the USSR was a strong proponent of protective mea-
sures for women on the basis of their physical nature, it accused the ILO of partiality “in favor
of a certain group of countries” (Rehof 1993: 129). The final text only contains protective
measures based on reproductive functions.

Three other issues were also contentious: First, explicitly mentioning a lower retire-
ment age for women. This was supported in the CSW, but withdrawn in the Third Committee
because it could have discriminatory consequences for women. The final wording allowed,
but did not demand, an earlier pension age. Second, paid maternity leave being a public re-
sponsibility, and whether it should be “granted” or just “encouraged.” The United States op-
posed the public responsibility because it didn’t allow employers to provide for paid leave
from private funds. Together with India and Indonesia, the US argued that it would be prefer-
able if states “encouraged” paid leave provisions, “because not all countries were in a position
to require employers to grant paid maternity leave or had the public funds to cover the cost.”
(Rehof 1993: 139) The majority within the CSW still retained the responsibility of public
funding, but the Third Committee later deleted any reference to the funding source. Third,
granting part-time workers the same rights as full-time workers. This proposal was not in-
cluded in the final version, although the CSW had been discussing the problems of female
part-time workers for a long time.

During the negotiations in the CSW, the issue of health care was not dealt
with in a separate article, rather within the context of the articles on employ-
ment and rural women. It was only in the debates of the Third Committee that
a new article was proposed by Denmark and the Netherlands and that health care, with a spe-
cial emphasis on pregnancy and motherhood, was understood as an important issue in the
scope of the Convention. The allusion to family planning services was again briefly dis-
cussed, yet the amendment submitted by Finland, India and Iran referring only generally to
“health care services, including those related to family planning” was accepted (Rehof 1993:
145).
Together with Article 12, Denmark and the Netherlands proposed another new article in the Third Committee on the elimination of discrimination in economic and social life. Its basic intention was to make provisions only contained in specific articles, or omitted altogether, generally applicable. The provision on the right to family benefits, for example, had previously been part of article 11 and had therefore been linked to employment. The right to bank loans and other forms of financial credit was a crucial issue of article 14 on rural women, but it was not formulated as a general provision (see Rehof 1993: 148f). The right to participate in recreational activities, sports and cultural life was a topic that had gained relevance within the Women’s Decade.

The special needs of rural women were not originally addressed in a separate article, but within the articles of education and employment. To stress the importance of the issue, FAO drew attention to the resolution on the Conditions of Women in Rural Areas adopted by the World Women’s Conference in Mexico and to other international documents. A group of states (Egypt, India, Indonesia, Iran, Pakistan, Thailand and the United States) later drafted a full article on the special measures to be taken to guarantee the rights of rural women. Except from addressing the high relevance of women’s work “in non-monetized sectors of the economy” and the right to organize self-help groups, the article hardly contains provisions not covered by other articles, yet the intention of the proponents – most of them developing countries – was to give priority to the situation and the rights of rural women. The article was undisputed in principle, but received a range of revisions and extensions (Rehof 1993: 153f).

Article 15 guarantees women equality with men in civil matters. Civil rights include a broad set of rights, yet CEDAW focuses on four areas supposedly most important to women: First, equality with men before the law, second, equal legal capacity with men in all civil matters, third, the prohibition of any restriction on women’s legal capacity, and fourth, the right to freedom of movement for women. These principles had already been included in the DEDAW, but the Convention contained an important improvement: Contrary to the 1967 Declaration, the connection of women’s civil rights with the harmony of the family was no longer supported by the delegations.

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98 The Covenant on Civil and Political Rights specifies the following areas: the right to life and security of the person, the rights of persons in procedures before the courts, the right to privacy, freedom of thought and conscience, the right of assembly and to join organisations, the right to marry and found a family and the right to be treated equally before the law.
The concrete provisions of both articles 15 and 16 were highly contentious. It might have been a smart strategy to move these two articles to the end of the Convention, because it “meant that readers, and potential ratifying nations, would see the less controversial provisions first, building up to the logical conclusion that law, including marriage and family law, institutionalized inequality.” (Fraser 1995: 86). Between the two, Article 15 was more easily agreed to. Ecuador opposed paragraph 3 on the annulment of contracts and “all other private instruments of any kind” that restrict the legal capacity of women, because it feared it would create a legal vacuum. Yet its amendment was not adopted (Rehof 1993: 166). Further, Egypt, Indonesia, and Iran explained that their legal systems were not in accordance with Article 15, and Egypt and Iran expressed reservations on granting freedom of movement to women (Rehof 1993: 167).

Article 16 deepens Article 15 by spelling out the equality of women and men in matters of marriage and family relations. It was one of the most controversial articles during the negotiation process, and later became subject to the most reservations to the Convention (Bayefsky 2001: 684). Before CEDAW, family law had only been dealt with in two international Conventions: the 1956 Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery, and the 1962 Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage. Therefore, the “inclusion of provisions relating to the family … is something of a breakthrough in the international recognition of women’s rights.” (Burrows 1985: 450).

The first article proposed by the Philippines was based on the DEDAW and included equal rights for men and women to enter marriage, equal duties during marriage and equal rights at its dissolution. Further, mothers should be granted parental authority over a child born out of wedlock. In a joint draft of the Philippines and the USSR, further provisions were added: the right for married women to choose their family name, profession and occupation, to own and dispose of property, to be a guardian, to adopt children, and to receive family allowances on equal footing with men. Further, no legal distinction should exist between children born in and out of wedlock.

Paragraph 1(c) on the same rights during marriage and at its dissolution was strongly opposed by a range of states. Egypt, Indonesia and Iran found the mentioning of “dissolution” ...
problematic and declared it conflictive with their national laws. The Moroccan delegation argued that the article did not take into account that

“(t)he rights of women and men could not be the same in marriage, because their roles in the family unit were not the same. Those roles … had arisen in the deep consciousness of the human race where the masculine image of the father and the feminine image of the mother were clearly stamped and complementary. That clear distinction and that complementarity were necessary for the physic and moral balance of children.”

(UN Doc. A/ C.3/ 34/ SR. 70, para. 11)

Morocco therefore proposed to replace “the same rights and responsibilities” with “respect for the rights of women.” The Iranian delegate noted that this wording wouldn’t affect discriminatory laws where they were in place, and the proposal was rejected (Rehof 1993: 175). Article 16 (1c) remained controversial until the end of negotiations and was put to a separate vote in the General Assembly (104: 0: 32).

Paragraph 1d on the responsibility of parents is formulated in gender-neutral terms, but this final agreement was preceded by many other proposals and a heated debate. Within the CSW, a version was adopted that stressed the rights of single mothers: “Women, whether married or not, have equal rights and responsibilities with men in matters relating to their children.” This was unacceptable for some Muslim countries. The delegation of Bahrain explained that illegitimate relationships between men and women went counter to Islam, and that provisions should be specified for married couples (Rehof 1993: 177). In the Third Committee the United Kingdom suggested replacing “whether married or not” by “irrespective of their marital status.” This allowed the interpretation of “married or divorced” instead of “married or single” and was therefore easier to accept for Islamic states (Burrows 1985: 451). In the final version "women" was replaced by “parents.” This version was adopted despite reservations.

A proposal introduced by the Belarusian SSR, Guyana and the USSR on children born out of wedlock was also in the discussion, yet it was unclear what exactly its meaning should be. It was consensual that the protection of children was beyond the scope of the Convention, but delegations disagreed on whether the rights of unmarried women or of unmarried parents relating to their children should be strengthened. The CSW adopted a version referring to “unmarried parents,” but the whole provision was deleted in the Third Committee, because the issue of unmarried mothers was very sensitive especially to Muslim countries and it was feared that the paragraph would delay ratification (Rehof 1993: 186).
While the CSW discussed the implementation provisions of the Convention, it did not reach agreement on most articles and left decision on them to the Third Committee’s working group. Based on the previous controversies Sweden, together with Kenya and Yugoslavia, proposed a comprehensive version of articles 17-22. With only some amendments, this version was adopted.

Article 17 demands the establishment of a Committee to consider the progress made by states in implementing the Convention. After 35 ratifications, the Committee was to consist of 23 independent experts “of high moral standing and competence in the field covered by the Convention.” The mode of election of the experts is elaborated. Experts receive financial compensation from United Nations resources, and the Secretariat provides necessary staff and facilities for the effective performance of the Committee.

Intense controversies unleashed over the nature and mandate of the monitoring body as well as over its relationship to the CSW. Those delegations that were against an independent monitoring body stressed the additional financial burden as well as their concern that a new body could make the CSW unnecessary or might reduce its prestige. Those favoring the establishment of an extra body argued that the reviewing was too much workload for the CSW, and that it was preferable if an objective committee of independent experts rather than a body of government representatives performed such a task (Rehof 1993: 193).

As a compromise, the establishment of an *ad-hoc Group* to the CSW comprised of experts who had worked with women’s or sex discrimination issues was proposed by the United States (Rehof 1993: 195). Based on the Swedish proposal, the 3rd Committee finally agreed on an independent supervisory committee. The comparatively high number of experts was favored because, with the expanding membership of the UN, it would permit a more adequate representation of smaller states (Rehof 1993: 196). In the question of financing, the amendment from Bangladesh on the Swedish draft was adopted almost in the last minute of the Third Committee’s session time. As a result, the responsibility to provide funding for the committee’s work then remained with the United Nations, not with the state parties.

Article 18 specifies the obligations of state parties to submit reports to the United Nations on their progress in implementing the Convention. The periodic schedule of the reports was subject to debate – between a two-year cycle that would put more pressure on the states and a four-year cycle that would permit more time for planning and implementation,
the majority of delegations opted for the four-year cycle. It was also debated what kind of information should be submitted in the report, yet the final wording remained rather general: “on legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect.” Most delegations preferred national to international implementation mechanisms. The proposal of Canada to set up a method for handling complaints by states and individuals regarding violations to the Convention did not find resonance (Rehof 1993: 202).

Article 19 gives the Committee the authority to adopt its own rules of procedure and elect its officers.

Article 20 determines the time and place of the Committee meetings. The fixed time frame of two weeks per year was subject of frequent criticism, because the CEDAW Convention was the only human rights instrument with such a restricted meeting time. The provision is a residual of the debate around article 17. Several delegations had proposed to link the body to the CSW session. The draft version adopted by the CSW read that the “group will meet for a period of not more than two weeks before the opening of the regular session of the Commission on the Status of Women” (Rehof 1993: 206). The final treaty text did not link the Committee to the CSW and gave it more autonomy, but the time limit was retained.

The Committee reports to the General Assembly via ECOSOC and is entitled to make suggestions and general recommendations. The Secretary General sends the reports to the CSW for its information.

The debate around this article was again shaped by the divergent understandings of the relationship the Committee should have with the CSW, but it was also influenced by the reporting procedures of other Human Rights Instruments. Finally, the procedure as practiced by CERD was adopted, and the CSW was only marginally involved in the reporting process. What kind of information the reports should contain was left vague. The right of the Committee to make “suggestions and general recommendations” refers to the communication between the Committee and the state parties. Also, it entitles the Committee to make proposals to other UN bodies, yet without specifying to which ones.

Article 22 specifies the participation of specialized agencies within the implementation procedure of the Convention. The role of specialized agencies was a point of
discussion throughout the negotiations, yet the final outcome assigned them a weaker role than their representatives would have wished. Instead of being “entitled to submit reports” on provisions that fall within their scope, the article allows their representation when reports are considered and provides that the “Committee may invite the specialized agencies to submit reports” (emphasis added). Some delegations understood “specialized agencies” to mean national and international organizations promoting the advancement of women. This understanding would have allowed NGO participation in the implementation process, a goal that especially the Netherlands was trying to get through. The version as it stands refers only to United Nations Specialized Agencies, however.

Article 23 ensures that the provisions of the Convention will not affect any national legislation more conducive to achieving equality that was already in place. The article is result of the fear that provisions could overlap with national or other international provisions in a contradictory way, and especially, with existing protective measures. This concern was most strongly voiced by the ILO as to international agreements, and by the USSR and Hungary regarding national legislation. The article was adopted despite some opposition – e.g. Finland pointed out “that the convention should not only codify but improve existing legal provisions” (Rehof 1993: 217), indicating that it should have the function of an authoritative guideline. Other opponents, e.g. Canada and the United States, feared that this article could allow protective measures that would actually reinforce discriminatory practices against women (Rehof 1993: 220).

States Parties should adopt "all necessary measures at the national level" to realize the rights spelled out in the Convention. This statement sounds somewhat redundant in the light of the substantial articles, especially of article 2. However, this provision underscores that states are legally bound to implement the provisions of the Convention on the national level, even if existing legislation and other circumstances are not – yet – in accordance with it. In these cases, the Convention should be seen as a challenge and national legislation should be brought into conformity (Rehof 1993: 224). An amendment proposed by Egypt that states should make sure to “progressively achieve the full realizations of rights” was not included in the final version. This means that the drafters chose a “maximal” instead of a “flexible” approach in terms of national implementation (Delbrück 1981).
Article 25 determines that the Convention is open to signature, ratification and accession to all States without restrictions.

States Parties are permitted to request the revision of the Convention. Authority for action lies with the General Assembly.

According to article 27, the Convention enters into force 30 days after the first twenty ratifications are registered with the Secretary General.

Article 28 provides that reservations to the Convention are allowed, as long as they are not “incompatible with the object and purpose” of the Convention, and that they may be withdrawn by notification addressed to the Secretary General.

The issue of reservations was brought up at a late stage of negotiations by Denmark. Different views were exchanged: the Philippines suggested not allowing reservations at all, Finland mentioned the possibility of partial ratification, and Sweden wanted to allow “short-time reservations” that would allow states to ratify and make changes after ratification. Following the procedure of the CERD, Denmark proposed that reservations should be inadmissible if two thirds of the States Parties objected to it. This was adopted by the CSW, but deleted again in the Third Committee, because delegations felt that the inadmissibility of reservations was sufficiently dealt with in the Vienna Convention on the Law of Treaties. Thus, the final wording prohibits “incompatible” reservations, but it does neither specify how a reservation is declared inadmissible, nor does it spell out any concrete action to be taken in this case. Due to this vagueness, the issue of reservations has become a major concern in the Committee's work (see 6.1.3).

The need to have a mechanism for dispute settlement between states party to the Convention was brought up by states from time to time, but a real provision was only drafted at the very end of the negotiations. Some delegations felt that this was outside the scope of the Convention, but the article was retained. Canada wanted to include a complaint procedure for states and individuals on violations on the Convention, and the Netherlands proposed that individuals and social organizations should have the right to submit reports, but none of the two proposals was included in the final text (Rehof 1993: 238f).

According to the Vienna Convention on the Law of Treaties adopted in 1969, states are allowed to ratify a treaty and at the same time, enter reservations to it. Before, each party to the treaty had to accept individual reservations. Thus, the Vienna Convention has made it easier for states to enter reservations (Clark 1991).
Article 30 decrees that the Convention shall be given to the Secretary General in all six UN languages (Arabic, Chinese, English, French, Russian and Spanish).

4.2.3 Strong ideals, weak implementation mechanisms - assessing the document

CEDAW represents a big step forward in the promotion of women’s rights. It contributes to the codification of human rights law in specifying the principle of equality enshrined in the Universal Declaration of Human Rights (Delbrück 1981), and it is "the definitive international legal instrument requiring respect for, and observance of, the human rights of women; it is universal in reach, comprehensive in scope and legally binding in character.” (Cook 1995: 441) More than on its substantial provisions, CEDAW was criticized on the cautious or even ineffective character of its implementation provisions. The most important substantial and procedural features – the comprehensive view on discrimination against women; the concept of gender equality; the state orientation; and the construction of a low-key control mechanism - are critically discussed in this section.

1) The comprehensive definition of “discrimination against women” in CEDAW is unprecedented. It goes beyond the norm of equal treatment and responds to the problem of pervasive gender hierarchies and the inferior status of women in all spheres of life. In recognizing “that the particular nature of discrimination against women and their distinctive characteristics is worthy of a legal response” (Cook 1995: 442), it fills a legal gap. The scope of discrimination against women contains all forms of discrimination, therewith addressing the "systemic nature of discrimination against women.” (Cook 1995: 447) Of particular importance is the inclusion of the civil sphere: CEDAW does not restrict governmental obligations to public life, but extends them to private life and family relations – the realm where women’s rights are violated the most. This important substantial innovation in CEDAW notwithstanding, it remains unclear how the fulfillment of governmental obligations in this respect may be scrutinized (Cook 1995). More recently, it has been criticized that despite the Convention’s broad concept of discrimination, it cannot explicitly be applied to discrimination on the basis of sexuality or sexual orientation. While this form of discrimination could be interpreted as a subject of the Convention – insofar as article 5 calls for the modification of stereotyped gen-

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101 For critical views on the substance of the Convention, see Charlesworth 1994; Donner 1994; Zearfoss 1991.
102 See 5.1 and Byrnes 1989; Jacobson 1991; Meron 1990.
der roles – it remains unlikely that the Committee will deal in principle with discrimination based on sexual orientation, e.g. by issuing a general recommendation (Byrnes 2002).

2) The concept of gender equality enshrined in CEDAW is predominantly based on non-discrimination. It is far reaching, especially when compared to previous international documents dealing with the status of women that often had a protective or corrective character (Hevener Kaufman 1986). Protective provisions implicitly accept the social definition of women being predominantly wives and mothers and seek to protect women in fulfilling this role. While many international documents prior to CEDAW took this protective stance, it has become evident that protectionism often reinforces discrimination against women. Thus, protective provisions are almost entirely absent from CEDAW, with the only exception being article 4 (2) on special measures to protect maternity that are deemed non-discriminatory. Corrective provisions assume that there are particular areas where women are not being treated fairly and that their treatment should be improved. CEDAW’s article 4 on special temporary measures enshrines this principle of “righting a specific wrong” (Hevener Kaufman 1986: 74) most comprehensively. Some of the corrective provisions spelled out in the specific articles were dealt with in earlier treaties, such as the prohibition of trafficking in women (art. 6) or the equal right to acquire, change or retain one’s nationality (art. 9). Other corrective measures were addressed for the first time, such as the special problems of rural women (art. 14) and the equal treatment in education (art. 10). Non-discriminatory provisions presume that gender should in no case be the basis for differential treatment. They aim “to revise the legal system in such a way that gender will no longer be a basis for the allocation of benefits and burdens in society” and “to broaden the range of behavioral options open to both sexes regardless of their inherent or cultural differences” (Hevener Kaufman 1986: 78). The content of CEDAW is predominantly non-discriminatory: the general goal is equality of women with men, as set forth in the definition of article 1 and spelled out in articles 2, 3, 7, 8, 9, 10, 11, 13, 15 and 16. For example, articles 5 (b) and 16 (d) contain a non-discriminatory redefinition of the role of the mother and the father in asserting the responsibility of both parents in raising children. In this sense, CEDAW has confronted the widespread subordination of women’s rights under other social norms, especially under the well being of the family (Burrows 1985: 459).

In sum, the CEDAW Convention has almost entirely eliminated protective provisions, maintains some corrective provisions codified in earlier documents and adds some new ones, yet predominantly takes a non-discriminatory approach. Some critics found that CEDAW remains within the androcentric limits of human rights law, because it aims at eliminating
discrimination against women to enable them to enjoy rights on equal footing with men (Charlesworth 1994). Yet this fails to reflect particular women's experiences, and in cases where the experiences of women "are related to fundamental social patterns of disadvantage, a right to equality with men may fail to address the real problems and injustices." (Byrnes 2002: 126) However, CEDAW also bears a high degree of flexibility and can be interpreted from different angles. Some articles do not at all refer to men as the standard of women's equality, e.g. article 6 and article 14, others, especially article 5, call for a modification of traditional roles and therewith challenge any androcentric standard (Byrnes 2002; Nash 2002). In the light of this potential of the treaty norms, CEDAW is a suitable instrument to enhance what Nash calls "deconstructive equality," that is the "ongoing transformation of all aspects of sex, gender and sexuality in the name of equal treatment for all individuals regardless of their personal sexual characteristics, biography or choices" (Nash 2002: 421).

3) The Convention provides for a purely state-orientation mechanism. The CEDAW Committee exclusively addresses states and does not establish a connection to individuals or non-governmental organizations, which makes CEDAW a conservative treaty in comparison to others. The CERD Committee, for example, has the mandate to consider the reports from States Parties, to hear complaints submitted by one State Party against another, and to consider communications from individuals claiming to be victims of racial discrimination. The CEDAW Committee’s sole function is to consider the reports from States Parties. Until the year 2000, when the Optional Protocol to the Convention was adopted (see chapter 9), it did not dispose of an individual complaint procedure. As a result, CEDAW lacked an important facet of treaty-based activities for a long time – that is, the development of international jurisprudence through case law (Jacobson 1991).

4) The Convention constructs a low-level control mechanism. Its relative powerlessness is characterized by two components; first the unclear obligations imposed on the states, and second, the limits of the monitoring body.

While the provisions enumerated in the substantial part of the Convention are detailed and ambitious, most of the “responsibilities” for the states are formulated generally. For example, CEDAW article 5 urges states to “take all appropriate measures” to modify social and cultural patterns “based on the idea of inferiority or the superiority of either of the sexes,” while the comparable article in CERD is much more concrete: it even contains the obligations for states to condemn all propaganda and declare organizations illegal that promote or incite racial discrimination (Donner 1994). Likewise, article 24 of CEDAW contains a “maximum” concept in urging states to take "all necessary measures" to realize the rights spelled out in the
Convention, but the text of the Convention does not provide for concrete proposals of what this might mean (Delbrück 1981). This vagueness leaves the decision of what "appropriate measures" may be to the states. Similarly, the decision of whether a reservation is compatible with the Convention or not lies with each State Party. While article 28 doesn’t allow reservations “incompatible with the object and purpose of the Convention,” the text does not provide for any instrument to distinguish between admissible and inadmissible reservations to the treaty. The CEDAW Committee itself is not authorized to determine the incompatibility of reservations.

The text of the Convention limits of the CEDAW Committee in several ways: it restricts the Committee's annual meeting time to two weeks, in contrast to all other human rights treaties. The Convention also lays down that the Committee shall meet in Vienna or New York, not at the United Nations Centre for Human Rights in Geneva, which put the Committee in a situation of “geographical isolation” (see 5.1.2). The mode of financing the Committee's work through the United Nations instead of by the state parties also raised concerns; since the United Nations is often faced with financial problems, the organization may be an insecure funding source. However, problems in funding have not significantly influenced CEDAW and the other Treaty Bodies financed by the UN.

4.3 The intergovernmental context of CEDAW's creation - a summary

The creation of CEDAW is historically situated within the multilateral context of the United Nations. It was influenced by several significant features: First, thanks to a few committed female UN delegates, the "woman question" was put on the organization's agenda. After a phase of international consciousness raising and standard setting in which the CSW was the driving force, the debates in the 1960s went beyond women's legal equality and recognized their disadvantaged socio-economic position. In the 1970s the discussion on women's rights gained new momentum within the UN due to the increased publicity of gender issues in the context of the Women's Decade from 1976 to 1985 and the newly emerging transnational activism of non-governmental women's organizations. These impulses helped to construct a Convention on women's rights as a long overdue necessity. Second, a discourse on human

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103 The CERD deems reservations incompatible with the treaty if two thirds of States Parties object to it (Donner 1994).
104 The General Assembly later changed this provision and since 1993, the Committee has been meeting for six weeks as a plenary and two weeks as a pre-session working group (see 5.2.1.1)
105 For example, the Human Rights Committee, which is also funded by the UN, works at the highest level of resources of all Treaty Bodies.
rights had been initiated within the UN that remained largely uninfluenced by the emerging gender awareness: it constructed those issues as general human rights traditionally of concern to men, while women's concerns were regarded as a distinct category. In particular, human rights violations taking place in the private sphere were not considered – which is in fact the category of rights violations most harmful to women. As a consequence, there was no adequate organizational expression within the UN to address violations of rights specifically suffered by women, despite the general recognition that human rights included the elimination of gender-based discrimination. In addition, the United Nations system for human rights promotion and protection is as a whole a somewhat limited instrument, insofar as it depends on the principle of state sovereignty and thus on the states' willingness to engage in human rights protection. Third, the international context of this time was shaped by a range of ideological confrontations that affected the United Nations and any of its organs and debates. Particularly relevant were the block confrontation between Socialist and Western states, the different interests of former colonies and colonials powers, and of "developed" and "developing" states. The confrontational atmosphere in virtually all debates, including on the rights of women, was a severe impediment for the attempt to find common grounds among the community of states.

For CEDAW to become a reality, it was necessary to link the discourse on women's issues with the discourse on human rights. The Convention became the first international legal document to link the two separate fields; its adoption was seen as a turning point because "separate concepts of 'women's rights' were recast in a global human rights perspective." (Reanda 1981: 12). Its predecessor from the late 1960s, the Declaration on the Elimination of Discrimination against Women, already contained the basic ideas of the Convention, but at that time there was not yet enough support for a concrete instrument dealing with women's rights. The final outcome of the intergovernmental negotiations was "comprehensive in scope and legally binding in character" (Cook 1995: 441). It took place within the Commission on the Status of Women and the General Assembly. The monitoring mechanism established with the CEDAW Convention provides for the following interactions (see graph 2): States that have ratified the Convention – the States Parties - report periodically to the CEDAW Committee on their efforts to implement it. The CEDAW Committee has the function of monitoring the implementation progress in each state party in a constructive dialogue. The UN-Secretariat provides adequate administrative support for the Committee. Specialized Agencies of the United Nations are invited to contribute relevant information to the constructive dia-
The States Parties elect the independent experts of the Committee in their biannual meetings.

Graph 2: The intergovernmental context of the creation of CEDAW

In its substantial provisions CEDAW signifies a big step forward in the promotion of women’s rights. Especially its comprehensive concept of discrimination against women and the goal of gender equality spelled out in its articles make the Convention a useful guideline for the realization of women's rights. However, the international control mechanism was designed cautiously and is exclusively state-oriented. Thus, the monitoring procedure as provided for in the Convention stands in contrast to its strong ideals.

Which normative positions and which interests does the Convention represent? The drafting process of the Convention revealed differing understandings of the roles and rights of women among delegations. The crucial line of conflict emerged between secular versus religious notions on women's status, the first constructing women as individual bearers of rights, the second seeing women as fulfilling certain functions within family and society. Accordingly, the articles dealing with the rights of women within family and marriage were the most heatedly debated. Somewhat surprisingly, the different positions between Socialist and Western states did not result in antagonistic disagreements. However, the hostile international atmosphere at that time contributed to the strong emphasis on state sovereignty in the document. Instead of searching for a suitable instrument to eliminate discrimination against women in an cooperative attitude, the monitoring mechanism was designed in a way that has only weak influence on the domestic realm. This emphasis on the interests of states notwith-
standing, the newly emerging awareness regarding gender justice is also reflected in the text. The progressive tone of the Convention is certainly due to the engagement of coalitions among female proponents of women's rights from different governmental delegations and from within the UN. The influence of women's movements was minimal in the drafting process, as it was ‘by and large, the work of member states, although established non-governmental organizations dedicated to issues of concern to women contributed’ (Connors 1996: 160-161). The coalitions of women behind CEDAW were, however, not representative for the world's women: They were proponents of a secular concept of women as individual subjects of rights, and the delegates from Socialist states laid specific emphasis on the importance of women's rights in the socio-economic sphere. In the last stage of negotiations, many female delegates were replaced by diplomats who did not have any particular interest in gender issues. Thus, the governmental interests were reinforced, resulting in the weak enforcement mechanisms of the Convention. In a nutshell, the text of the CEDAW Convention is both shaped by a secular feminist understanding of gender equality, which included Western and Socialist values, and by the interests of states to minimize any constraint on their national sovereignty.
5. The Functioning of the Convention and its International Network

The international operationalization of CEDAW consists of the CEDAW Committee as monitoring body and its international support structures. Generally speaking, CEDAW started as a weak human rights instrument that has developed increasing visibility and authority during its time of functioning from 1981 on. In the late 1980s, it was suggested that the Committee should try to become more efficient in its working methods and "take the initiative in defining an expanded, constructive role for itself … (and to) play a more expansive role in developing international understanding of women's human rights." (Byrnes 1989: 66f) It is exactly these two dimensions that have shaped the later development of the Committee: efficiency in working procedures and a prominent role in defining women's rights beyond its original mandate. In the 1980s, the work of the Committee was impeded by the tremendous lack of resources and the restricted interpretation of the Committee's mandate. During the 1990s, the situation began to change: not only received the Committee more institutional support, but the discourse on women's rights gained importance, and more actors got involved in the CEDAW procedure.

How has this increase of efficiency and international authority of CEDAW exactly taken place, and in how far has it influenced the impact of the regime? To answer this question, the chapter analyses the international dimension of the CEDAW in two steps: it first discusses the composition and functioning of the CEDAW Committee (5.1), and then maps out the support structures within the UN for the Committee's work (5.2). The composition of the CEDAW Committee (5.1.1) differs in some aspects from other Treaty Bodies, in particular in terms of professional diversity and of gender. The Committee's concrete work (5.1.2) has changed over time and its activities have been expanded both within and beyond the original mandate. The Committee has worked towards improving the conditions of the constructive dialogue (5.1.2.1). As a consequence, the constructive dialogue as the centerpiece of the regime has gained complexity and efficiency (5.1.2.2). Further, the Committee has become more authoritative in interpreting the Convention's meaning, particularly in formulating general recommendations (5.1.2.3) and it has acquired an attitude of moral pressure regarding inadmissible reservations to the Convention (5.1.2.4). Individual experts have engaged in augmenting the publicity and authority of the Convention inside and outside of the UN (5.1.2.5). Within the United Nations, three contexts have been crucial for the work of CEDAW: first, the technical and administrative support structures provided by the Secretariat (5.2.1); second, the cooperation among the Human Rights Treaty Bodies that has decreased
the isolated position of the CEDAW Committee (5.2.2); and third, the cooperation between CEDAW and a number of Specialized Agencies of the UN that has lead to a far-reaching integration of the CEDAW principles in UN operations (5.2.3, 5.2.4).

The analysis is guided by the following theoretical questions: Has the CEDAW monitoring procedure developed into a forum where "intersubjective meaning" regarding the rights of women can be constructed, in other words, does the procedure strengthen a common international understanding of what women's rights should enshrine? Has the monitoring procedure created learning processes among States Parties? Does the dialogue with experts influence national policy makers? Is the procedure suited to cause a long-term process of compliance, and has the clarification of norms and detection of problems helped to make states abide the Convention? In how far is the CEDAW regime embedded in hegemonic international structures, and how has this influenced its work and impact? In how far does the monitoring procedure itself reproduce or resist those structures? To what extent have the activities of actors around CEDAW within and beyond the monitoring procedure transformed the Convention into a transnational instrument?

5.1 The International Monitoring Mechanism: The CEDAW Committee and its Work

5.1.1 "Honourable, faithful, impartial and conscientious": the experts

CEDAW article 17 (1) provides that the Committee should consist of

"twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems."

Hence, according to the Convention, three factors are relevant for the composition of the committee: their competence, their independence, and an equitable regional distribution among them (5.1.1.1). While the Convention does not make any reference to the gender of the

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106 The findings in section 5.1 are based on all three empirical methods presented in 3.2, that is document analysis, expert interviewing, and participant observation.

107 According to Rule of Procedure No. 10 of the CEDAW Committee, experts shall make a solemn declaration upon assuming their duties. It reads: "I solemnly declare that I shall perform my duties and exercise powers as a member of the Committee on the Elimination of Discrimination against Women honourably, faithfully, impartially and conscientiously." (UN Doc. CEDAW/C/ROP)
experts, the almost exclusively female composition of the Committee has turned out to influence the Committee's practice as well (5.1.1.2).

5.1.1.1 Professional diversity, independence and regional equity

*Professional competence and diversity:* From the beginnings of the Committee's work, CEDAW experts have covered a broad diversity of professions. This is a striking contrast to all other Treaty Bodies, as they have almost exclusively been made up of lawyers and law professors. All CEDAW experts have been working in the field of the advancement of women, in governmental as well as in non-governmental contexts. A look at the professional background of Committee members in the year 2000 reveals the following picture:

16 experts were employed in governmental posts or had been so before. Ten of them were working in the women’s policy agency or on posts in other ministries that served to integrate a gender perspective into those institutions; four were diplomats, usually representing their countries internationally in the field of women’s affairs.

Five members were practicing jurists, holding positions as judges, prosecutors and attorneys. Four members were academics, either in the field of law or international law, political science, literature, or women’s studies. Four members worked in non-governmental organizations concerning women’s rights or were otherwise employed independently, and one member was a dental surgeon. Of the 23 experts at that time, ten revealed a strong NGO affiliation, being founders or longstanding members of different NGO's in the field of women’s rights. All experts except three had strong experience in international or intergovernmental activities before their serving for the Committee; e.g. they were members of official delegations in the international women's conferences, or participated in regional meetings, workshops and seminars on women's issues (UN Docs. CEDAW/ SP/ 1998/ 3, CEDAW/ SP/ 1996/ 3).

Members themselves describe this breadth of diverse professional backgrounds as important feature of the Committee. They stress it as indispensable to shed light on all possible dimensions of discrimination against women. While juridical and human rights expertise is highly valued, most members find a purely legal perspective too limited. The experts' common understanding of adequate expertise is that it should be as broad as possible, and that the

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108 Some of the members fell into more than one category.
109 Out of these ten experts, two headed or belonged to mass organizations in socialist countries; in these cases, the line between governmental and non-governmental activity is hard to draw.
group of experts should represent a wide range of perspectives. One of the judges serving the Committee summarizes:

"I think that we need two or three judges or lawyers who have practical court experience as well as two or three who should be legal academics. But at the same time, we must have our health professionals, our educators, we just must have those people. If we were all judges and lawyers we wouldn't be as effective." (Interview 5)

While this is a representative perspective for CEDAW members, experts of other Treaty Bodies do not agree. In comparing the HRC with CEDAW, a member of the HRC articulates an opinion rather common among human rights experts, that is the paramount importance of legal expertise in the Treaty Bodies:

"The HRC has certain prestige within the UN system. (...) We tend to have almost only lawyers and also persons who nowadays are really independent in the sense that we don't have government people at all. There are either judges or professors. It is kind of a model what Treaty Bodies should be (...). CEDAW is much weaker, it has lesser lawyers, has less independent members. (...) I think that the application of a human rights treaty is to such a large degree a question of interpretation of the laws. That is law in essence. Of course … we could have medical doctors, sociologists, political scientists, but I think they would feel marginalized. … (I)n 80% of the discussion they would be outside." (Interview 32)

These differing assessments illustrate the distinct traditions of the women's rights discourse emerging from a socio-economic perspective on the one hand and on the "general" human rights discourse on the other (see 4.1.2, 4.1.3). Speaking from the latter vantage point, the orientation of CEDAW "has also meant that the Committee was slow to conceive of itself as a member of the family of Treaty Bodies whose work was potentially of considerable legal importance" (Byrnes 2002: 130).

CEDAW experts tend to stress their cumulative experience both in governmental positions, women's NGOs, and in academic activities related to women's issues. Experts working in governmental institutions see their background as an asset for the dialogue (Interviews 1, 2, 3, 7), in the sense that the work experience within a Women's Policy Agency (WPA) would help to ask very precise questions about the strategies and policies established by other countries' WPAs. Most experts who are associated with both governments and women's NGOs aim at building a link between these different perspectives (Interviews 1, 2, 3, 6). In relation to their work in the Committee, they seek to give space both to the governments' views on their own responsibilities and constraints, and to the legitimate claims brought forward by non-governmental organizations.
The following two examples give an illustration of biographical backgrounds that are typical for CEDAW members in terms of professional diversity and governmental as well as non-governmental affiliations:

"I am trained as an economist. … I was teaching at the University and then I joined the Planning Commission under the Ministry of Economic Planning, which is responsible to prepare 5-year development plans (…). I was working in areas like agriculture, public, finance etc. I slowly realized that nowhere I could see the women’s concern being reflected, but I had a common knowledge that women largely contributed to agricultural production. … I started digging more into the papers of the Planning Commission and realized that the whole concept of gender need was totally absent from our planning process. (…) I gathered more and more information (…) Initially it was somewhat academic in nature. Yet the more and more I went into it, it also transformed me. I realized how much women’s issues were overlooked in the policy planning, that the whole perception was wrong. And then I started writing short policy papers on pertinent issues, and also through internal lobbying I succeeded in having some of the major policies changed. (…) In the meantime I … did a diploma in gender-planning at the University of London. … I got more and more involved with women’s movement and NGO activities. (…). A year ago I started a NGO to work on implementation of CEDAW." (Interview 3)

"I have been engaged in the women’s movement in my country in the 60s and 70s, in the period when the women’s movement was first of all strongly fighting for the right to divorce, secondly for the right to abortion, and thirdly for the right to change the family law (…). I was engaged in the international policy of a political party (…). I was also involved in the socialist international, and the socialist international women’s movement, and for 6 years I was the vice chairperson for the Socialist International Women. Then, when in 1984 the first governmental equality committee was established by decree, I was a member of this committee …. I am also the member of a movement called “women’s caucus”, a political pressure group on women’s issues (…). Further, I am a member of the governmental Commission for Human Rights. On the basis of these activities I put my first candidacy to CEDAW. I was also member of my country's delegation for the Nairobi Conference and all the preparatory conferences for Nairobi, and I was also three times the chief of the delegation to the Commission on the Status of Women." (Interview 4)

Independence: Some observers have voiced concerns regarding the independence of CEDAW experts, especially because many CEDAW members have held some form of official post in their countries (e.g. Galey 1984)\textsuperscript{110}. While this criticism is relevant until today, it was of greater concern in the first decade of the Committee's work: on the one hand, the Committee had not yet established rules of procedure and thus it remained unclear in how far governmental partiality of experts could become harmful to the objectivity of the monitoring

\textsuperscript{110} In her overview of all Treaty Bodies, Bayefsky found that 48% of all experts were government employees, with the CRC, CEDAW, CERD, and CESCR having even a higher percentage of experts being employed by their government (Bayefsky 2001: 102f).
process. Later, the Committee took measures to minimize any biased influence in this regard\footnote{The long established practice that Committee members “should refrain from participating in any aspect of the consideration of the reports of the States of which they were nationals” was reaffirmed in the Committee's Decision 18/ III of 1998, “in order to maintain the highest standards of impartiality, both in substance and in appearance” (see UN Doc. A/ 53/ 38/ Rev. 1: 3).}. On the other hand, mostly Eastern European experts displayed a strong partisan spirit during the 1980s. As one longstanding CEDAW expert recalls:

"When I was elected, it was still the period of the cold war, and we had the representatives of the Eastern European countries who had the tendency to take always a political position, even if they were committed to women’s issues (…). Also when they saw that there was discrimination against women to a large extent … , Socialist countries had in any way to be defended and not to be attacked if they didn’t follow the implementation of the Convention." (Interview 4)

Likewise, advances of Western European states were downplayed and continuing problems in those countries highlighted (Byrnes 1989: 12; Galey 1984). This attitude disappeared with the end of the cold war. These changes notwithstanding, the closeness of experts to state institutions remains a debated matter. In 1998, the Meeting of the Chairpersons of the Human Rights Treaty Bodies recommended to the States Parties that "governments should refrain from nominating persons for election to Treaty Bodies whose political or other functions may not be reconcilable with the obligations of independent experts." (UN Doc. A/ 53/ 38/ Rev. 1: 6) Observers partly believe that government officials accept the logic of state institutions and therefore, are less critical towards states' achievements (Galey 1984), partly they argue that "public officials … may also be more aware of the potential for, and limitations of, government to effect important social changes." (Byrnes 1989: 10) Besides, the closeness to state institutions is not necessarily the most influential factor in the profile of experts, as their feminist background may be more relevant (ibid.).

In contrast to these considerations, experts usually have the self-perception of being completely independent. Some simply state that one should be able to separate roles in the case of holding a governmental position. Others were of the opinion that good relations to the government enabled the CEDAW expert to lobby governmental bodies and thus, to make better national use of the international experience:

"As an independent expert on the Committee, … you learn so many good practices … that women elsewhere are doing, and I try to take some of the good practices to our Council for discussion, and make use of them. So, yes, nobody interferes in my work as an independent expert, … and additionally, I use my independent expertise to also influence the position of my government on women’s issues. (…) I have, for instance,
established a national CEDAW Committee in (my country) through the national machinery, and the government has accepted.” (Interview 6)

As a matter of fact, the UN-secretariat even urges the experts to produce some repercussions in their states. In some cases, "good relations" of an expert to her own or other governments can turn out to be a strengthening factor in terms of resources. For example, as the Beijing conference approached, the Chair of the Committee was successful in getting funds for the Committee's activities for the conference from a particular government (Interview 4).

The election process of the candidates indicates some dependence of experts from states' interests in another way: in almost all cases, the government approaches the candidate, and hence, knows and approves the candidate's profile. In only one case out of 15 experts who were asked how they got elected, the candidate herself approached the government to propose her candidacy. In one other case, the nomination was a joint proposal by the government and by non-governmental organizations. Under these conditions, it seems evident that candidates who are fundamental critics of their governments' gender policies are not very likely to be considered adequate experts. Likewise, experts who have proven their independence may jeopardize reelection:

"No regional group is immune from … attempted political manipulation of the outcome of the treaty monitoring process. Key members of committees in terms of expertise, years of experience, membership in the bureau, are not put forward for reelection because of their perceived independence of changes in the state's governing party. Candidates are nominated (and elected) who are current Ambassadors, politicians, and senior government bureaucrats." (Bayefsky 2001: 102).

Finally, there is one structural element in the nomination and election of candidates that makes the process dependent from states' interests: states usually have informal pre-negotiations about the nomination of candidates that determine the outcome of the election. As the world regions should be equally represented in the Committee, negotiations take place within the regional groups of states about which state should nominate a candidate. States then engage in a kind of horse trading activity: if state x "gets" the nominee for the CEDAW Committee, state y might "get" the nominee for the CERD Committee, and each state agrees to vote for the candidate of the other. Also, states engage in promoting their candidates among delegations from other regions before the election takes place. Apart from informal bilateral exchanges, states might distribute publicity material shortly before the election takes place; some states also make it possible for their candidates to be present at the States Parties meet-
ings, which is another element that increases their chances. Thus, while delegations examine the qualifications of each expert and vote accordingly, interstate dynamics might become a deciding factor in the elections. However, this does not mean that the elected expert is by any means the "state's candidate" in the sense that it represents governmental positions: "The nomination is a process of support. They support my election as an expert, that’s really what it means. But I come here as an expert, not as their nominee, that’s a big difference." (Interview 34)

Regional distribution: While the Convention’s aim of an equitable regional distribution of experts has always been considered very important, it has not always been achieved. Galey (1984) notes that in the early years of the Committee, Eastern European and Latin American experts were far over-represented (4 Western European, 7 Eastern European, 6 Latin American, 2 African, and 4 Asian experts). In contrast, after the end of the cold war, Eastern European experts were absent altogether (Schöpp-Schilling 1999: 221). Only in 2003 did three Eastern European experts join the Committee again.

These inequalities originate from the nomination practice on the one hand – not all regions do nominate enough, if any, candidates – and from the mode of elections on the other: there are no provisions made on a regional quota system, nor are there separate votes per region. Art. 17 of the Convention only states that every two years, 11 out of the 23 members should be elected for a four year term. Elected are "those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting", with two thirds of the States Parties constituting a quorum. Based on this mode, an equitable regional distribution cannot be a guaranteed. For example, in the election of 2000, of the 11 experts elected 2 were from Africa, 2 from Latin America and the Caribbean, 3 from Asia and Pacific, and 4 from Western Europe and other Developed Regions, and within this group, all were Western European candidates. However, the general distribution among the regions has remained balanced. A general view on the Committee membership underlines a fairly even distribution between world regions:

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112 States with permanent missions in New York and sufficient staff and resources have a certain advantage in this promotion process.
113 For current membership of the Committee, see Division for the Advancement of Women 2005a.
114 This explains the absence of Eastern European experts during the 1990s, as well as the absence of any expert from a Pacific state in the CEDAW Committee whatsoever. Further – and this goes beyond regional representation – it is noteworthy that out of the over 90 experts until the year 2004, only four came from states with less than one million inhabitants (Guyana, Barbados and St. Kitts and Nevis), as it constitutes a much greater effort for small states to send experts abroad than for states with higher population figures.
115 In relation to States Parties to the Convention, African states should be represented by 6 or 7, Latin American states by 4 or 5, Asian states by 6 or 7, and the developed regions by 5 or 6 experts (own calculation based on States Parties as of 2000).
In relation to the number of States Parties to CEDAW, Africa and Asia/ Pacific are under-represented, Latin America is slightly, and the Developed Regions are strongly over-represented. However, this gross picture does not take into account the dynamics that have taken place during the course of the years, e.g. the inclusion of Eastern European states into the category of developed regions and the fast ratification of Latin American States that led to a high number of experts from that region in the early years of the Committee.

Equitable regional distribution of Committee members is a highly relevant dimension both for the international acceptance of the Convention and for the work of the Committee itself. The idea behind this provision is to represent "different forms of civilization as well as the principal legal systems" (CEDAW art. 17). In other words, it is intended to make the Convention a framework that is acceptable throughout the world and to avoid the impression that it is more inclined towards one particular culture or juridical system. The increasing number of ratifications points to widespread acceptance of the Convention, however, states do sometimes express that they feel misrepresented by the Committee's interpretation of the Convention. For example, in 1987 a range of states with an Islamic legal tradition felt offended by the Committee's request to conduct a study on the status of women under Islamic law (see 6.1.3).

For the work of the Committee, the knowledge experts have as members of particular world regions is of invaluable importance: members coming from the same regions as the reporting state are able to contribute contextual knowledge that other experts do not dispose of. This ability is of particular use, because regional experts increase the authority of the Committee if they appear both knowledgeable \textit{and} sensitive towards the situation in each reporting state.
On the other hand, experts from world regions different from that of the reporting state can contribute new impulses.

5.1.1.2 Gender as silent category of expertise and source of solidarity

The CEDAW committee has been consisting almost exclusively of women: out of the over 90 experts that have been serving as members of the committee between 1982 and 2004, only 2 were men coming from Sweden and the Netherlands. At first sight, this distribution doesn't seem surprising – in most countries, there are many more female than male experts in women's rights issues. However, if one takes note of the severe under-representation of women in all other Human Rights Treaty Bodies, it is at least surprising that there are hardly any female experts in the fields covered by those bodies, namely political and civil rights; economic, social and cultural rights; racial discrimination; torture; and children's rights. Possibly, most governments consider it important to nominate women experts for the CEDAW Committee for a variety of reasons, but they nominate experts irrespective of their gender for the other Committees; yet if the gender of an expert does not play a role, it is more likely that the candidate chosen by the government will be a man. Thus, while the gender of experts seems to play an implicit role in the election process for all Treaty Bodies, this has affected the CEDAW Committee – and maybe the CRC Committee as well (see footnote 116) - in a way different from the other monitoring bodies.

The gender bias in the composition of the Committee has been matter of discussion among the experts: for example, at its 1988 session, one expert proposed to adopt a recommendation to urge states to nominate male candidates for the CEDAW Committee. This was a reaction to comments on the all female membership of CEDAW within the 1987 ECOSOC meeting. However, the Committee did not adopt this recommendation, partly because members felt that nomination should be the exclusive decision of states, partly because they deemed a women-dominated human rights forum positive, partly because they considered the CEDAW-Committee as a counterweight to the under-representation of women in the other Treaty Bodies and found that these gender biases should be addressed first (Byrnes 1989: 9). At its 11th session in 1992, the issue was raised again, when the Committee was discussing on

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116 In 1989, the Treaty Bodies displayed the following gender distributions: CERD 17 men and 1 woman, HRC 16 men and 2 women, CESCR 16 men and 2 women, CAT 8 men and 2 women (Byrnes 1989: 8). The CRC and CMW did not yet exist. In 2005, CERD consisted of 16 men and 2 women, HRC of 15 men and 3 women, CESCR of 15 men and 3 women, CAT of 9 men and 1 woman, CRC of 9 men and 9 women, and CMW of 8 men and two women (Office of the United Nations High Commissioner for Human Rights 2004b). The equal gender distribution in the CRC stands as extraordinary exception and may be attributable to alleged thematic closeness of women not only to women's rights, but also to children's rights.
how to involve more men in the promotion of gender equality. In this context, the possibility of a quota of men on the Committee was considered, yet it was "agreed that such reform should not be undertaken until other Treaty Bodies had quotas for women." (UN Doc. A/47/38, para. 441)

Irrespective of the expertise of Committee members, the dominance of women in the CEDAW Committee seems to give the impression of lower expertise and authority to States Parties and other bodies, at least is this the perception of CEDAW experts. As one member puts it:

"Probably it (the all female membership, S.Z.) affects the impression that the Committee gives, because you can still marginalize a Committee comprised of women. If we had this group, with the expertise in this group, and we were male, we would be a very powerful Committee." (Interview 5)

Nevertheless, members themselves do welcome a male perspective, because men could give new impulses to complement the focus of gender equality in the work of the Committee. Also, the nomination of male candidates is interpreted as a sign of more comprehensive understanding of gender equality on the part of the States Parties:

"In my view, it would be positive if male experts were participating. The impact (of all experts being female, S.Z) is that one notes a misleading perception of the governments. They have not really considered a gender focus, and they don't consider it when nominating candidates. In the beginning, we had a male expert. That was very positive." (Interview 7)

Looking at CEDAW's gender homogeneity from the inside, it has influenced the work of the Committee in creating specific group dynamics. Several experts who had been serving as Committee members in different periods describe the high degree of team spirit and commitment they found in the Committee. In their view, this cohesion stemmed from the "necessary and important fight against discrimination against women" (Interview 4), and from the confidence and solidarity that was inherent in this common fight. Men are not disturbing in this struggle for gender equality, yet women have to be the protagonists in it:

"It is the women who have to be in the forefront and I don’t think that we must shy away from that. We would welcome men here, but very few of them feel very com-

\[117\]... a mi me parece que sería más positivo que participaran expertos varones. El impacto es que se nota una percepción equivocada de los gobiernos. Que no han contemplado el enfoque de género, no tienen el enfoque de género al definir sus candidaturas. Tuvimos un experto varón en la primera etapa. Y fue muy positivo."
An expert who had been Committee member in the 1980s recalls:

"What was very good about the Committee was that it was a Committee of women coming from different social contexts and backgrounds, and all of them knew exactly what discrimination against women was about. … (A)ll of them had experience in their countries or elsewhere of some forms of discrimination …. And we were united in a determination to confront all the governments that came before us with every aspect of discrimination against women in their country that we could find. (…) It made … a tremendous spirit of sisterhood among the members which bridged some of the ideological differences." (Interview 12)

While experts do identify some difficulties in working together, such as ideological and cultural differences between members, the building of regional peer groups or the formation of an "inner circle" of longstanding members, the commonalities and the solidarity among women seem to outweigh them. One expert found it easy to work together despite different backgrounds, because

"everybody had her own area of interest. Somebody was very interested in stereotypical roles and violence against women, somebody else in labor market issues, another one in rural or health issues. The whole convention was covered without agreeing who would take what kind of issues. We … could rely on each other." (Interview 25)

5.1.2 "The Committee is hard-working"\textsuperscript{118}: decades of improving working methods

5.1.2.1 Setting the framework for "good work" – adjusting the rules of procedures

When the Committee met for the first time in October 1982, it basically took the whole session to set up its rules of procedure (ROP), which were drafted following the rules of other Treaty Bodies, especially the CERD Committee. The ROP remained unchanged until the late 1990s, even though the working methods of the Committee had changed over time and were not reflected anymore in those rules. After a yearlong process of revision, the Committee finally adopted new ROP in its 24\textsuperscript{th} session in 2001 (UN Doc. CEDAW/ C/ ROP). One of the leading experts in revising the ROP saw the reason for their belated adjustment in the workload of the Committee that had not allowed appropriate reflection on the working methods.

\textsuperscript{118} See Interview 5.
However, in her view, discussion on rules is an important opportunity to better working procedures:

"… one of our problems is that we don’t have time to discuss change. And how we change procedures. (…) I think one of the reasons why I was very, very keen to review our rules of procedure was that we should bring them up to date. (…) They bore no relationship to the way we do our work at all. (…) And I want that process to continue, not to be another 20-year gap before they are looked at again. In short, if we want to change the procedure that we put it into the rules straight away (…) and debate new methods of work while we are doing it. (…) If you put down a rule and say this is how we are doing it, often ideas will come up to improve that." (Interview 5)

The new version of the ROP, then, can be interpreted as a condensed set of the best rules as practiced by the Committee over the last 20 years. This section briefly refers to the most significant principles of the ROP and discusses changes between the original and revised version. The most relevant matters in the first version were: organization of sessions, agenda setting for each session, provisions for Committee members and officers, the role of the Secretariat, conduct of business, voting procedures, and the participation of Specialized Agencies. The redraft keeps the structure in principle, yet shifts priorities in some sections. Also, it separates general rules from rules concerning the functions of the Committee and adds an entirely new section on how to proceed with the new Optional Protocol to the Convention (see chapter 9)\textsuperscript{119}.

Organization of sessions: In the first version, the annual meeting time of the Committee was laid down according to the text of the Convention for two weeks (rule 1) despite the reluctance of some experts (UN Doc. ST/ CSDHA/ 5: 7). As the Committee's meeting time was expanded during the 1990s (see 5.2.1.1), the new ROP state that the Committee "shall hold such sessions as may be required for the effective performance of its functions". In addition, it defines regular and special sessions (rules 2-3), therewith opening up the possibility to further extend meeting time if the "effective performance" so requires, and it establishes the institution of a pre-session working group stating that such a group "shall normally convene prior to each regular session" (rule 4). The Agenda section remained unchanged in principle, providing a model provisional agenda, the timely transmission of this agenda including relevant documents relating to each agenda item, and the adoption and revision of the agenda. In the initial debate, the Committee seemed to be anxious that the Secretariat would take over the

\textsuperscript{119} Further issues addressed in the ROP are the prescription of all six UN-languages as official languages of the Committee, the production of records and of the annual report, the provision that all official documents of the Committee are for general distribution, and provisions of amending and suspending the rules.
lead regarding the agenda setting process, yet over the years, agenda setting had developed into a routine and was not been debated again.

The *Provisions for Committee members and officers* set the beginning of Committee members' terms of office and determine measures to be taken if members are not able to attend meetings. In both versions of the ROP, members who cannot attend meetings may not be represented by alternates (rule 11), however, the redraft contains an additional provision to increase the discipline of attendance: members who are frequently absent from meetings should resign from their posts and, in the case they do not follow that rule, should be brought to do so by efforts of the Chairperson or the Secretary General (rule 13). The section on elected officers of the Committee has hardly been changed: it contains the election process of one Chairperson, three Vice-Chairpersons, and a Rapporteur, their terms of office, measures to be taken in the absence of the Chairperson, and the replacement of officers. The only changes are that the officers should be elected "with due regard to equitable geographical representation" (rule 16), and that the Chairperson should represent the Committee at UN meetings (rule 18).

Rules on the role of the *Secretariat* were rather short in the original version, stating only that the Secretary General may make statements at meetings of the Committee and that the Secretariat should provide information on the financial implications of any proposal discussed by the Committee. The renewed version adds a very important rule on the duties of the Secretary General (rule 21): he or she has to provide for "necessary staff and facilities for the effective performance" of the Committee's functions, including timely information of the Committee members on any question to be brought before the Committee. The 1982 version of the ROP contained a detailed section concerning the *Conduct of business* that resulted very much shortened in the actual rules, presumably because these procedures have not been problematic in the course of the Committee's work. What has been kept is the agreement of public and private meetings – the Committee meets in public, with the exception of working group meetings and such meetings where Concluding Comments on reports of States Parties are discussed -, the prescription of a quorum of twelve members, and the determination of the powers of the Chairperson. Accordingly, the Chairperson directs the meetings under observance of the ROP, has the right to propose a limitation of time for each speaker and to close the list of speakers, to rule on points of order, and to propose adjournment or suspension of meetings.

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120 In the debate, "the opinion was expressed that the role of the United Nations Secretariat was limited to the preparation of the agenda; it should not be able to choose priorities. The current formulation … fully guaranteed that the agenda would be decided by the committee." (UN Doc. ST/CSDHA/ 5: 9)
The provisions on voting rights and procedures have remained the same in substance. The most important change is that "the Committee shall endeavour to reach its decisions by consensus. If and when all efforts to reach consensus have been exhausted, decisions of the Committee shall be taken by a simple majority of the members present and voting." (rule 31 of the redraft) Show of hands is specified as usual method of voting, and secret ballot is determined as method of elections.

According to the Convention, the initial ROP provided that Specialized Agencies may be invited by the Committee to attend meetings and to submit reports on the implementation of the Convention falling within the scope of their activities. It is a considerable change that the new ROP contain two new rules granting the same treatment to intergovernmental organizations and other UN bodies (rule 46), and to non-governmental organizations (rule 47). All these organizations are invited to present their information prior to the meeting concerned, most suitably to the meeting of the pre-session working group. Especially this last change indicates the dynamic the Committee's work has taken over time, while the rules remained in their initial version.

5.1.2.2 Assisting States Parties in adequate reporting

As the reporting procedure is the main function of the CEDAW Committee, experts have put a lot of energy into improving the reporting discipline of States Parties as well as the quality of periodical reports submitted. From the very beginning of its work, the Committee has been confronted with reports of States Parties of widely differing quality. Major shortcomings were that states did not organize reports in accordance with the provisions of the Convention or that the provisions were not understood; that official policies and legal guarantees were described, but no information was provided on the extent to which these policies were realized in practice; that reports tended to describe their achievements in an over-optimistic way without mentioning obstacles and problems; and that statistical data was lacking, partly due to the fact that gender-disaggregated data was not available (Byrnes 1989: 13f).

Faced with these shortcomings, the Committee has continuously worked to support states in fulfilling their reporting procedures adequately. In its second session in 1983, the Committee discussed what kind of criteria should be used to examine the quality of state reports, and members expressed the desirability of "some degree of uniformity in the preparation of reports" (UN Doc. ST/ CSDHA/ 5: 24). Therefore, the Committee adopted guidelines for the preparation of initial reports: they should consist of a general part outlining the coun-
try's political, legal and social framework, and a second part with detailed descriptions of steps taken to implement each article of the Convention, whereas it was recommended

"that reports should not be confined to mere lists of legal instruments … but should also include information indicating how these legal instruments are reflected in the actual economic, political and social realities … in the country." (UN Doc. CEDAW/ C/ 7).

In its 7th session in 1988, the Committee adopted guidelines for the preparation of second and subsequent reports: they should update previous reports by describing innovations in implementing the Convention and by identifying significant changes and continuing obstacles to the achievement of the Convention's goals. Also, they should describe the measures taken on issues raised by Committee members in the last constructive dialogue (UN Doc. A/ 43/ 38, 1988, Annex IV). Arguably, these guidelines were still too general to be of great use for the States Parties (Byrnes 1989: 15).

In the following years, the reporting guidelines were revised several times. Since 1995, reports should contain an initial part in accordance with the "consolidated guidelines for the initial part of State Party reports" (UN Doc. HRI/ 1991/1), that is, with a "core document" that should introduce the reports to all Treaty Bodies. The idea of this change was to reduce the burden of reporting for states. Further, States Parties were invited to include in their reports information on measures taken to implement the Beijing Platform for Action, and States Parties that had entered substantive reservations to the Convention were requested to report on the reasons for that decision and on plans to withdraw them (UN Doc. CEDAW/ C/ 7/ Rev. 3). The most recent revision of reporting guidelines was adopted in the Committee's 27th session in 2002 (UN Doc. A/ 57/ 38: 137f). Drawing on the former separated guidelines, it provides a comprehensive framework for both initial and subsequent reports. Major new elements are that reports should reflect, together with the articles of the Convention, also the General Recommendations adopted by the Committee. Further, specific reporting provisions for States Parties to the Optional Protocol and the requirement to inform about measures to implement outcomes of UN conferences in relation to the Convention are included.

Over time, the quality of States Parties' reports has improved, and States Parties tend to follow the guidelines. In addition, several training seminars on the preparation of reports held in different regions have also enhanced the quality of reports (see 5.2.3). In the opinion

121 A more comprehensive and helpful manual was prepared by the Commonwealth Secretariat together with the NGO International Women's Rights Action Watch (IWRAW) in 1988. It was the first joint non-governmental and inter-governmental activity in relation to CEDAW. The guide explained the background of the Convention, the meaning of each article, and put a set of relevant questions under each article (see 8.2.1).
of one of the CEDAW experts, reports increasingly express a commitment of states regarding their obligations under the Convention:

"Since my first Committee meeting, which was in 1991, there is a great difference of some of the ways the reports were, and how the reports are now. Governments are now frank in their reports … they are even saying negative things in their reports. (...) And that for me, I like it very much. The quality of the reports has very much improved." (Interview 6)

However, the lack of discipline of States Parties to submit their periodical reports at all has remained an issue of concern for the CEDAW Committee. This unsatisfactory situation is typical for all human rights instruments – experts have sarcastically described it as "non-reporting procedure" (Byrnes 1989: 15). The CEDAW committee has encouraged timely reporting, partly by "mild pressure", partly by publicizing non-compliance, and partly by offering assistance. The Committee provides in its rule of procedure no. 47 that the Secretary General informs the Committee on overdue reports, that the Committee sends reminders to the States Parties concerned, and that those States Parties that do not comply with their reporting duties are named in the annual reports of the Committee. In an early comment, Galey expresses cautious optimism about this procedure of "sanctions, however mild" combined with a "threat of global publicity" (Galey 1984: 482). In this context, it is important to mention a structural weakness of the Committee's work, that is, the limited time it has to consider reports and, resulting from this time limit, the huge backlog of reports that are submitted, but cannot be considered in time. While the meeting time of the Committee has been prolonged (see 5.2.1), the number of States Parties has been consistently increasing as well, which means that the number of reports amounts higher each year. As has been noted many times with irony, the low reporting discipline of States Parties makes it easier for the Committee to catch up with its own duties (Byrnes 1989; 2002: 134).
Graph 4 shows the ratio of States Parties to the Convention and reports considered before the Committee during the course of 20 years. It basically demonstrates two things: first, the obvious gap between ratifications and reports considered before the Committee. Ideally, States Parties should submit their first report one year after ratification, that means that the 55 ratifying states of 1983 would have submitted 55 reports no later than 1984, and additional 42 states would have done so in the next five years until 1989, etc. Accordingly, 97 first reports would have awaited consideration in 1989. However, the Committee had examined less than the half of this number by 1988 (45).

The gap between the number of first reports that should have been considered and their actual consideration has remained significant: in the year 2003, of the 174 States Parties, 126 had had the opportunity to present their initial report before the Committee. If second, third, fourth, fifth and all subsequent reports are also taken into consideration, the gap becomes even wider: for example, in 1988, 55 second reports were due (those of all states that had ratified the Convention until 1983), yet only two second reports had been considered.

The second information contained in this graph is that from the mid 1990s on, the capacity of the Committee has increased. Until 1993 - roughly the first 10 years of the Committee's functioning -, 105 reports had been considered in total, while the number almost doubled in the following five years - 208 reports until 1998 -, and jumped up to 367 reports in 2003.

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122 Many of the missing 48 initial reports, however, had not been submitted at that time, as failure of submission is most severe in initial reports (see 6.1.1).
This has two major reasons: on the one hand, the extension of the Committee's meeting time (see 5.2.1), on the other hand, the Committee's decision in 1997 to invite States Parties to submit a maximum of two combined reports "in order to address the backlog of reports awaiting consideration and to encourage States Parties to report in a timely fashion". (UN Doc. A/52/38/Rev.1: 1) This decision was later modified by Decision 23/II of 2000 that encouraged States Parties with overdue reports to combine all outstanding reports (UN Doc. A/55/38/Rev.1: 49). However, the submission of combined reports is meant as a temporary measure. The Committee has made it clear that ratifying the Convention and submitting a package of reports only many years later entirely undermines the basic idea of the reporting procedure, that is, the periodic monitoring of a long-term commitment.

There are different reasons for States Parties to neglect their reporting obligations, such as lack of commitment, lack of personnel with expertise in preparing reports, and pure lack of resources – the latter is a particularly severe problem for small and developing states with huge reporting duties (Byrnes 1989: 17f). To take these different situations into account, the Committee made a detailed proposal how to deal with non-reporting States Parties in year its 27th session in 2002: the Secretariat is requested to prepare a file on long-term and short-term non-reporting states, also in regard to other treaties. Based on this information, the Committee analyses reasons for non-reporting, "for example, lack of resources, capacity or political will", and recommends an incremental approach to bring states to report that may include the following steps: Sending reporting reminders on a systematic basis, including the possibility to combine reports, and offering technical assistance; asking high UN officials to encourage a particular State Party to cope with the reporting duties and urge Committee members to meet informally with non-reporting states on regional basis; issuing closed meetings with representatives of non-reporting states "to discuss challenges to timely reporting" (UN Doc. A/57/38: 131f).

Apart from periodic reports, the Committee is also entitled to ask States Parties for reports on an exceptional basis, if in the Committee's view the special situation of the state requires such a report. The Committee has made use of this possibility only three times in the cases of Namibia, Yugoslavia and Rwanda. As the function of these reports is to intervene in urgent matters, "the wisdom of requesting special reports has to be directly questioned", because "urgent human rights matters are taken up by a wide range of UN actors and the involvement of the Treaty Bodies does not significantly add to visibility." (Bayefsky 2001: 23)

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123 As a consequence, several countries submitted up to five combined reports. One example is Brazil that first reported before the Committee in 2003, after having ratified the Convention already in 1984.
Arguably, the strength of the Treaty Bodies lies in the "regular consideration of human rights conditions in every ratifying state." (Bayefsky 2001: 24)

5.1.2.3 The "raison d'être" of the Committee: the constructive dialogue

The main function of the constructive dialogue is to support States Parties in the fulfillment of their treaty obligations. This may entail vocal criticism towards certain practices of states, yet the main role of the Committee in that of an advisor of the States Parties. Hence, the constructive dialogue is not "a judicial or quasi-judicial process in which the extent of the state's compliance with the provisions of the Convention is determined by the Committee. Rather, it is an occasion on which the state can identify the progress it has made, and the obstacles that face it, in implementing the Convention, and discuss these with the Committee." (Byrnes 2002: 136)

The dialogue embodies a multi-layered set of functions, among others, to comprehensively review national legislation and administrative rules; to ensure that States Parties understand the provisions of the treaty, and that they are aware if and to what extend the various rights guaranteed are enjoyed; to give the government the opportunity to present policies designed to ensure these rights and to facilitate public scrutiny of these policies; and to enable States Parties to develop a better understanding of problems and shortcomings in efforts to realize treaty provisions (UN Doc. E/1989/22, Annex III).

The CEDAW Committee has shaped the dialogue over the years both in terms of its underlying principles and of procedural efficiency. The following section first illustrates general questions of the Committee's role in the dialogue, in particular if there is a common understanding of experts what each state has to achieve, where the political limits of the Committee's mandate have to be drawn, and how each State Party can be treated adequately in its particular context. Second, four crucial measures to improve the constructive dialogue are explained, namely the preparation and structuring of each dialogue, the consideration of additional information, and the introduction of a summarizing assessment with the "Concluding Comments".

General attitude: When the Committee started performing its task of scrutinizing reports of States Parties, there was no clear definition of its own role and the limits of its mandate in that process. While the overarching feature of the Committee has been clear, that is, its authority as a monitoring body of independent experts, more concrete questions arose from its work. Two are discussed here, first, to what extend Committee members need a common base
to engage in the dialogue, and second, in how far experts are entitled to ask "political" questions. Regarding the first issue, Byrnes noted that the "Committee has not articulated any collective view of its understanding of the models of equality/ non-discrimination embodied in the Convention" (Byrnes 1989: 28). Seemingly, a common base among the experts is implicitly assumed. The questions experts ask in the dialogue point to principal matters of concern, e.g. the legal and institutional framework as set out in the Convention, equal representation of women in higher decision-making, their social and economic rights, family-related matters including violence against women, and on the need to overcome stereotyped attitudes. However, experts have had differing opinions on how discrimination against women may effectively be eliminated. For example, in the 1983 session, some experts from Socialist states could not agree with the Swedish policies based on gender equality and felt that Sweden should focus more on women's needs (UN Doc. ST/ CSDHA/ 5: 50). Thirteen years later in 1996, Ukraine was criticised by some experts because of the strong role model of the mother as it was reflected in a number of laws – this criticism was based on the notion of gender equality in the field of reproductive work (UN Doc. A/ 51/ 38: 32). In the 1980s, the contentious preambular paragraphs on world peace and development played a certain role in the dialogue. Mostly socialist experts referred to them stating that world peace and development were essential prerequisites for women to enjoy their rights. Other Committee members sharply refused to refer to these paragraphs, because they felt this was beyond the mandate of the Committee. After the end of the cold war, the preambular principles have not been mentioned anymore.\(^\text{124}\)

The second contested dimension of the mandate of the Committee is the extent to which it is allowed to ask "political" questions. In principle, the Committee should monitor a State Party exclusively in its progress towards gender equality. However, this process requires a certain degree of political will as well as some basic political prerequisites, such as a general respect of human rights. In cases where these prerequisites were obviously lacking, experts sometimes asked questions or voiced concern of general political nature. For example, in the 22\(^{\text{nd}}\) session in 2000, the Committee was confronted with Myanmar, a country that to the common knowledge of the international community violates human rights, including the

\(^{124}\) Arguably, the preamble would be useful to scrutinize States Parties: for example, the link between military budgets – as a threat to world peace – and social policies affecting women in particular could be criticised, further, the reference to colonialism, racism, and the right to development would include to look at the impact of state action to women outside of the state's own territory (Byrnes 1989: 32). While there is without doubt a great deal of impact on women's lives by trans- and international action, the CEDAW Committee has hardly ever addressed state action with international consequences, except when affecting trafficking in women and sex tourism.
rights of women. Under these conditions, it is difficult to create a meaningful constructive dialogue; some experts tried to shame the delegation in commending Myanmar to be the home country of the first female Asian peace Nobel price winner, Aun San Suu Kyi, who is the most determined opponent of the military regime. In the same session, the delegation of Belarus was reminded by one expert that a pluralistic society is indispensable for women to enjoy their rights.\(^\text{125}\). While some experts have expressed their conviction that democratic political institutions are the best framework for gender equality, other Committee members believe that a statement of this nature is beyond the mandate of the Committee, because it does not monitor the process the state is going through. As one expert puts it:

"There are experts who say that we should be very demanding in reviewing if there is democracy or not, but I do not agree on that. Before we qualify if a government is democratic or not, we have to review the situation of the women. After analyzing their living conditions and their level of development in comparison to the conditions of men, we could comment on the level of democracy in the country, but we have to remember that there is no definite agreement on what real democracy is."\(^\text{126}\) (Interview 7)

In general, the attitude of the Committee towards the delegations of States Parties is one of support in fulfilling the obligations assumed under the Convention. The constructive dialogue "envisions the States Parties and the Committee as engaged in a joint enterprise to advance the goals of the Convention by cooperative endeavors involving the exchange of information, ideas and suggestions." (Byrnes 1989: 19f) To this end, the Committee strives for an open, non-adversary atmosphere in which a well-informed and open dialogue is most likely. One of the Committee experts characterizes this approach as follows:

"As a point of departure, the Committee appreciates that states ratify the Convention and assume the scrutiny of the Committee. It appreciates this decision in the name of the women of that country. The next step is to critically examine what the state is doing. In doing so, it is necessary to consider reservations, since they can undermine the Convention, yet it is important to keep in mind that a state that ratified the Convention is willing to engage in a dialogue. Then, the Committee has to consider what can be expected from a state. That is not to say that states should be released from their duties, … yet it is important to note impeding factors." (Interview 1)

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\(^{125}\) These cases are drawn from personal observation of the constructive dialogue. As they are not part of the Committee's Concluding Comments, they do not appear in the Committee's official report.

\(^{126}\) "Luego hay expertas que dicen que debemos estar muy exigentes en revisar si existe o no democracia, cosa con la que yo no estoy de acuerdo. Antes de calificar si un gobierno es o no democrático debemos revisar qué situación guardan las mujeres y después de estudiar sus condiciones de vida y su nivel de desarrollo en igualdad de circunstancias con los varones, podríamos comentar el nivel de democracia del país. Pero hay que recordar que todavía no hay un acuerdo definitivo sobre cual es la verdadera democracia."
The crucial point here is that the Committee is very concerned to encourage – and by no means damage - the willingness of States Parties to accept international monitoring. The dialogue is considered a key instrument to convince States Parties to take further measures towards gender equality. In the earlier sessions of the Committee, Byrnes observed that after some experts having voiced strong criticism, others tended to take a more conciliatory perspective, pointing to positive achievements or weakening the previous critical remark. He suggests that the intention of this somewhat contradictory behaviour is to encourage the state to continue the dialogue and interaction with the Committee instead of alienating it from the procedure (Byrnes 1989: 21). This attitude can be interpreted as too cooperative and hence, as loosing sight of the actual task of the Committee. A human rights expert of the UN finds that it does not do justice to the importance of human rights norms:

"They (the Committee members, S.Z.) are very cautious …, they want to be a human rights body, but then they are nervous of being a human rights body. (…). Which might be to do that several of them are ambassadors … they come out of the mind set which isn’t a human rights background.” (Interview 9)

Experts themselves describe their perspective as one that is aware of different contexts and conditions States Parties are confronted with. They do not use the same criteria of assessment for each state and rather consider the specific situation of each state. From there, they try to assess the state's advancement and recommend most important measures to be taken.

"When we are looking at a rich country, and a country with long tradition of democracy that has achieved a lot, maybe we are much stronger than with a developing country which is in a deep crisis and has a high illiteracy rate and has a customary law. We can’t judge Germany in the same way as Burkina Faso (…). Then, our attitude is different, and so are our questions.” (Interview 4)

At the same time, experts are not intending to use a double standard, but to support states in different conditions to achieve the same goal, that is to implement the Convention's provisions. The constructive attitude of the Committee fades if lack of political will is clearly visible either in the delegation's appearance – for example, if a state sends an un-informed delegation - or in the report. In several cases, the Committee was confronted with such kind of unwillingness, and then tended to stress its function as a scrutinizing body:

"I think we often feel the state is very startled by the depth of the examination that has occurred. Very early on I recall one representative of one state from Asia saying that they presented their report and they were very concerned, they didn’t dream that we would have such a group. So that’s good news and bad news." (Interview 5)
However, experts also describe their impression that States Parties increasingly recognize the Committee's authority and engage in the monitoring process (see 5.1.2.2).

Concrete proceedings: Beyond these general trends, a range of concrete efficiency measures has been introduced during the course of the Committee's work to make the dialogue as meaningful as possible. The four major tendencies of development are the thorough preparation of each dialogue, the structuring and timely limitation of the dialogue itself, the systematic consideration of additional independent information by Specialized Agencies and NGOs, and the summarizing follow up of the dialogue in the form of Concluding Comments. Taken together, these improvements in the procedure give the impression of a much more well-prepared and well-informed process than in the beginning of the Committee's work.

Preparation of the dialogue: The Committee has developed two main preparatory mechanisms: The first one is that for each country to be examined, one Committee member from a country of the same region is appointed as "country rapporteur". The function of the rapporteur is to brief the other experts on general patterns and areas of concern before opening the dialogue with the state, and to take a leading role in the dialogue and in its follow-up. The second mechanism, which relates only to states submitting subsequent periodic reports, is the establishment of a pre-session working group. When it was first introduced in 1989, the pre-session working group was a result of the scarce resources of the Committee (see 5.2.1). Its task is to prepare a structured set of questions on periodic reports in order to save time for the Committee as a whole. The group is compiled of four or five members in equitable geographical representation. It meets for a full week after the closure of a regular session of the CEDAW Committee to prepare questions for the states presenting at the next session. Since the expertise of the country rapporteur is of high value for the pre-session working group, the Committee decided in its 27th session in June 2002 that country rapporteurs should be included in pre-session working groups as far as possible (UN Doc. A/ 57/ 38: 133). To put the pre-session working group in a situation of ideal working conditions, experts need to have the country reports some months in advance. To further improve the knowledge of the pre-session working group about each presenting state, the Committee decided in 1998 that Specialized Agencies as well as NGOs should be invited to submit independent information (UN Doc. A/ 53/ 38/ Rev.1: 3). In practice, Specialized Agencies are more likely than national NGOs to be present at those meetings, because NGOs prefer to travel to New York when the Committee

127 In case of initial reports, no preparatory steps are taken, because the State Party concerned should first get familiar with the Committee itself.
meets as a whole. Both Specialized Agencies and NGOs also submit written information without being present at the working group's session.

The working group prepares a list of questions for each state to be considered at the Committee's next session. This list is sent to the State Party as well as to all Committee experts. When this procedure was first introduced, the delegation had to answer these questions in its oral presentation, while Committee members did not have the opportunity to intervene. To create more liveliness in the dialogue, the state now has to answer the written questions before it comes to the Committee, and these answers are, together with the periodical report, the base for the constructive dialogue. Since this proceeding has led to a certain surfeit of questions and answers, the Committee called the pre-session working group to concentrate on "major issues and trends and (to) limit the number of … questions", keeping in mind that they should primarily enhance the constructive dialogue between Committee and States Parties (UN Doc. A/54/38/Rev.1:39).

Structuring the dialogue: Having started as a rather open and unstructured undertaking, the constructive dialogue has been subject of a number of organizational improvements. The Committee established a standing working group in 1987 to make suggestions on ways and means of expediting its work. The major changes introduced in terms of the constructive dialogue were, first, the different treatment of delegations presenting initial and subsequent reports, second, the timely organization of the dialogue, and third, the introduction of measures to improve the substance of the dialogue.

The Committee has treated the presentation of first reports in a special way because experts felt it was important to build up confidence in the first encounter with a States Party. Initially, there were no restrictions whatsoever, which sometimes made the dialogue random and inefficient (Byrnes 1989; Interview 12). Therefore, the procedure was changed later on: after the oral presentation of the delegation, experts ask questions article by article. The delegation doesn't answer immediately, but is given time to compile information. It returns about one week later to answer the questions raised, and the Committee members may add remarks or ask for further clarifications. In the case of subsequent periodic reports, the dialogue is based on the preparation of the pre-session working group as elaborated above. When the idea of preparing a list of questions for the dialogue was first introduced, the main motive was to shorten the dialogue itself. However, this proceeding was deemed rather unsatisfactory, since experts could not actively engage in a dialogue (Byrnes 1989:25). The current modus operandi, in which the State Party answers the pre-session working group's questions in written form, and presents updated information in its oral presentation, allows for much more interac-
The dialogue is organized as an exchange: after collecting some questions of experts, the delegation gets the floor to answer. In the opinion of a UN staff member, this also leads to better conditions to achieve implementation:

"You can see that they had moved. Their constructive dialogue with regard to periodic reports is almost lively. … (Before), they just had people reading out answers to questions. And they didn’t have time to have any interaction at all. This is much more interesting, this is far more useful in terms of implementation." (Interview 9)

Experts have recently agreed on a further change, which provides that questions of experts should be clustered according to the 4 thematic blocks of the substantial CEDAW articles. After each cluster, the delegation has opportunity to answer (UN Doc. A/ 57/ 38: 132). If this change leads to less interaction or a more structured and less repetitive dialogue remains to be seen.

The timely organization of the dialogue affects both the presenting delegations and the Committee members. Initially, a strict timely limitation was refused by Committee members, since it was felt that this would lead to inadequate consideration. However, experts seem to have become more pragmatic on this issue: In the twentieth session of the Committee in 1999 it was agreed to limit the time of initial presentations to 45 minutes, and that of periodic reports to 60 minutes (UN Doc. A/ 54/ 38/ Rev. 1: 39). Due to a decision in the 27th session in 2002, time limits became even more restrictive: 45 minutes for initial, 30 for periodic reports, as well as a time limit of 5 minutes for each Committee member's comments (UN Doc. A/ 57/ 38: 132). Probably because of the huge number of reports awaiting consideration, the attitude of the Committee in terms of time limits has changed: In the early sessions, experts tended to refuse any timely restrictions and even left it in the individual decision of each expert whether to repeat questions (UN Doc. A/ 41/ 45, para. 22). Due to time pressure, experts were later urged to refrain from asking questions already raised (UN Doc. A/ 53/ 38/ Rev. 1: 37).

The Committee has also introduced measures to improve the substance of the dialogue. One of these measures is the country rapporteur, a Committee member from a country close to the state under examination. The rapporteur frames the dialogue in opening it with a general statement and also has the last word before the Chairperson closes the dialogue. This proceeding intends to give the State Party the impression that it is not judged from a perspective alien to its own context, but from a group of experts that includes grounded regional knowledge. Another such measure is the encouragement of experts to specialize in particular

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128 While questions from different cultural backgrounds may contribute to insightful new perspectives, delegations have sometimes expressed complaints because they felt that their cultural context was not adequately con-
fields such as health, the situation of rural women, or legal matters and to concentrate on these fields in the dialogue. As a consequence, Committee members find that the dialogue has become increasingly complex:

"Now, we are asking more analytical questions. (...) I mean a more holistic way. For instance, now, when we are talking about maternal mortality, ... we are not only considering the existence of hospitals, but we are also considering the infrastructure, the access to the hospitals. The hospitals may be there. But does the rural woman have access to that place? This is what I mean: broadening the issue, that it demands more than just putting a hospital in place to ensure that you are doing something for safe motherhood." (Interview 6)

However, the complexity of the experts' questions sometimes tends to overload delegations and turn into unrealistic recommendations and remarks. As one expert argues,

"I think we ask too many and too detailed questions. In my mind, that doesn't help if we want to enhance the most adequate application of the Convention. (...) In the case of Myanmar, we should have focussed on human rights, on the elimination of forced labour of women and girls. That would be more realistic than telling them: 'Please provide gender-disaggregated statistics'. I think in that particular case, this is not a very realistic request." (Interview 7)

Another consequence of the huge amount of questions experts ask is that delegations can not clarify them and then often give unsatisfactory answers that are based on a misunderstanding, and that they do not answer all questions raised.130

Consideration of additional information by Specialized Agencies and NGOs. A monitoring process based exclusively on information submitted by those to be monitored is arguably limited. Since the information of the states reports has often been insufficient or over-optimistic, information from independent resources is an urgent need to make the reporting procedure meaningful. According to the Convention and the initial rules of procedure, Specialized Agencies are allowed to contribute information to the reporting process upon invitation, however, in the 1980s, the Committee invited comments by Specialized Agencies, but hardly received any response. Since the mid 1990s, one meeting each session is dedicated to the remarks of Specialized Agencies on each reporting state (see 5.2.3). Apart from Special-

129 “A mi me parece que estamos haciendo demasiadas preguntas, y sumamente detalladas. Eso no ayuda en mi opinión (...) si queremos fomentar la mayor preocupación por darle una aplicación adecuada a la Convención. (...) en Myanmar deberíamos enfocarnos al respeto a los derechos humanos, a la eliminación del trabajo forzado de las mujeres y las niñas, eso sería más realista que decirle: ‘presente Usted estadísticas desglosadas por sexo’... creo que en este caso preciso, se trata de una petición muy poco realista.”

130 A compilation of typical questions raised by the Committee in a constructive dialogue can be found in Appendix 4.
ized Agencies, some NGOs had started to interact with Committee members on an informal basis since the mid 1980s. While experts appreciated their supply of critical information, it took the Committee until 1997 to take a formal decision inviting the Secretariat to facilitate NGO access and organize informal meetings with NGO representatives outside the regular meeting time of the Committee (UN Doc. A/52/38/Rev.1: 1). The argumentation to support this decision indicates a certain sense of ambiguity towards, but finally approval of NGO participation the Committee's work:

"The Committee was broadly supportive of the involvement of non-governmental organizations in its work, its general view being that non-governmental organizations material did not compromise the independence of the members, who had been selected on the basis of expertise and integrity. (…) reports of non-governmental organizations were able to shed light on the de facto implementation of the Convention in States Parties … It was stressed that the input of NGOs should not be perceived as clandestine material given to Committee members." (UN Doc. A/52/38/Rev.1: 48, emphasis added)

Since 1999, NGOs are assigned one regular meeting per session including translation service. While this is still not a lot of time for each organization, the shift from informal consultations towards official integration clearly indicates the Committee's recognition of the important function of NGOs in the CEDAW process (see 8.1).

4) Summary of the dialogue in concluding comments. Initially, the CEDAW Committee's report contained a detailed description of the dialogue with each state, but no summary or emphasis of positive or negative aspects. It was only in its 15th session in 1996 that the Committee adopted the procedure of Concluding Comments: they contain an introduction based on the State Party’s presentation, followed by sections on difficulties, positive aspects, and principal areas of concern according as to the assessment of the Committee. The final part makes suggestions and recommendations to the state to enhance further implementation of the Convention. In its 19th session in 1998, the Committee defined how the Concluding Comments should be prepared: the introductory statement has to be phrased in accordance with the State Party and is prepared by the Secretariat; the rest of the statement is first drafted by the country rapporteur. After each dialogue, experts hold a short follow-up meeting to discuss their general impressions. Considering these assessments, the country rapporteur prepares draft Concluding Comments that are then discussed, amended and adopted by the Committee as a whole in a closed meeting. To make the Concluding Comments both legitimate and useful, the Committee found that they had to be of high and comparable quality:
"Each concluding comment is internally balanced, and the Committee strives to achieve consistence …, particularly in terms of praise and expressions of concern, among the concluding comments elaborated at each session. Accordingly, the Committee considers concluding comments comparatively in an effort to ensure that they are even." (UN Doc. A/ 53/ 38/ Rev. 1: 81)

The introduction of the Concluding Comments is without doubt a very important step to enhance implementation of the Convention, as states receive a short and well-structured document that includes concrete recommendations. A Committee member who witnessed the introduction of the Concluding Comments characterizes the qualitative improvement as follows:

"When I first arrived, the Concluding Comments were literally an oral summary from the chair. We had those records, … but that was just the debate from one person's point of view. All the chairs were highly competent, but you need to discuss and to enlarge on what were really important steps of each state. Now, we are going to be working just on our Concluding Comments for the next three days, so we put a lot of work into those." (Interview 5)

Despite their high potential, the ideal of comparability and high quality is not met by all Concluding Comments (Byrnes 2002: 136). According to the opinion of one Committee member, the varying quality of the Concluding Comments is partly attributable to the short time available for the drafting and partly to the fact that the Committee doesn't have general criteria of assessment (Interview 1). To improve the quality of CEDAW's Concluding Comments, Bayefsky proposes that the introductory remarks should be worded by the Committee, not by the government, that emphasis should be on recommendations, and that the document should be published fast and disseminated widely (Bayefsky 2001: 64). Further, the CEDAW chairperson suggested on the Committee's 27th meeting in 2002 that mechanisms should be developed to follow up the Concluding Comments (UN Doc. A/ 57/ 38: 81). The practice of the Committee is to encourage states to use the Concluding Comments in their domestic policies and to refer to their efforts regarding the Committee's comments in the next dialogue. The development of a more concrete follow-up mechanism by the Committee itself would be a meaningful step, yet it remains to be seen if the Committee is able to allocate resources for that purpose.
5.1.2.4 The development of the Committee's General Recommendations\textsuperscript{131}

According to Article 21 of the Convention and rule 52 of its rules of procedure, the Committee is entitled to make "suggestions and general recommendations based on the examination of reports and information received from the States Parties." In the work of CEDAW as well as of other Treaty Bodies, general recommendations (GR) fulfill an important function: in the dialogue with States Parties, Treaty Bodies usually identify patterns of discrimination that go beyond the profile of a single state. To react to those patterns, each Committee can formulate its interpretation of specific treaty provisions, clarify their meaning, and give concrete advice to States Parties how to comply with them. Thus, general recommendations are instruments of correction that draw from single cases, but go beyond them. While general recommendations are not legally binding, they constitute an authoritative interpretation of the treaty as part of the body of international human rights law. In this function, they serve as guidance for all States Parties (Byrnes 1989; 2002).

Initially, the CEDAW-Committee had problems in defining the exact functions of general recommendations and suggestions. For some years, it went on discussing what the scope of recommendations and suggestions could be, but due to "lack of legal and expert human rights advice available to the Committee" (Byrnes 1989: 43), these debates were not very fruitful. In 1987, a standing working group "on the implementation of Article 21 of the Convention" was established. Since then, the working group has developed the Committee's view on crucial provisions of the Convention and has prepared a number of general recommendations. In its 1988 session, the Committee decided to address suggestions to the ECOSOC and other UN bodies, but not to individual states, and general recommendations to all States Parties\textsuperscript{132} (UN Doc. A/ 42/ 38: 10).

The Committee was initially rather cautious in issuing general recommendations. An expert explains this attitude with the block confrontation and the resulting disagreement regarding GR in the Committee:

"For a few years there was a certain element of political hostility between East and West, which made it difficult sometimes to advance the Committees’ procedures. For example, the Eastern block, under the guidance of the Russian member, were adamant that we should never make any general recommendations to the State Parties. (...) They just didn’t want the Committee to exercise the power to make general recom-

\textsuperscript{131} For a list of all General Recommendations of the Committee, see Division for the Advancement of Women 2005b.

\textsuperscript{132} Most of the Committee's suggestions deal with the financial constraints and time limits of its meetings (e.g. suggestions no. 1 and 2 requesting extension of meeting time and provision of adequate resources). Since suggestions have hardly developed significant practical meaning in the Committee's work, they are not considered here in further detail.
mendations which is clearly stated in Article 21. (...) So the Western and other members had to fight extremely hard to overcome this resistance, because the Committee works by consensus. (...) when Gorbachev came to power, the Russian member was replaced by another member who was much more willing to agree. We were able to make gains and to develop our general recommendations, in areas like genital mutilation and violence against women." (Interview 12)

The result of this blocked situation was that the early GR were rather technical and did not interpret the Convention\textsuperscript{133}. It took the Committee until 1992 to produce general recommendations that contributed to the development of soft law in the same manner as other Treaty Bodies, especially in the Human Rights Committee (Byrnes 1989). Both academic experts and Committee members describe the adoption of General Recommendation no. 19 on Violence against Women as the first substantial interpretation of the Convention and thus, as a turning point in the Committee's work (Byrnes 2002: 139; Fitzpatrick 1994). From then on, general recommendations have spelled out the Committee's interpretation of the meaning of specific articles and have proposed a set of concrete steps to State Parties to fulfill their obligations in the matter concerned\textsuperscript{134}. One Committee expert describes this qualitative shift:

"You can see a turning of the tide, I think, at general recommendation No. 19 on violence. Before, …general recommendations were suggestions that were not argued thoroughly. General recommendation 19 represented the first time that the Committee sat down and developed its philosophy and explained itself and produced what I think was a very influential document. And we followed the same process since then on the family, on women in political and public life, on health, and I think, …it shows a much more in-depth examination than previously." (Interview 5)

In 1997, the Committee laid down guidelines for the preparation of each General Recommendation to ensure a qualitative and consensual process (UN Doc. A/ 52/ 38/ Rev. 1: 127): first, a general debate on the topic has to be launched in an open Committee meeting, to which other bodies and organizations are invited to comment on the topic. Second, a Committee member in charge compiles that debate and prepares an initial draft with the support of the Secretariat. This first draft is subject of comments and amendments in the Committee's working group II. In the final step, the revised draft is submitted to the Committee as a whole for consideration.

\textsuperscript{133} The early GR either reminded States Parties to fulfil their obligations (e.g. GR no. 1 of 1986 on the timing of reports; GR. no. 5 of 1988 on the use of temporary special measures; GR. no. 6 of 1988 on strengthening of national machinery) or dealt with procedural and resource problems (e.g. GR no. 7 of 1988 on the strengthening of coordination between Geneva-based and Vienna-based human rights bodies).

\textsuperscript{134} Some of the general recommendations have been invoked in domestic courts, a fact that points to the legal usefulness of detailed and concrete interpretations of the Convention (Byrnes 2002: 139; Fitzpatrick 1994).
There are two factors that make general recommendations particularly innovative: first, they express the interpretation of international legal norms from the perspective of an independent expert body, and thus constitute an important step in detaching international law creation from the interests of states (Byrnes 2002: 122f). In this sense, general recommendations extend the norm of states being the only subjects of international law and ascribe a high degree of authority to the Treaty Body. If a general recommendation is accepted, e.g. by domestic court decisions or in intergovernmental legal bodies, it becomes part of international "soft law". Due to the circular character of international law, international legal norms become binding through growing agreement. It is not clear, however, if silence of States Parties on general recommendations can be interpreted as acquiescence or not (ibid). Second, general recommendations offer the opportunity to expand the scope of the Convention. Each international treaty has its limitations due to the historical context of its creation – issues that come to public attention only after this historical situation cannot be part of the text. General recommendations are the instrument to contextualized interpretation and can add new perspectives: in the case of CEDAW, the GR on violence against women fulfilled this function, and the debate on the GR on article 4 on temporary special measures includes reflections on intersecting discriminatory dimensions that reinforce each other, such as gender, race and poverty (see 8.3.2.4 and Graterol 2003).

5.1.2.5 Reservations to the Convention – the Committee's changing attitude

Article 28 of the CEDAW Convention allows states to enter reservations upon ratifying the Convention, as long as those reservations are not incompatible with the "object and purpose" of the Convention. While this provision is in accordance with the Vienna Law of Treaties that has made it easier for states to enter reservations upon ratification of a treaty, the CEDAW Convention has invited an outstandingly high proportion of substantial reservations (Clark 1991). Partly, this is due to the lack of any mechanism to determine what makes a reservation incompatible with the Convention, yet more importantly, some norms enshrined in the Convention have faced strong resistance by part of some states since the drafting process (see 4.2). In the following, the role of the Committee regarding this crucial question is discussed.

135 For a list of all current reservations to the CEDAW Convention, see Division for the Advancement of Women 2005e.
136 The attitude of States Parties concerning reservations is discussed in detail in chapter 6.1.3.
From very early on, CEDAW members realized that a range of reservations States Parties had entered to the Convention seriously undermined the Convention's objectives. Experts started discussing how the Committee should react in this matter, bearing in mind that according to the Convention, the Committee has no authority to make an assessment on reservations. To clarify the mandate of the Committee, legal advice from the Secretariat was requested. In the third CEDAW session in 1984, the Secretariat stated that "the Committee's functions … did not appear to include the determination of the incompatibility of reservations, although such reservations undoubtedly affect the implementation of the Convention, and the Committee might have to comment on them." (UN Doc. ST/ CSDHA/ 5: 417) In other words, the legal opinion confirmed the limited authority of the Committee. However, while the Committee was denied the authority to decide on the incompatibility of reservations, experts found that it was in their mandate to examine in how far the implementation of treaty obligations in a certain state was impeded by its reservations. Following this logic, the Committee has been using several strategies to deal with reservations: it has urged states to formulate their reservations in a more precise manner, it has consistently encouraged states to review and withdraw reservations\textsuperscript{137}, and it has reminded States Parties to their self-assumed responsibility in terms of women's rights.

The Committee considers those reservations most threatening to the integrity of the Convention that are formulated in a very broad manner, e.g. those that accept the obligations of the Convention "only to the extent that they are consistent with the requirements of Islamic Shari'a or with traditional customs and practices." (Byrnes 1989: 53) The content of this kind of reservations is by no means clear, since Islamic practices as well as traditional customs can be interpreted in many different ways\textsuperscript{138}. Based on this view, the Committee requested in its 1987 session that a study should be conducted from within the UN-system on "the status of women under Islamic laws and customs." (UN Doc. A/ 42/ 38, para. 580) The intention of the Committee was to obtain information about the influence of religious believes and institutions on the position of women, and especially of Islam, because of the high number of reservations referring to that religion. However, the Committee's request was interpreted by many UN member states as singling out and offending the Islamic religion. For that reason, the General Assembly refused to conduct such a study\textsuperscript{139} and asked the Committee to reconsider its decision. In its subsequent session, the Committee tried to explain its intention again and reaffirmed its position.

\begin{itemize}
\item \textsuperscript{137} In 1987, General recommendation no. 4 first expressed the concern of the Committee to the significant number of reservations and suggested all states concerned to reconsider such reservations (UN Doc. A/ 42/ 38, para. 579).
\item \textsuperscript{138} See Connors 1996b; UNIFEM Western Asia Regional Office 1999.
\item \textsuperscript{139} See UN Doc. A/ C.3/42/SR.22, 26-28, 30 and 6.1.3 in more detail on reservations.
\end{itemize}
firmed the necessity of the requested study: States Parties directly or indirectly had referred to Islamic religion, traditions and customs as a source of or influence on laws relating to the status of women. The Committee felt

"totally misinterpreted … as no criticism of the religion had been made during the last session; on the contrary, the discussions as well as the idea of the study were to demonstrate the rights provided by the Islamic religion. The Committee was fully aware that it was not within its competence to discuss the content of any religion or criticize it." (UN Doc. A/42/38: 12f)

Nonetheless, the Committee's request was not taken up again in the GA, which shows that a group of states was successful in constructing it as culturally insensitive and thus, absolutely inadequate.

The occurrence indicates the improbability that the issue of reservations gets resolved through "authoritative pronouncements on the validity of particular reservations", particularly if made by the Committee (Byrnes 1989: 51). As a consequence, the Committee has taken a pragmatic stance on reservations: While it considers the amount and scope of reservations highly unsatisfactory, it prefers that states become parties to the Convention and therewith accept external scrutiny, even if this acceptance is combined with reservations. Starting from this understanding, the Committee has regularly asked questions about the meaning and scope of reservations, how they are justified, and in which timeframe the state plans to remove them. In 1994, the Committee even issued a statement requesting all states to justify their reservations and to explain the effect of the reservation on national laws and policy. The statement also made clear that general reservations are considered incompatible with the Convention. (Byrnes 2002; UN Doc. A/49/38: 13)

The Committee elaborated its strongest statement on reservations in the context of the 50th anniversary of the Universal Declaration on Human Rights in 1998 (UN Doc. A/53/38/Rev. 1: 47f). There, it tries to define its own role in terms of assessing the permissibility of reservations. While it is acknowledged that it is the mandate of States Parties to deal with this question, the Committee underlines that it has also taken responsibility, e.g. in issuing General Recommendations dealing with reservations. Further, the Committee considers reservations to article 2 - on the legal and institutional framework to eliminate discrimination against women - and article 16 – on equal rights of men and women regarding marriage and the family - most dangerous. It is one important task of the constructive dialogue to review reservations. Based on the experiences in the dialogue, the Committee
"wishes to draw to the attention of States Parties its grave concern at the number and extent of impermissible reservations. It also expresses concern that, even when States object to such reservations there appears to be a reluctance on the part of the States concerned to remove and modify them and thereby comply with general principles of international law." (UN Doc. A/53/38/Rev.1:49)

The statement concludes that after 50 years of serious universal commitment in the protection of Human Rights, it is "time to re-examine States' self-imposed limitations to full compliance with all the principles in the Convention by the entry of reservations." (UN Doc. A/53/38/Rev.1:50). The tone of this statement reflects the increasing courage of the Committee to speak out against reservations. It is difficult to say if this new attitude of the Committee has had any impact on states. While the Committee's repeated calls to withdraw reservations have ceased to cause a collective outcry, and while it has become "good international practice" to admit the importance of human rights norms, this rhetoric may not necessarily move states to withdraw reservations.

5.1.2.6 Committee members' activities to render CEDAW more well-known

According to the Convention, the Committee's functions cover the monitoring procedure of the reports submitted by States Parties, the annual reporting to the General Assembly, and the preparation of general recommendations and suggestions. In addition, committee experts, and the chairpersons of the Committee in particular, have engaged in several other activities within and beyond the United Nations. Within the UN, they worked to increase the visibility of the Committee, to establish a closer link between the World Women's Conferences and the Committee's work, and to integrate a gender perspective in several UN agencies and conferences, especially in the field of human rights. Outside of the UN, experts have tried to make the Convention better known in regional and national conferences and meetings. All these activities started to develop in the early 1990s and were enhanced by the additional meeting time conceded in 1997.

While the internal procedures of the CEDAW Committee had gained solidity in its first years of functioning, the Committee was still largely unknown within the UN. Thus, chairpersons of the Committee became aware of the necessity to increase the Committee's visibility among UN institutions. One of the extraordinarily active chairpersons serving from 1993-1996 recalls the unsatisfactory situation and how she started to react to it:

"Before I became chair, I had already served for three years in the Committee (...). The visibility of CEDAW was really zero in this period. Even in the CSW, to whom
we gave always the concluding document of each session. (...) When I was elected the chair, I said, I will go and speak to the CSW, but the Secretariat replied to me this was not used to be done. I said, 'Ok, it is not used, but I will break this use.' And I went, and then I hadn’t the right to speak. I went to the chairperson of the CSW and I explained to her that it was very important to allow me at least ten minutes to speak about the Committee and to say what we have adopted and what we recommended the CSW to talk about. So, she allowed me, and after my speech, really, I was surrounded by half of the conference, and I was asked 'Where are these documents? We never saw them, we don’t know about them!'" (Interview 4)

The personal commitment of chairpersons has remained to be a crucial element enhancing the publicity of the Committee. For example, the chairperson cited above also referred to her efforts to bring the Convention to the attention of several Specialized Agencies and NGOs. In addition, the Committee recommended in its 20th session in 1999 that the chairperson or one of the alternates should regularly attend the annual session of the CSW, the session of the Commission on Human Rights, the biannual meeting of the persons chairing the human rights Treaty Bodies, and the General Assembly's Third committee (UN Doc. A/54/38/Rev.1: 42). This attendance serves the function to establish a flow of information and gives the representative of CEDAW the possibility to present major achievements and concerns. In other words, the CEDAW committee has gained permanent representation within UN-structures. As an indicator for this shift, the vice chairperson reports in the 21st CEDAW session that in the session of Commission on Human Rights that she had previously attended, a whole agenda item was devoted to women for the first time, and she could make a statement (UN Doc. A/54/38/Rev.1: 50). Also, the Committee has started to take publicity more seriously: among other activities, it has urged the UN Department of Public Information to disseminate the Committee's concluding comments to relevant states, and it organized a number of events to celebrate the 20th anniversary of the Convention, among others, a special meeting with the Secretary General and roundtable discussion with experts and current and former members of CEDAW and of other Treaty Bodies.

The idea to link the World Women's Conferences with the Committee's work played a role from the beginning of the Committee's existence. In the second CEDAW session, the representative of the Secretariat drew attention to the preparatory work for the Nairobi Women's Conference performed within the CSW. As the CSW's main task was to "review and appraise" the achievements of the United Nations Decade for women (1976-85), it stated in its report that the CEDAW monitoring procedure "might be one means of reviewing and appraising progress at the national level" (UN Doc. ST/CSDHA/5: 19). However, the Committee itself did not have the resources to participate in the Conference and could only send its
ports to the CSW. When the Beijing conference of 1995 was approaching, the Committee was already well established and ready to make a sound contribution to the conference, yet again, there were no extra resources allocated by the UN. The chairperson at the time thus used unorthodox ways to get the CEDAW Committee prepared for Beijing:

"The preparations for the Beijing Conference had started, but we hadn’t time to prepare anything, we had only once a year to meet, for two weeks. (…) We had to look at the reports and prepare our normal documents, so how could we do something else? I addressed myself to two governments, by my own idea … in my capacity as a chairperson, whether they would allow us to have at least a one-week meeting … and the Spanish government replied positively. It was the first time that a State Party sponsored a CEDAW meeting. We had the best meeting ever … with all the facilities and possibilities and it allowed us to prepare a very good document for Beijing. We had press conferences, and meetings with the NGOs." (Interview 4)

The Committee’s efforts to link up with the Beijing dynamic were not limited to presenting a document at the 1995 conference. In the years following Beijing, it also discussed how to integrate important topics of the Beijing Platform for Action (BPFA) into its work, especially those that were not explicitly covered by the Convention, e.g. violence against women or sexual and reproductive rights. The Committee reminded states that the CEDAW reporting procedure was an integral part of implementing the Beijing Platform, and in the constructive dialogue experts made references not only to the Convention, but also to the BPFA. In addition, the Committee set new goals for the year 2000, when the implementation of the BPFA was to be reviewed, namely to achieve the universal ratification of the Convention by that year – a goal that was ultimately not achieved.

The Committee has further been active to integrate a gender perspective into other UN agencies and conferences, particular in the UN activities on human rights. The meeting of the chairpersons of the Treaty Bodies provided an important starting point for this: in 1998, the meeting of chairpersons agreed to request a study on the integration of gender in the work of the Treaty Bodies to be prepared by the Division for the Advancement of women (UN Doc. A/ 53/ 38/ Rev. 1: 6). On the occasion of the 50th anniversary of the Universal Declaration on Human Rights, three of the Treaty Bodies (HRC, CERD and CEDAW) issued a statement on the indivisibility of civil and political and economic, social and cultural rights and the centrality of gender awareness (UN Doc. A/ 53/ 38/ Rev. 1: 83). Additionally, Committee members participated in several events jointly organized by different UN institutions 140. While coopera-

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140 To mention just a few: in 1996, the chairperson participated in a round table on human rights approaches to women’s health, with a focus on reproductive and sexual health rights, co-sponsored by UNFPA, DAW and the UNHCHR. At that time, it was the first such meeting of chairpersons on thematic issues (UN Doc. A/ 52/ 38/
tion did not always work out to the fullest satisfaction of the Committee – e.g. chairpersons repeatedly expressed disappointment that the Committee could not adequately benefit from the important work of the Special Rapporteur on violence against women (UN Docs. A/ 53/38/ Rev. 1: 7; A/ 54/38/ Rev. 1: 11) – the ever-increasing linkages to other UN bodies is evident. The Committee's intention is to underline that discrimination based on gender is reinforcing all other dimensions of discrimination and should be taken into consideration in all UN activities. With that approach, the Committee was present - with a statement and representatives - at the World Conference on Racism, Racial Discrimination and Xenophobia in 2001 (UN Doc. A/ 56/38: 39f), the General Assembly session on children in 2001 (UN Doc. A/ 56/38: 83f), the Conference on Sustainable Development in 2002 and the World Conference on ageing in 2002 (UN Doc. A/ 57/38: 69). The Committee's statements usually provide a thorough analysis of the gendered dimensions of each of the conference topics, of which the document prepared for the Conference on Racism and Xenophobia is an excellent example.

While the scope of the Committee's proposals sometimes seems to be too strictly tied to the Convention - e.g. the document for the Conference on racism calls for the ratification of the Optional Protocol to the CEDAW Convention as one important strategy to prevent racism (UN Doc. A/ 56/38: 41) - its general attempt is to draw attention to the intersection between different dimensions of discrimination and to contribute to the adequate understanding of human rights.

Last but not least, most Committee members have been engaging in promoting the Convention outside of UN. They have participated in numerous conferences and workshops on the regional, national and local level, where they usually inform governments, NGOs, the judiciary, and the general public about CEDAW. Many of these events were co-sponsored by other UN-agencies, such as UNIFEM, or by national governments and NGOs. In CEDAW session 24, the Latin American chairperson reported on her activities in Chile and Costa Rica, where she was invited by NGOs and female lawyers associations (UN Doc. A/ 56/38: 6f). The fact that she could not follow all invitations she had received may be interpreted as growing national and local awareness of the Convention, and hence, as a growing potential for its implementation.

Rev. 1: 9f). In 1999, the chairperson participated in a seminar on gender integration in the human rights system (UN Doc. A/ 54/38/ Rev. 1: 50), and one expert took part in a Workshop organized by UNIFEM on the convergence and divergence of the Convention and Islamic Law (UN Doc. A/ 55/38/Rev. 1: 7).
5.1.3 The CEDAW Committee, its functions and activities – a summary

The composition of the CEDAW Committee depends partly on different forms of gender expertise and partly on governmental interests; it shows both a great level of diversity and is shaped by exclusionary structures. In contrast to experts of other Treaty Bodies who are predominantly lawyers, CEDAW members have diverse professional backgrounds in order to cover the content of CEDAW most comprehensively. Their distribution regarding the world regions and different cultural contexts has been fairly representative. A considerable part of Committee members hold governmental posts while they serve as CEDAW experts, a situation that potentially undermines their personal independence. While independence is a very important criterion for acceptable CEDAW members, experts with first hand experience in governmental policies may well be "independent enough" and have the capacity to assess other governments' policies adequately. More threatening to the CEDAW members' impartiality is probably the fact that they have to be appointed by their governments, which excludes those experts that are either unknown or unwelcome to their government. Also, the nomination and election process is influenced by inter-governmental bargaining on candidates.

Almost all CEDAW experts have been women. This is a result of governments using gender as an implicit category of expertise: they appoint women as experts for CEDAW, and predominantly men for all other Treaty Bodies. In the view of CEDAW members, this recruitment policy lacks understanding of the Committee's mandate and has lead to the perception that the Committee has less authority than other Treaty Bodies. On the other hand, experts also describe the (almost) unisexual composition of the Committee as a source of solidarity, combined with expertise that is grounded in the members' own experience of gender discrimination and their commitment to contribute to its elimination. A former CEDAW expert characterizes the CEDAW "group" as follows:

"The experts on the Committee are a privileged group: well-educated, articulate, and comparatively wealthy. They share a rich variety of experiences and come from widely differing religious, cultural, and ethnic backgrounds. Across the divide of differing languages there has been a strong bond of friendship and determination to use the privileges of education and status to help the women of the world." (Cartwright 1998: 181)

Implicitly, this description provides another element of exclusion next to government interests, namely the social status of the experts: their proficiency is closely connected to education and wealth, which excludes gender expertise of people with low educational and working class background. Thus, while the selection of CEDAW experts is embedded in hegemonic
structures shaped by governmental interests and mechanisms of exclusion such as high level education, the collective of CEDAW members has also altered the notion of adequate expertise regarding women's rights in as far as they represent a broad set of knowledge going beyond legal expertise.

Over the last decades, the CEDAW Committee has consistently tried to improve its work and working conditions, both within its mandate and in expanding the mandate to assume wider responsibilities. In doing so, it has engaged both in the constitutive and the regulative dimension inherent in an international regime: on the one hand, the Committee has added to the wider normative foundations of international law, e.g. in providing authoritative interpretations of the Convention's provisions in its general recommendations. With this practice, the Committee has gone beyond mere state-by-state scrutiny and contributes to international jurisprudence. Also, it has developed an outspoken stance on reservations that exerts soft pressure on states that have entered reservations to specify and withdraw them. On an individual basis, Committee members have further engaged in activities beyond their mandate as independent experts. In particular, they have worked to increase the publicity of the Convention, and they have strived to integrate the respect for women's rights into a range of other UN activities, especially into those targeting human rights.

On the other hand, the Committee's practice has aimed to construct the best possible conditions for a meaningful interaction with the States Parties in several ways: first, it constructed an adequate framework for its activities in adapting rules that provide reliability for the CEDAW procedure. Second, the Committee took measures to better the reporting discipline of States Parties and to enhance the quality of the reports submitted, because the timely submission of sound reports is the basis for a meaningful dialogue. Third and most importantly, the Committee has increased the substance and complexity of the constructive dialogue. As a general trend, the Committee's role as an independent expert body and its relation to States Parties has become more clear-cut. The common impetus of Committee members is to support States Parties in their efforts, yet they also make clear that the base of this supportive attitude is the states' commitment to the goals of the Convention. Within this general trend, a number of concrete improvements have taken place, e.g. the preparation and timing of the dialogue, and the consideration of additional information submitted by Specialized Agencies and NGOs. Finally, the measure to summarize each dialogue and combine it with concrete recommendations in the Concluding Comments has resulted to be a useful instrument with regard to domestic implementation. The amount of improvements has led to a high complexity of the reporting procedure and bears the risk to make the interaction overloaded. In
sum, however, the framework provided for by the Committee opens the possibility for States Parties to present their achievements and problems, to discuss potential domestic improvements regarding gender equality, and to learn from the experts' knowledge in the field. The Committee accepts and respects states as sovereign actors, but it also expects states to cooperate with the international monitoring procedure and to consider the Committee's recommendations if they have voluntarily ratified the Convention. The history of the Committee shows that such a relationship of mutual respect and expectations can only develop with a widely known monitoring body that disposes of international prestige and authority.

The assessment of these developments turns out highly positive if it concentrates on the inner logic of the Committee: a clear trend towards professionalism has taken place, and the Committee has expanded its radius of action. At the same time, most of the measures taken are a result of intergovernmental dynamics and of the limited possibilities within UN structures. It is an open question if these measures ultimately support the overarching goal of eliminating discrimination against women at the domestic level. For example, the interpretation of the Convention's meaning in general recommendations is of highest interest in terms of international law creation. However, from the domestic perspective, general recommendations mean that the responsibilities for a State Party to CEDAW become more comprehensive. It cannot be ruled out that this assumed additional load of compliance may contribute to some States Parties' neglect of their reporting duties. Also, the efforts of awareness raising by part of the Committee have focused on the international level and have largely neglected the domestic sphere. Instead of spreading the Convention's vision among UN agencies, the Committee could have engaged in developing more tangible follow-up mechanisms to increase the impact of the Convention. In other words, the Committee's activities have concentrated more on its repercussions on the international level, not on concrete domestic implementation. Arguably, this focus is connected to the limited resources the Committee disposes of and to its international mandate.

5.2 UN institutions supporting and cooperating with CEDAW

While the CEDAW procedure first and foremost takes place between a monitoring body of independent experts and states that are parties to the Convention, it is also embedded in the international context of the United Nations. These international support structures have

141 The findings in section 5.2 are predominantly based on the empirical methods of document analysis and expert interviews.
been crucial for the CEDAW Committee's work, both regarding the concrete monitoring procedure under the Convention and the reception and acceptance of CEDAW more generally. Three segments of the UN context are of particular relevance for the functioning of CEDAW: first, the technical resources and administrative support structures for the Committee. As a consequence of the close link between women's and development issues within the UN, the CEDAW Committee is not served by the UN Centre for Human Rights, but by the Division for the Advancement of Women (DAW). This has detached the CEDAW Committee from an administration specialized in human rights issues, but allowed a strong tie to the UN activities on women and gender issues. The second dimension is the cooperation between the Human Rights Treaty Bodies, which was borne out of the need to coordinate their work, and the efforts of the CEDAW Committee to promote gender sensitivity in the human rights work of the UN. This cooperation has been both a way to address the problem of scarce resources that all Treaty Bodies are confronted with, and to lessen the initial isolation of CEDAW. Thirdly, the Specialized Agencies of the UN have contributed to the Committee's constructive dialogue and have taken measures to incorporate the CEDAW principles into their work. UNIFEM has been particularly active in this regard: it does not so much attempt to monitor the implementation of the Convention, but tries to identify how CEDAW could be a useful tool for women working in NGOs or governments. Other Specialized Agencies predominantly use CEDAW as a normative guideline for their work. Finally, the CSW's connection to CEDAW is explored, yet it is shaped by a low level of mutual influence.

5.2.1 Technical and administrative support structures for CEDAW

CEDAW started functioning under conditions of scarce resources. While all Human Rights Treaty Bodies have had to deal with that problem, CEDAW lacked the resources to carry out even its most basic functions, which made one Committee member refer to CEDAW as "the poor cousin of the human rights Treaty Bodies" (Byrnes 1989: 57). The most detrimental factors in the early years were, first, that the CEDAW Committee's meeting time was limited to two weeks per year, which was not nearly enough to develop adequate working mechanisms, especially in the face of the growing number of States Parties. Second, the limited financial and technical resources hindered the Committee in expediting its work in many ways, e.g. it was difficult to hold meetings in other places than Vienna because of financial constraints, yet the Vienna-based Secretariat was not adequately equipped to properly prepare and follow up the sessions. Third, CEDAW was not serviced by the UN Human Rights Centre
in Geneva and thus worked with a Secretariat without expertise in legal matters and in human rights monitoring procedures. In the view of observers\textsuperscript{142} and Committee members, these detrimental initial conditions "subjected (CEDAW) to discrimination from the very beginning" (UN Doc. A/ 42/ 38/ SR. 84, para. 41f), but have been significantly improved over time. CEDAW functions today on the basis of administrative resources comparable to the other Treaty Bodies, even if differences remain.

5.2.1.1 Resources and meeting time

The Convention schedules an annual meeting time of two weeks for the Committee, and identifies "UN headquarters or any other convenient place" as the meeting place. In its first session, the Committee decided to confirm the meeting time in its rules of procedures and interpreted the formulation on the venue as either meaning Vienna or New York (UN Doc. ST/ CSDHA/ 5: 7f). As it turned out, these two issues were going to severely hamper the next 10 to 15 years of the Committee's work.

Already in its third session in 1984, the Committee stated that its meeting time was too short. From then on, it explored different methods to deal with the problem: first, it made a recommendation to ECOSOC to provide adequate financial resources and staff to enable the effective functioning of the Committee (UN Doc. ST/ CSDHA/ 5: 474). Then, it had a discussion with the Programme Officer of the Department of International Economic and Social Affairs (DIESA), which was the Department to which the Branch for the Advancement of Women belonged, on financial implications of extended meetings (UN Doc. A/ 41/ 45/ SR. 81). The result of this discussion was that an additional week of conference service was, in the words of the Officer, unlikely to be "absorbed" by the Secretariat's budget, while one additional day for a preparatory meeting seemed to be feasible. The Committee brought the matter of time constraints to the ECOSOC and to the States Parties meeting to request those bodies to seek for a solution (UN Doc. A/ 41/ 45/ SR. 81, para. 26). In its following sixth session, the Committee decided to request the General Assembly to be allowed to meet for four additional working days in \textit{the} following year (UN Doc. A/ 42/ 38, para. 580). This request was granted on an exceptional basis for 1988, but rejected for the following year. Thus, in its eighth session in 1989, the Committee took another initiative to handle its ever-growing workload and first established a pre-session working group to prepare the examination of periodic reports.

\textsuperscript{142} See Burrows 1985; Byrnes 1989; Clark 1991; Jacobson 1991; Meron 1990 for harshly criticising the working conditions of the CEDAW Committee.
As this group met for three days and was composed of only five of the 23 members, its costs were low enough to be approved first on an exceptional, then on a regular basis. Nonetheless, the Committee kept pointing to the backlog of reports awaiting consideration. It requested to extend meeting time in the year 1993 to either one three-week session or two two-week sessions, yet again, this request was rejected because of its financial implications.

While the efforts of the Committee remained a rather fruitless enterprise for almost fifteen years, they finally paid off: in 1995, five Nordic States Parties to CEDAW made a request to the GA to revise article 20(1) of the Convention, proposing that the words "normally meet for a period of not more than two weeks annually" should be replaced by the words "meet annually for a period necessary". Subsequently, the GA requested the States Parties to consider this question, and it was discussed at the next States Parties meeting in 1995. To that occasion, Finland introduced a draft resolution to amend article 20(1) on behalf of 50 States Parties (UN Doc. CEDAW/ SP/ 1995/ 2). This resolution was adopted and would enter into force after ratification by two thirds of all States Parties. However, at that point it was unclear when the required number of ratifications of the amended article 20(1) would be achieved, hence, the subsequent States Parties meeting proposed an interim regulation: Finland on behalf of a large group of states introduced a new draft resolution, proposing to allow the Committee two three week sessions per year plus a one week session of the pre-session working group until the amendment would enter into force (UN Doc. CEDAW/ SP/ 1996/ 5). This resolution was adopted and has since then provided the base for the Committee extended meeting time. While the amendment would theoretically allow greater flexibility, its ratification has been going very slowly: as of 2004, only 44 out of 180 States Parties have taken this step (UN Doc. A/ 59/ 38: 184f). Based on the interim-solution, the Committee has been able to establish solid working procedures. Since January 1997, it meets for six weeks a year as a whole and for two weeks as pre-session working group. In comparison to other Treaty Bodies, only two, the HRC and CRC, meet longer (9 weeks as a whole and 3 weeks pre-session), and the CESCR disposes of the same meeting time as CEDAW. CERD meets six to seven weeks as a whole, but not in pre-session, and CAT meets for 5 weeks without pre-sessional meetings (Bayefsky 2001). The CMW has met once a year for one week since the year 2004.

According to the Secretariat, an additional two weeks meeting would cost the Centre for Social Development and Humanitarian affairs US $ 64,400, one additional week US $ 39,900 (UN Doc. A/ 47/ 38: 127).

Originally, the CESCR met for half of its current meeting time (3 weeks as a whole, and one week in pre-session), but in 1994, the amount of time was doubled.

Before 1998, the regular meeting time of CAT was four weeks.
The Committee's meeting venue was another matter of conflict in the 1980s and early 1990s. Until 1993, the Secretariat serving CEDAW was based in Vienna, and as meetings in Vienna were most cost efficient, the Advisory Committee on Administrative and Budgetary Questions of the UN (ACABQ) preferred the Committee to meet there. Yet in terms of visibility of the Committee, New York was the much better meeting place, which was one important reason for Committee experts to favour New York. The other reason was that New York was more accessible for small and developing states, most of which had a mission in New York, but not in Vienna. The Committee tackled this question in many sessions (UN Doc. A/43/38: 10), and the practice until 1993 was that it held alternating meetings in New York and Vienna. The debate on finances was a clear impediment to the functioning of the Committee. Only in 1993 was this problem solved, as the Secretariat's Division for the Advancement of Women was moved to New York.

Apart from these two major issues of financial constraints, the Committee had to fight hard for any additional expenditure. For example, the Committee wanted to send its Chairperson to the 1985 World Women's Conference held in Nairobi to underline the importance of its work, yet the Secretariat could not provide the resources for that trip (UN Doc. ST/CSDHA/5: 509). Today, it is out of the question that CEDAW gets the resources to send a representative to World Conferences that intersect with the Committee's mandate, even if the funding is often shared between the regular UN budget and other sources, e.g. UNIFEM and national governments. In general, the situation of funding has gradually relaxed and the most pressing concerns of the Committee are taken care of. However, this trend goes parallel to the increased workload of the Committee. At an exceptional meeting in the year 2002, the Committee managed to deal with a total of 17 reports, yet this contributed only marginally to reduce the reports awaiting consideration.

In the context of budgetary constraints, it is of interests to look at the effective costs of the CEDAW procedure. Unfortunately, the expenditures are difficult to specify as well as to compare to the costs of the other Treaty Bodies, because the budgetary plans for economic and social affairs – where CEDAW is listed under the DAW budget – and for the human rights bodies in Geneva disaggregate their expenditures in different ways (UN Doc. A/146).

\footnote{Due to the complex financing system of the UN, the real benefits of meeting in Vienna were not as clear as the Secretariat claimed. For example, the translation services in New York were not paid out of the budget of DIESA which made the New York based meetings actually cheaper for the Secretariat. Also, according to information provided by the Secretariat in the 8th CEDAW session, technical costs were generally higher in Vienna than in Geneva (Byrnes 1989; UN Doc. A/44/38: 3).}

\footnote{A rough estimate based on graph 7 comes to around 40 first, 40 second, 50 third, 50 fourth and 30 fifth overdue reports in the year 2002.}
The costs for CEDAW for 2000-2001 were estimated US $ 938,500. This amount includes US $ 142,000 honoraria payments for the CEDAW experts, their travel and subsistence costs during the sessions as well as the travel and subsistence costs of the chairperson or alternates when attending meetings of other UN organs (UN Doc. A/ 54/ 6/ Rev.1: 281). This figure, however, does not contain the substantive and technical servicing costs for the pre-session working group and the plenary session, including documentation and translation. In contrast, the total budget for the Human Rights Bodies and Organs based in Geneva amounted to US $ 9,302,000 for the same period of time (UN Doc. A/ 54/ 6/ Rev.1: 327). While this seems to be a much higher amount than the budget of CEDAW at first sight, it covers not only the costs for five Treaty Bodies (HRC, CESCR, CERD, CAT, CRC), but also for the Commission on Human Rights and its sub-commissions, and the meeting of persons chairing the Human Rights Treaty Bodies. Further, it includes the expenditures necessary to monitor several individual complaints procedures\textsuperscript{148}. Also, the figure covers not only travel expenses, but also regular and other staff servicing the procedures. Thus, while the budgetary figures are not informative for the comparative understanding of the Treaty Bodies' financial situation, they do reveal that all Human Rights Treaty Bodies work with limited resources.

5.2.1.2 The Secretariat servicing CEDAW

When the Committee started its work, its Secretariat – the Branch for the Advancement of Women - was not equipped to fulfil even most basic servicing (Byrnes 1989). When these detrimental conditions were discussed during one of the Committee's sessions, the representative of the Secretariat remarked that

"the entire Branch for the Advancement of Women had always had to cope with inadequate services. (...) (It) had to deal with women's rights in almost every area in which the United Nations was active, but was expected to do so with a professional staff of only 10 people." (UN Doc. A/ 43/ 38/ SR. 128, para. 18)

This statement not only points to the severe under-funding of the Branch, but also shows that the Secretariat had to deal with a variety of other tasks besides CEDAW. Another initial deficiency of CEDAW's Secretariat was its lack of knowledge in legal matters in general and in the functioning of Human Rights Treaty Bodies in particular. While these conditions have significantly improved, CEDAW remains to be the only Treaty Body that is not served from

\textsuperscript{148} These are 1503-procedure to the Commission on Human Rights and the procedures for the CERD, HRC and CAT.
the Geneva-based Centre for Human Rights, where arguably most administrative expertise and resources for servicing Treaty Bodies is concentrated. Thus, the administrative support for CEDAW has advanced, but in a direction different from the "main-stream" human rights administration. This special situation has brought the Committee's work both advantages and disadvantages.

The Branch was updated a Division for the Advancement of Women (DAW) in 1988, among other reasons, to be better equipped to support the follow-up process of the Women’s conference in Nairobi (Pietilä and Vickers 1996: 102). In 1993, the DAW moved from Vienna to New York, which made it easier to connect with other UN bodies. After the Beijing conference, a Women's Rights Section was established within the DAW "in order to respond to the requirements of the Platform for Action, which essentially highlights human rights in a way that hadn’t occurred before." (Interview 9) The section provides substantive and technical service to the CEDAW committee and assists States Parties in the implementation of the Convention, it seeks to ensure the mainstreaming of a gender perspective in the work of other Human Rights mechanisms, and it prepares reports for intergovernmental bodies on women's rights (Division for the Advancement of Women 2005c). In the year 2000, the Women's Rights Section consisted of 2 ½ professional posts, that is the Chief of the Unit, one Secretary, and one part-time Human Rights Officer; another post remained vacant. In resolution 55/ 70 of December 5 2000, the GA requested the Secretariat to provide full support for the additional functions resulting from the Optional Protocol to the Convention (UN Doc. A/ 56/ 38: 4). Thus, one additional post was created in 2002. While the Women's Rights Section has the main responsibility for the CEDAW process, other staff members temporarily assist in it, particularly during the sessions of the Committee, when the workload is at its peak. The staff of the section is also involved in activities that are not CEDAW related, e.g. in the servicing of the CSW. The importance of this section for the CEDAW process can't be overestimated, because it institutionalized the legal expertise necessary for servicing CEDAW. Compared to the other Treaty Bodies, it is difficult to say if CEDAW has the same amount of staff available. The Geneva Secretariat has fewer employees dedicated to each Treaty Body, but hey don't have further responsibilities. While all Treaty Bodies are in need of more administrative support, CEDAW is, to date, no longer disadvantaged in terms of substantial servicing.

Servicing the CEDAW process consists of several tasks: First, the preparation and assistance of the two annual sessions of the CEDAW Committee. This includes the timely pro-
vision of documents for the experts\textsuperscript{149}, which according to some Committee members is not always functioning well and documents are sent out only with considerable delay. The DAW is only partly responsible for those delays, next to the States Parties themselves, the Specialized Agencies or the translation services. Further, the Secretariat assists the drafting of the Concluding Comments and publishes them after their adoption, and it prepares the annual report of the Committee's work for the General Assembly. Since NGOs have become an official part of the CEDAW sessions in 1997, it also belongs to the preparatory work of the Secretariat to register each NGO that wishes to make a statement and assist them in any related inquiry. With the adoption of the Optional Protocol to CEDAW in the year 2000, the \textit{Women's Rights Section} has also established the servicing structures for the additional functions (see 9.2.1).

Second and maybe most important for the CEDAW Committee, the \textit{Women's Rights Section} has been very engaged in supporting the improvement of the Committee's working methods, and in that context it has conducted a lot of analytical work. For example, when the Committee worked on the improvement of its Concluding Comments, the Secretariat was asked to provide an analysis of all Concluding Comments issued by the Committee in terms of length, quality and balance. For the Committee's discussions on reservations, the Secretariat provided an analysis of the practices of other Treaty Bodies (UN Doc. A/ 56/ 38: 37). In order to facilitate the Committee's debate on overdue reports, it prepared a file on all States Parties with overdue reports, indicating if they were overdue for a long time or for a short time, and how they dealt with their reporting obligations in respect to other treaties (UN Doc. A/ 57/ 38: 131).

Third, the \textit{Women's Rights Section} has conducted a range of training seminars in different regions to identify problems States Parties encounter in their treaty obligations and to assist them in preparing reports\textsuperscript{150}. These seminars also include explanations of the meaning of the Convention's provisions in specific cultural contexts. Fourth, the DAW has been active in increasing the gender sensitivity of other UN bodies, for example, it prepared a study on gender-awareness in all Treaty Bodies including recommendations for further action (UN

\textsuperscript{149} These include the state reports, the reports of Specialized Agencies, former dialogues of the Committee with the reporting states and the resulting Concluding Comments, and the Concluding Comments issued by other Treaty Bodies. Further, the CORE-documents of the reporting states that inform about the general human rights situation in the countries.

\textsuperscript{150} In 1999, a workshop on CEDAW was conducted in Benin and hosted government representatives from Benin, Cameroon, the Central African Republic, Chad, Equatorial Guinea, Ivory Coast, Senegal, and Togo (Ouedraogo 1999). In 2002, two such seminars were held in Bosnia-Herzegovina and Kuala Lumpur (UN Doc. A/ 57/ 38: 79).
Doc. HRI/ MC/ 1998/ 6), and it has held various workshops discussing a rights-based approach to women’s advancement (UN Doc. A/ 54/ 38/ Rev. 1: 8).

In the year 2000, the work of the Division in assisting states in the implementation of the Convention was strengthened through the establishment of a new Unit, the Gender Advisory and Service Unit (GASU). GASU was the result of a rearrangement within the Department of Economic and Social Affairs, and strangely, it was wound up again only two years later. In its two years of existence, GASU was engaged in two activities relating to CEDAW, first, to assist States Parties in submitting adequate reports, particularly those states that had failed to submit their initial report. Through trainings on the regional and country level, governmental representatives were encouraged to discuss about the Convention and ways of its application to get a "sense of ownership" regarding CEDAW (Interview 10). The second activity related to CEDAW was to approach those countries that were not yet States Parties to CEDAW and encourage them to join the treaty. Many of those states were Muslim countries, and the fact that the chief of GASU was herself from an Arab country may have had an encouraging effect of some Muslim governments to cooperate. It is hard to say if GASU has had direct influence on any Muslim state to ratify CEDAW, yet it did make some concrete steps in that regard:

"There seems to be an interest from Qatar on (ratification, S.Z.), we’ll have the meeting with the representative, in fact we will meet with a member of the royal family on the 8th of March (2000, S.Z.), which is a good date. (...) If that is going to be a positive meeting, the next thing to do will be to pay them a visit in the country and talk to various ministries. Hopefully we will be visiting during the next six months to start a negotiation process, and we hope we can also visit Oman, which seems to have indicated interest.” (Interview 10)

Why exactly GASU did exist only for such a short time, is difficult to detect, but one of the factors may be that its function overlapped with the work of UNIFEM. In contrast to the DAW, which is a servicing body, both UNDP and UNIFEM are operational bodies, that is, they have developed a strong presence in many countries and world regions, while GASU was only starting to make such connections (see 5.2.3).

In sum, the most important administrative change is the integration of human rights expertise in the DAW. Before the installation of the Women's Rights Section, the DAW was ba-

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151 "(T)he ambassador (of Mauritania, S.Z.) herself came to talk to me and she said, you know we are pleased that there is an Arab woman in the Division, because our voices are not heard and we have specific problems. And I know that Muslim countries have specific problems related to the culture and the tradition … . She clearly expressed the need to work with us but also for us to support them, to move forward in the rights for women. And I think that is a very clear need and also a very clear mandate for us.” (Interview 10)
sically staffed to serve intergovernmental procedures. According to a staff member within the Women's Rights Section, the servicing of an independent expert body is a completely different task:

"I don’t think that human rights bodies are successfully serviced … by people who had no knowledge of international law and human rights instruments. I think they just don’t understand the meaning of the treaty and they confuse it with things like a program for action. (...) we are looking for implementation on the domestic level. (...) And the best way of getting implementation of the treaty on the domestic level is to ensure that the implementation mechanism is as strong as possible. (...) As it is now, we have experts which are part time experts, experts which may be nominated for political reasons, but we in the Secretariat can ensure that given all of those variables we can provide a strong reporting system. We …we can facilitate access of NGOs, we can ensure that the concluding observations go back …. But we only are able to do these things if we know why we are doing it. And I think the lack of appreciation why we are doing it is something which is very much within the Secretariat." (Interview 9)

According to this staff member, the Secretariat should provide the experts with all the support they need, and it should make the CEDAW process as smooth as possible. To understand the importance of its tasks, Secretariat staff should understand its servicing duties in the broader context of domestic implementation of the treaty.

In the last years, the Secretariat has undergone a learning process in this regard, particularly due to the influence of the Women's Rights Section. However, CEDAW experts have expressed different levels of unease with the servicing of their work. Some experts point to the many other duties the DAW has to carry out besides servicing CEDAW:

"The relationship (between the Committee and the DAW, S.Z.) could be better, in the sense that the Division is the Secretariat … for us and for the CSW. The CSW meeting shortly follows the CEDAW session, which means that the Secretariat is very much overburdened at that particular time. (...) Therefore, I personally think … that it would be better both for the Division and for the Committee, if we had a fulltime responsible Secretariat for our Committee. (…) Which we do not have, and that brings a lot of constraints … But otherwise, …, the Secretariat, they do their best." (Interview 6)

Others experts feel that the DAW should make stronger efforts to connect CEDAW experts to other processes related to women's rights, especially the Beijing process and its follow-up, and to the debates within the CSW (Interview 4). Further, a range of experts wishes to establish a stronger link to the other Human Rights Treaty Bodies. One expert expresses the belief that this "would almost ensure that the Division gave better support if we had a firm connection to the bodies that are serviced in Geneva. It would be a helping competition." (Interview 5) However, experts are also aware of the limited resources the Geneva Secretariat has to deal with, where the Committees have to share staff (Interview 7).
5.2.2 Cooperation within the UN Human Rights System

The Human Rights regime within the UN has grown "through a process of cumulative incrementalism rather than planned evolution" (UN Doc. A/ Conf. 157/ PC/ 62/ Add.11/ Rev.1: 5). The now seven Human Rights Treaty Bodies – HRC, CESCR, CERD, CAT, CEDAW, CRC and CMW – have all developed their own procedures and have been working in a situation of insufficient resources. Thus, the need for cooperation and restructuring has been obvious. From the perspective of CEDAW, cooperation has been particularly important, because it helped to overcome the Committee's geographic isolation from the other Treaty Bodies that are all based in Geneva. Besides, the exchange helped to increase the gender awareness in the work of the non-gender-specific Treaty Bodies. To improve the effectiveness of the Human Rights monitoring system, different models of restructuring have been proposed (UN Docs. A/ 44/ 668; A/ Conf. 157/ PC/ 62/ Add.11/ Rev.1; Bayefsky 2001). While none has yet been realized, such a reform would affect CEDAW significantly.

In 1986, the first meeting of the persons chairing Human Rights Treaty Bodies took place, at that point, without the participation of the CEDAW chairperson who started joining two years later in the second meeting. The goal of these meetings has been to give the chairpersons the opportunity to exchange and discuss common problems of the Treaty Bodies. Themes that have been dealt with include the financial situation and the servicing available to each Treaty Body, measures developed to increase efficiency in the procedures of each body; procedures developed in response to inadequate and overdue reports; exchange on the situation of reservations under each treaty; ways to cooperate with Specialized Agencies and NGOs to integrate independent information; the normative consistency of the international instruments among each other and with regional instruments; and the possibility and use of joint statements of the Treaty Bodies (UN Docs. A/ 44/ 98; A/ 45/ 636; A/ 47/ 682; A/ 49/ 537; A/ 50/ 505; A/ 51/ 482; A/ 52/ 507; A/ 53/ 125).

While the chairpersons' meetings have attracted increased interest and participation of UN agencies and NGOs in recent years, their function is somewhat restricted: Chairpersons basically exchange the different methods their Committees have developed, yet there is "no serious attempt (being) made to coordinate or consolidate responses." (Bayefsky 2001: 101)

While CEDAW has certainly not been the only Treaty Body working under inadequate conditions, its especially precarious situation was acknowledged on several chairpersons' meetings.
to similar problems" (Bayefsky 2001: 102), and they do not consult each other during their work – e.g. when they draft General Recommendations, or in case the same state is reviewed before different Committees simultaneously. With a view to these limitations, Bayefsky proposed to extend the meetings' scope and to make it work on crosscutting issues and find collaborative outcomes. A first step in this direction is the establishment of Inter-Committee meetings, the first of which took place in 2002. The aim of these meetings is to bring together delegations of each Committee, to strengthening cooperation, to harmonize working methods and to come closer to a holistic perspective of all Treaty Bodies (UN Doc. A/57/38: 149).

From the perspective of CEDAW, the chairpersons' meetings have been an entry point both to learn from the practices of the other Committees and to raise their awareness regarding gender issues:

"The chairs of the Treaty Bodies … are very supportive of this Committee. That also has meant that the other Treaty Bodies are seeing the impact and importance of women’s issues in their work and it's beginning to filter through their work quite strongly, too." (Interview 5)

While most Treaty Bodies were actually lacking this kind of gender-awareness in earlier times (Byrnes 1989), gender-related discrimination has become more important in their work since the mid-1990s. A study conducted by the DAW thoroughly examines how far the "Mainstream Human Rights Treaty Bodies" understand gender as a possible dimension of discrimination and what they do to incorporate that perspective in their work (UN Doc. HRI/MC/1998/6). It underlines the responsibility of all Treaty Bodies, not only CEDAW, to prevent gender-based discrimination:

"A dual strategy – attention to women-specific issues by women-specific machinery, and a gender approach by mainstream mechanisms – reinforces an understanding that gender equality must be addressed as a strategic objective by society as a whole, rather than being a "women's concern", an approach which focuses on women as a vulnerable group and on women's issues as marginal issues". (UN Doc. HRI/MC/1998/6: 6)

According to the findings of the study, gender-sensitivity in the Treaty Bodies varies considerably. CERD and CAT seem to have been more unaware of gendered discrimination patterns than HRC, CESCR and CRC. While CERD expressed the view that gender issues do not fall within the mandate of the Committee on a systematic basis, concerns of women have sometimes been addressed in the concluding observations, e.g. the treatment of women working as foreign domestic servants. Thus, CERD occasionally shows "appreciation of the way in which gender and race/ethnicity intersect", but the study recommends a more consistent and
systematic consideration of gender dynamics in the Committee's work (UN Doc. HRI/ MC/ 1998/ 6: 8)\textsuperscript{153}. CAT has not systematically integrated a gendered perspective, which is expressed in the fact that its concluding comments have never made a reference to gender-specific forms of torture. CAT has started to cooperate with CEDAW and took note of the Beijing Platform, but has not expanded its lines of inquiry in the light of the BPFA, which elaborates on domestic violence against women and war crimes that specifically target women, such as mass rapes. Both phenomena could be interpreted as gender-specific forms of torture\textsuperscript{154}.

The other three Treaties Bodies have taken a more systematic approach towards gender-based discrimination. The HRC does request gender-specific information in its guidelines, it exchanges information with CEDAW, and consistently refers to issues affecting women's enjoyment of their human rights in its constructive dialogue and concluding comments, covering areas such as equality before the law, violence against women, gender stereotyping, discrimination against women in employment, and family rights and responsibilities. The systematic approach of the Committee is also reflected in its General Recommendations, most comprehensively in the one interpreting Article 3 on gender equality adopted in the year 2000. The CESCR also has a long tradition in incorporating gender in its work. The Committee often refers to gender issues in its constructive dialogue, e.g. regarding equality legislation, women's subordinated role in society due to the persistence of discriminating customs, women's discrimination in employment and education, violence against women, inheritance rights, or prostitution. Likewise, the committee addresses structural and systemic gender issues in its concluding comments and in its General Recommendations. The CSEC also participated in the Fourth World Women's Conference in Beijing, and stated in this occasion that the Covenant "constitutes an indispensable element in any comprehensive framework for the promotion and protection of the rights of women." (UN Doc. HRI/ MC/ 1998/ 6: 15) Probably due to its late creation, the CRC has incorporated gender issues from the beginning of its work. It is the only treaty that uses male and female pronouns and makes it explicit that the rights apply equally to boys and girls. The Committee refers in its guidelines to the BPFA, especially to the critical area of concern on the girl child. It frequently addresses the special discrimination of girls both in the constructive dialogue and in the Concluding comments, e.g. concerning marriage age and forced marriage, violence against girls, child prostitution, teenage pregnancies, or school retention of girls.

\textsuperscript{153} More recently, CERD has produced General Recommendation 25 on racial discrimination of women and girls which is a sign for its increased gender sensitivity.

There is no doubt that gender-sensitivity has increased in all Treaty Bodies over the last decade. The initiative of CEDAW supported by the DAW has been crucial, not only in connecting with other Treaty Bodies, but also with other organs of the UN Human Rights system. These efforts notwithstanding, experts of other Committees point to the processes that have taken place in their work independently from CEDAW. One expert points to the long-term change in the Human Rights Committee that is reflected in its General Recommendation on gender equality:

"The Committee has drafted an incredible comment on the rights of women, which probably covers virtually all kinds of issues relating to women and puts them in the context of the legal obligation of the Covenant. That's been our effort to integrate women’s rights in the human rights system. (...) I came to the Human Rights Committee from the Women’s Committee ... and naturally, I was looking for a way to deal with women’s rights ... And I was able to raise issues about violence against women, genital mutilation, all kinds of issues and put them in the context of the Covenant. Gradually, ... other members began to understand how violence, for example, would fit in to the provisions of the Covenant. (...) So over the years we’ve been raising issues where a gender dimension could be identified in respect of particular rights. So when Cecilia Quiroga (member of the HRC at that time, S.Z.) drafted the general comment on Article 3 of the Covenant, the ideas that were in it were not at all unfamiliar to the members. (...) As the discussion on the general comment progressed, more and more members were making input, raising new ideas. (...) You couldn’t do that in one day. I’m talking about the period of time from 1993 to today, that’s 7 years. (Interview 12)

In her view, this process of reading gender into the Covenant was uninfluenced by CEDAW, but based on internal dynamics.

Independently from this increased gender-sensitivity, CEDAW has kept an exceptional status among the Treaty Bodies. The question if CEDAW should be moved to Geneva has been discussed since the Committee's inception. Both from a material and a symbolic point of view, Geneva would have been the adequate place for CEDAW. However, with the increase of administrative support for CEDAW in the DAW, it has become less urgent for the Committee to be served by the Geneva secretariat, even if CEDAW could still benefit from sharing resources with the other Treaty Bodies. This is especially true for the administrative structures to be installed for the Optional Protocol to the Convention, because the "creation of a wholly independent CEDAW-communications unit de novo (would fail) to capitalize of the experience of the Treaty Bodies' communication staff." (Bayefsky 2001: 127). Thus, every study that has been conducted to evaluate the UN Human Rights system, recommended CEDAW to move to Geneva (UN Doc. A/ Conf. 157/ PC/ 62/ Add. 11/ Rev.1; Bayefsky 2001). However, the power of already established organizational structures has prevented such a reform. In the
CEDAW Committee's 25th session in 2001, the chairperson reports from a meeting she and other Committee members had had with the Secretary General, where it was reiterated that CEDAW would further be serviced by the DAW (UN Doc. A/56/38: 48).

Such questions are, however, always related to the discussion on reforming the Human Rights Treaty System as a whole. Bayefsky calls for two main changes: First, a much stronger emphasis has to be put on follow-up measures of the reporting procedures. In her view, the constructive dialogue cannot be the core element of the Human Rights Treaty system, but it is "intended to cultivate a progression largely at the national level" (Bayefsky 2001: 74). In practice, Treaty Bodies do not sufficiently make this idea understand: none of them has established a follow-up procedure that goes beyond the idea of periodicity of reports. For a sound follow up procedure, Bayefsky proposes that the Treaty Bodies cooperate with follow-up partners both on the international and the national level. Operational UN Agencies with presence in various countries, such as UNDP, UNICEF and UNHCR, are important in this respect, especially since the UN as a whole has committed itself to integrate a Human Rights framework in all its activities. Even more crucial are national follow-up partners, for example national Human Rights Institutes, since international scrutiny finally aims at promoting national and local initiative (Bayefsky 2001: 86).

The second major change Bayefsky proposes is to consolidate the six Treaty Bodies into two, one dealing with states reports, the other dealing with individual communications. These two bodies should consist of members serving on a permanent basis, so that they can fully concentrate on their work (Bayefsky 2001: 133). This arrangement would reduce the backlog of reports all Treaty Bodies (with the exception of CAT) are confronted with, and it would eliminate the overlapping requirements between the six treaties. As a consequence, the system would become more "user-friendly" and eventually more output-oriented, as the reporting burden of states would be reduced and states would not have to undergo six different reporting procedures. However, consolidation would have to meet several requirements to effectively improve the situation, and increased resources would be indispensable (Bayefsky 2001: 133f). Maybe because of the risks such a fundamental change implies, especially under conditions of scarce resources, Committees experts predominantly object consolidation (UN Doc. A/53/38/Rev. 1: 6). Their fear is that the expertise and attention on specific rights may get lost. This is particularly true for CEDAW, as the Committee looks back at a period of struggle to integrate a gendered perspective in the Human Rights System.
5.2.3 Establishing links with Specialized Agencies: UNFPA, UNICEF, ILO, UNESCO and UNDP/UNIFEM

As article 22 of the Convention specifies, Specialized Agencies may be invited by the Committee to contribute independent information "on the implementation of the Convention in areas falling within the scope of their activities." Over the years, the links established between CEDAW and a range of UN Agencies have developed beyond the contribution of these Agencies to the CEDAW procedure. In addition, Specialized Agencies have also used CEDAW as a tool to implement a gender-sensitive human rights approach in their work. Among them, UNIFEM has been most systematic in supporting the CEDAW procedure and in integrating the CEDAW principles in its operational work.

It took the Committee some years to integrate the knowledge of Specialized Agencies into the reporting procedure. As of 1989, Byrnes maintains that the constructive dialogue of CEDAW suffers from lack of independent information, and that the contribution of Specialized Agencies has been disappointing. He observes a limited interest in the work of the Committee by part of the Specialized Agencies and attributes this partly to "CEDAW's apparent unwillingness to accord them a meaningful role in the review process" (Byrnes 1989: 38). While the Committee invited Specialized Agencies to contribute to the dialogue as early as in 1983, it was divided over the extent of cooperation. Some experts were hesitant to seek country-specific information from the Specialized Agencies, which may be interpreted as a "desire to minimize the scrutiny to which States Parties are subject." (Byrnes 1989: 42).

The potential of cooperation between Specialized Agencies and the Committee unfolded later on, partly due to the commitment of CEDAW members (see 5.1.2.6). A former chairperson of CEDAW recounts how she approached several heads of Specialized Agencies to convince them of the importance of the Convention:

"I prepared in cooperation with UNESCO the publication of Human Rights and Education. It was a joint publication of UNESCO and CEDAW. … UNESCO took care of the publication in all the different languages. … I asked UNICEF to include CEDAW in all the seminars and workshops. The same we did with different other Specialized Agencies, I went to the UNFPA, and I said you have so many issues that are connected to the Convention, but you never work with the Convention … and they accepted even to have a programme in which the CEDAW experts gave some lessons about gender issues to the staff of UNFPA … What was the most important thing: when the new Director General of UNIFEM was appointed, I called her to come to our meeting to speak. I said to her, 'the Convention on the Rights of the Child has a very powerful sponsor. Throughout the world, everybody knows about the Child convention. Very few people in the world know about CEDAW, so … would you accept to start the work on dissemination of the Convention, especially to make it known at the grass-
root level? Would you like to be what UNICEF is to the Child convention to the CEDAW convention? She immediately accepted this idea." (Interview 4)

Another reason why CEDAW gained importance in the work of many UN agencies was that they implemented the so-called "rights approach" into their activities. This approach has reinforced a mutual influence between the Agencies and the Human Rights Instruments and CEDAW in particular. The Specialized Agencies now use the human rights norms enshrined in the Treaties as guidelines for their work. Finally, cooperative ties have been increased through the dynamics of the Beijing Conference in 1995. Since that time, the Committee receives regular input from the United Nations Development Programme (UNDP), the United Nations Development Fund for Women (UNIFEM), the United Nations Population Fund (UNFPA), the United Nations Children's Fund (UNICEF), the International Labour Organization (ILO), the Food and Agricultural Organization (FAO), and the High Commissioner for Refugees (UNHCR). Since its 18th session in 1998, the Committee has also invited Specialized Agencies to participate in the pre-session working groups (UN Doc. A/ 53/ 38/ Rev. 1: 5).

Apart from submitting independent information to the Committee, various UN Agencies have made use of CEDAW in their own work to implement a gender-sensitive human rights approach. The United Nations Population Fund (UNFPA) is an operational agency with presence in 140 countries. According to its mission statement, it focuses on reproductive health, the autonomy and empowerment of women, and human rights. It bases its work explicitly on CEDAW and its provisions on reproductive health. The promotion of gender equality is a pronounced goal of UNFPA that intersects with all areas of its work, for example with "Improving Reproductive Health", "Supporting Adolescents and Youth", "Securing Essential Supplies". CEDAW itself is mentioned explicitly in the section "Promoting Gender Equality" (United Nations Population Fund 2005). The United Nations Children's Fund (UNICEF) strongly draws on the Convention on the Rights of the Child and on CEDAW to emphasize the rights of boys and girls (UNICEF 2005a). In its 14 areas of work, reference to gender is made relatively often, e.g. in the areas adolescence, gender equality, monitoring and statistics, and rights and results (UNICEF 2005b). UNICEF has adopted a human rights based approach to programming that focuses on boys and girls, but also on women as those

155 In the year 2002, UNFPA also referred to CEDAW in its mission statement, yet later on, the mission has been framed more generally in relation to the United Nations Millennium Development Goals. This change may be interpreted as a re-evaluation of the Human Rights Framework that has significantly shaped the language of several UN agencies during the 1990s. Apparently, this general shift has made reference to the human rights of women and to CEDAW in particular less prominent.
who should be enabled to claim their rights. The International Labour Organization (ILO) focuses on all kinds of labor related rights and the promotion of the dialogue between social partners. It aims at global standard setting in labor rights, and at creating better opportunities for men and women to secure decent employment and income (International Labour Organization 2002). It has a long tradition in working for gender equality in the field of employment that is reflected in the high number of gender-related ILO Conventions. ILO has already played an important role in the drafting of the Convention, especially related to article 11 (see 4.2.2). The United Nations Educational, Scientific and Cultural Organization (UNESCO) has a focus on women's status and role in society, particularly with regard to access to education and political rights. (UNESCO 2005) One of the organization's themes in its Social and Human Sciences Sector is gender equality and development where CEDAW is explicitly mentioned. UNESCO has conducted research on the role of women in society and on social practices that impede or promote the application of CEDAW. It has also designed capacity building and training projects to operationalize CEDAW.

UNIFEM has been most active and innovative in both supporting the constructive dialogue and implementing the CEDAW principles in its work. UNIFEM was initiated as a temporary trust fund for women in 1976 and transformed into a regular UN Institution in 1985. It is affiliated to the United Nations Development Programme (UNDP). UNDP itself has incorporated a gender perspective in all its fields, and has not simply relegated "women's issues" to UNIFEM. As UNDP states on its website, it encourages "the protection of human rights and the empowerment of women" in all its main fields of work (UNDP 2005). Those are: democratic governance, reduction of poverty, crisis prevention and recovery, energy and environment, and HIV/AIDS prevention. Based on its gender-sensitive human rights approach, UNDP has promoted a number of programs concerning women's rights in its field operations.

UNIFEM works in four strategic areas: reducing feminized poverty, ending violence against women, reversing the spread of HIV/AIDS among women and girls, and achieving gender equality in democratic governance in times of peace as well as war (UNIFEM 2005). It started to lay an emphasis on women's human rights after the Vienna Conference on Human Rights in 1993, where women's rights were first proclaimed an integral part of the general human rights framework. According to a staff member of UNIFEM, the "women's human rights" program started with an emphasis on eliminating violence against women, while CEDAW was not yet incorporated systematically: "There were very small initiatives between UNICEF and UNIFEM to do work on CEDAW on the CRC . . . , but we didn’t really have a programmatic approach." (Interview 11) This changed gradually, and since 1999, UNIFEM
has appointed a full-time CEDAW advisor. Today, UNIFEM's section on women's human rights focuses on eliminating violence against women, on assisting effective implementation of CEDAW, and on enhancing the understanding how human rights, gender and the HIV/AIDS pandemic intersect.

UNIFEM has been working on a systematic integration of CEDAW into its work since the mid 1990s. The first approach has been to provide trainings on CEDAW on regional and country levels:

"The projects of our CEDAW program range from trainings of NGOs, to training of judiciary, to working with governments, to bringing NGOs and governments together around CEDAW and CEDAW-specific issues, to integrating the principles of the Convention into our other areas of work, whether it is HIV/ AIDS or gender budgets (…). And we work on the national level with the CEDAW members to involve them as experts in national and regional debates." (Interview 11)

In 1997, UNIFEM started supporting an NGO-training program tailored to improve the constructive dialogue of the Committee. It was initiated by the NGO network IWRAW Asia-Pacific and has been running since then on a regular basis for one of the two CEDAW sessions each year. The program prepares NGO activists from the reporting states to produce informative shadow reports and brings them to the Committee's sessions. Further, the NGOs are assisted in presenting their information in ways most supportive for the Committee experts (see 8.3.2.2). Also, UNIFEM published a brochure called "Bringing equality home" which traces specific cases around the world where governments, the judiciary and NGOs have used the Convention (UNIFEM 1998)\(^\text{156}\).

The first strategy to incorporate CEDAW in UNIFEM's work was to do CEDAW-specific projects and raise awareness on the Convention, e.g. in translating CEDAW into local languages or in producing radio spots on CEDAW. While this continues to be important work, UNIFEM has taken another approach more recently:

"What we are trying to do more and more is to diversify, so that it's not just CEDAW-specific projects, but that we get … into the struggle women are engaging in, and try to see how they could use the Convention as a tool. It is a different approach: you can focus specifically on what the Convention says, what rights it does confer … But you can also say: what can women doing work on HIV/ AIDS with a specific gender dimension on the pandemic … gain from using CEDAW as a tool, what can women doing work on land rights gain from using CEDAW… we found that a lot of people in the world know about CEDAW – … but … do they see it just as a legal remedy

\(^{156}\) In a more recent publication, UNIFEM has linked the gendered dimensions of the HIV/AIDS pandemic with the CEDAW Convention to show how its provisions can be used to fight against AIDS (UNIFEM 2001).
document, where only legal types would be interested in, or do they see it as an advoca-
cacy document. And of course, both need to go together." (Interview 11)

Thus, UNIFEM tries to look at the Convention from an activist's point of view to see how it
could be used in local and national struggles for women's rights. From the perspective of
UNIFEM, the CEDAW process, and the concluding comments of the Committee in particu-
lar, is highly suitable to bring NGOs and governments to work together. Since UNIFEM both
works with women's organizations and has a strong relationship with governments, it tries to
support this kind of cooperation. In the words of a staff member,

"I am a real believer that the Convention, the reporting process and the frame of the
constructive dialogue … gives us now another venue for NGOs and governments to
engage. I think you can appropriate or use the model of the constructive dialogue also
on the national level … . Because we know that it is not always the government’s lack
of political will, sometimes governments don’t know what they need to do. (…) So
NGOs very often … have been working on this area of women’s issues, so they know
about the obstacles, too. The hope is, if you bring governments and NGOs together in
a dialogue, you may not be able to solve all political problems, there may not be suffi-
cient political will, but it is a way of getting some collaboration between governments
and civil society." (Interview 11)

In this sense, CEDAW could be the catalyst for an ongoing cooperation of governments and
civil society experts in women's rights. This does not mean that UNIFEM would discourage
more confronting strategies of NGOs such as pressuring governments through various means.
What it aims at, though, is to "get the Convention into the hands of women so that they under-
stand how to use it and educate their governments on how to use it" (Interview 11).
UNIFEM's director herself has expressed the understanding that it is the aspiration of
UNIFEM to become for CEDAW what UNICEF is for the CRC, even if on the basis of a
much more limited budget.

The strong connection of UNIFEM to grass-root level organizations has led to a com-
prehensive view on the use and impact of the CEDAW Convention. More than other inter-
national bodies, UNIFEM pays attention to the complex process of an international instrument
unfolding impact in local contexts. UNIFEM has done a lot of work to raise awareness on
CEDAW, and the projects in this regard revealed that awareness raising takes a long time and
often does not bring any clear results. Thus, there is not a linear relationship between interna-
tional norms and local contexts. As a consequence of this realization, UNIFEM has developed
a view on "impact" through the lenses of national and local actors. In the words of a UNIFEM
staff member,
"I think there are competing interests in how you document impact. (…) Sometimes the impact that we want to say is a direct result of the Convention is not real. We want to say: we did this training on the Convention and that led to this. It is not real, it was 20 years of advocacy around that issue. The fact that CEDAW was used is useful but it isn’t the only tool. It is also not insignificant that the Convention is used, it means something. So for those of us who are trying to extract artificially that one piece and try to show what its role was, we need to learn … that … it is a question of what we judge as impact and what we value. Do we value that women’s groups came together for the first time and talked about a range of issues, and also the Convention, is that an impact? Or is an impact only, if CEDAW is used to change a law?" (Interview 11)

Thus, while CEDAW sometimes has brought concrete change, it is more common that the Convention is used as *one instrument among others* in a much broader struggle for social change. From an activist perspective, the long-term change towards gender equality is important, not the question if one specific instrument has caused it.

### 5.2.4 CEDAW and the Commission on the Status of Women

The Commission on the Status of Women (CSW) is the most important intergovernmental UN organ in terms of women's rights, and it has drafted both the CEDAW Convention and the Optional Protocol to the Convention. Further, it has been responsible to monitor the follow-up processes of the World Women's conferences in Nairobi and Beijing, as well as the Beijing+5 process. The relationship between the CEDAW Committee and the CSW has been somewhat ambiguous over the time. On the one hand, both bodies see advantages in cooperating with each other, on the other hand, the intergovernmental dynamics within the CSW also suggest that it is beneficiary for the CEDAW Committee to maintain its independence from the CSW.

The CSW as well as Committee experts and external observers have underlined that the work of the Committee can support the CSW, and that the CSW could learn from the Committee's work (Byrnes 1989; Clark 1991). However, this principal understanding of the two bodies joining forces in the name of women's rights was not immediately translated into practice. Initially, the CSW was simply not informed about the work of the Committee, and it required some efforts on part of the Committee members to make their work known within the CSW (see 5.1.2.6). Later, principal ties between the two bodies were established: the CSW members have received the reports of CEDAW, the CEDAW chairpersons have been
attending the CSW meetings regularly\textsuperscript{157}, and the CSW has repeatedly discussed CEDAW-related issues. Nonetheless, CEDAW experts have occasionally expressed the view that the CSW is hesitant to rely on the Committee’s suggestions in its work. For example, when the call for an Optional Protocol to the CEDAW Convention came first up at the 1993 Conference on Human Rights, a group of Committee members and external experts started to discuss the idea and prepared first suggestions how to proceed. One Committee member recalls, that this initiative “was refused by the CSW, and CSW strongly sustained in a resolution that the Optional Protocol is the duty of the CSW and not of the Committee.” (Interview 4) In the view of some independent experts, this attitude is due to the political nature of the CSW that represents a governmental perspective on women’s rights. However, not all CEDAW experts have a critical position towards the CSW, probably due to the fact that a number of CEDAW experts have themselves represented their government in the CSW. As noted earlier, the membership overlap between the two bodies has affected the independence of the CEDAW Committee (see 5.1.1.1).

It is a matter of mutual agreement between the CSW and CEDAW that the Committee should not be influenced in its work in any way by governmental interests. A former chairperson of the CSW points to the necessity to respect the independence of CEDAW by part of the CSW, especially since the CSW assembles progressive as well as conservative states in the field of women’s rights. As a consequence of this principal detachment, the CSW does not grant CEDAW any special status, e.g. when it comes to the right to speak in the CSW. Thus, where CEDAW experts might suspect a reluctance of the CSW as an intergovernmental body relating to its suggestions or requests, or even a political strategy to refuse the Committee legitimate space, in the logic of the CSW, this might be the most appropriate behaviour according to the principle of mutual independence (Interview 8).

Given these ambiguous conditions, the cooperation between CEDAW and the CSW is not particularly intense, but has increased especially in the follow-up process of the Beijing conference. In its 22\textsuperscript{nd} session, the Committee made a very clear statement on the close link between the BPFA and CEDAW and on its commitment in the implementation process of the platform, which is the original responsibility of the CSW (UN Doc. A/ 55/ 38: 3). Also, the Optional Protocol to CEDAW has been a matter of debate in the CSW. Since the CSW disposes of a complaint procedure as well, the Optional Protocol to CEDAW might even have

\textsuperscript{157} In its 20\textsuperscript{th} session in 1999, the Committee recommended that the Chairperson or her alternate should regularly attend the CSW to maintain contact and flow of information (UN Doc. A/ 54/ 38/ Rev. 1: 42).
concrete effects on this mechanism, yet to date, no debate on the relationship of the two complaint procedures has been initiated.

5.2.5 The international network around CEDAW – a summary

CEDAW's international network consists of those interactions taking place within the UN (see graph 5). The work of the CEDAW Committee receives administrative support by the Division for the Advancement of Women which is a section of the UN Secretariat. Further, the CEDAW Committee interacts with the other Human Rights Treaty Bodies in the context of the UN Human Rights System, and with Specialized Agencies, in particular UNIFEM, to strengthen a women’s rights perspective. It also cooperates with the intergovernmental Commission for the Status of Women on the basis of mutual independence. Finally, CEDAW is accountable to the General Assembly and submits its annual reports to the GA via ECOSOC.

Graph 5: The international context of the CEDAW monitoring procedure

Three dimensions of the international context of CEDAW are most relevant: first, the technical and administrative support structures for the CEDAW Committee have evolved from an entirely under-resourced situation into one that is comparable to the other Human Rights Treaty Bodies. This development reflects the underestimation on women's rights in the 1980s and the increased understanding of women's rights as an integral part of human rights in the 1990s. The most important aspect of improving the support structures for CEDAW has been the establishment of an administrative body within the DAW that has expertise in inter-
national human rights law. With this expertise, the committee is adequately serviced, even if the disconnection with the Human Rights secretariat in Geneva remains.

Second, the networking between the Human Rights Treaty Bodies has become more intense. This has been positive for CEDAW, because the networking transformed its isolated situation and paved the way to increase the gender awareness of the other Treaty Bodies. As a matter of fact, CEDAW invested a lot of resources to bring gender into the work of all Treaty Bodies. For the future of the UN Human Rights System as a whole, it would be desirable to reform the system in order to make it more effective and decrease workload, instead of continuing a loose cooperation between the different Treaty Bodies, which signifies additional work for each of them, and not workload reduction.

Third, the cooperation between CEDAW and a number of Specialized Agencies of the UN has gone beyond mere reporting to the Committee's constructive dialogue. While it took a while to establish the links, especially UNIFEM and UNDP have gone far in integrating the CEDAW principles into their work. Based on its fieldwork, UNIFEM, in particular, has gathered experience in how to bring global norms and local contexts together. Its work adds to a bottom-up view of national and local actors using and assessing the CEDAW Convention according to their interpretations. Other agencies, such as UNFPA, UNICEF and UNESCO use CEDAW in defining their general mission and draw on the Convention in designing their operational programs. Finally, the relationship between CSW and CEDAW is shaped by the understanding that both bodies have to be independent from each other but at the same time, could benefit from cooperation. Based on their different mandates, the link between the two has been low-key, but has gotten stronger during the 1990s.

In the light of the theoretical framework of this study, these international developments shape CEDAW as a women's rights regime in three significant ways: First, they show the embeddedness of CEDAW in a broader international framework and at the same time, the Convention's and the Committee's contribution to this framework. CEDAW was the "poor cousin" of the Treaty Bodies during a period of time in which women's rights were not yet understood as an indispensable dimension of human rights. With the growing awareness of the relevance of women's rights, the working conditions of the Committee improved. However, this "growing awareness" was created by the engagement of Committee members and other individuals committed to women's rights among UN staff. They worked for increased publicity of the Convention and established dialogues with other UN agencies to make them aware of women's rights. These concrete linkages have added to make women's rights norms accepted within the international community of states.
Second, CEDAW as a women's rights regime has been situated within hegemonic international structures that have made its effective functioning cumbersome. To a certain extent, these structures hinder the work of all Human Rights Treaty Bodies, especially regarding the low level of resources human rights monitoring receives. However, the CEDAW Committee had to overcome additional obstacles, e.g. it had to make itself acceptable as a human rights instrument, it had to deal with inadequate administrative support, and it had to work continuously to make the relevance of women's widely understood – no other Treaty Body was confronted with such difficulties. As the authority and legitimacy of the CEDAW monitoring procedure depends on its reputation of impartiality and on the acceptance of UN member states, it has been integrated into these structures that are ultimately not favorable for the effective implementation of the Convention's mandate.

Third, all the efforts made to increase the Convention's strength have added a dimension to the instrument that goes beyond international repercussions of CEDAW. Especially the integration of the CEDAW principles in the work of UNIFEM, yet also of other Specialized Agencies has helped to understand the Convention in its use for national and local initiatives to achieve gender equality. The link between UNIFEM's fieldwork, situated claims of women activists, and international women's rights standards form an important element of the transnational use of CEDAW. As chapter 8 shows in detail, non-governmental activism has further intensified this transnational connection.
6. Responses of States to the CEDAW Convention – an overview

As of May 2005, 180 out of 191 UN member states have become States Parties to CEDAW, which means almost universal ratification of the Convention (Division for the Advancement of Women 2005d). What does this far-reaching support of CEDAW mean in practice? How do states implement the Convention? This chapter examines the contribution of states to the constitutive and to the regulative dimension of the CEDAW regime. In a first step, it is discussed if states accept and use CEDAW as an international arena of interpretation of women's rights norms and in how far States Parties to the Convention take their international responsibilities seriously (6.1). The commitment of states regarding their treaty obligations can be interpreted as crucial link between international norms and their domestic realization. Three dimensions are relevant to characterize the States Parties' attitude towards CEDAW, in particular regarding the states' willingness to attribute authority to the Committee: States Parties' decisiveness or hesitance in ratifying CEDAW and their compliance with adequate and timely reporting (6.1.1); the concrete performance of States Parties in the constructive dialogue with the Committee (6.1.2); and the different positions of States Parties regarding admissible and inadmissible reservations (6.1.3). As governments have hardly produced any information regarding their assessment of the CEDAW procedure and as the biannual meetings of the States Parties to CEDAW have not provided a forum where States Parties articulate and discuss their attitudes relating to CEDAW158, this section draws predominantly on UN data and comments of international experts on states behavior.

In a second step, the chapter gives an overview of the domestic use that has been made of the Convention, that is, it analyses the contribution of states to the regulative dimension of CEDAW (6.2). For this purpose, general trends of States Parties to implement the Convention's provisions are discussed. This overview is based on the analysis of documents and draws on the domestic dynamics in 43 States Parties to CEDAW. 16 of these states belong to Asia and the Pacific, 12 to Africa, 9 to Developed Regions, and 6 to Latin America and the Caribbean. This selection represents roughly 24%159 of all States Parties to CEDAW. "Compliance with CEDAW" is defined as the production of domestic change under the guidance of the Convention, either in national discourses, in state institutions, or in public policies (2.2.2;...

158 To do fairness to the States Parties' meetings, it should be mentioned that some statements were issued concerning the necessity to provide the Committee with adequate resources and to extend its meeting time in the late 1980s (UN Doc. CEDAW/ SP/ 10) and the mid 1990s (UN Docs. CEDAW/ SP/ 1995/ 2; CEDAW/ SP/ 1996/ 5). Also, the question of permissible reservations was discussed in the late 1980s, but apparently, "States Parties have little intention to address the ineffectiveness of the Convention that results from reservations made to the commitment that membership in the Convention professes." (Cook 1990: 708; Lijnzaad 1995)
159 That is, 43 cases out of 180 States Parties.
Cortell and Davis 2000). The dynamics that have taken place around CEDAW in 43 states are classified into five levels of compliance. Three possible explanatory factors for compliance with CEDAW are examined, namely the degree of prosperity of a state; the political system of a state combined with the degree of freedom of expression and representation of interests of women within state institutions; and the "cultural match" or the affinity between international and national norms on gender relations (6.2.1). As additional factor, the connection between (sub)national and international dynamics through NGO activism or governmental policies was considered, however, information on this connection remained fragmentary. In none of the cases explored is one explanatory factor alone decisive for impact of the Convention (6.2.2), but usually, a mix of factors combined with further specific dynamics of each domestic context enable good use of the international instrument (6.2.3).

An analysis of states' responses to CEDAW needs to include a discussion of those states that have refused to ratify the Convention. The domestic dynamics underlying the state's decision gives insights on the process of domestic appropriation – or rejection – of international norms. It can be interpreted as the attempt to find out if there is a significant overlap between the international women's rights framework and domestic values or not. Thus, section 6.3 discusses the well-documented domestic debate on ratification of CEDAW in the United States as one of the eleven remaining non-parties to the Convention. Major reasons to reject ratification are disagreement with the norms enshrined in the Convention and mistrust in the monitoring body. However, the case of the US suggests that an additional domestic pattern of reacting to international norms is to misunderstand them; both supporters and opponents of ratifying CEDAW partly misinterpret the international monitoring procedure.

6.1 States Parties' international interaction with CEDAW

6.1.1 Patterns of ratification and compliance with reporting duties

The CEDAW Convention has continuously moved towards universal ratification: In the year 2003, 175 out of 191 UN member states were States Parties to the Convention (see graph 6). Two years later in 2005, five more states have joined the treaty and bring the number of States Parties to 180. Their distribution across the four world regions is fairly

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160 For a systematization of the actors that have been using the Convention and a description of their action, see Appendix 2.
161 The five new States Parties are: Kiribati, Swaziland, Micronesia, United Arab Emirates, and Monaco.
162 The United Nations divide the states of the world in four geographic regions: Africa, Latin America and the Caribbean, Asia and the Pacific, and Developed Regions. The last category contains Western Europe, Australia,
even. However, the pace of ratification over time reveals differences among the world regions that may be connected to normative affinity to or disparity with the Convention's content.

The regions with most early States Parties to CEDAW were Eastern Europe and Latin America, followed by Developed Regions and Africa. All Eastern European states (including the former Soviet Union) ratified before 1983 and without reservations regarding the Content of the Convention. Even if one questions the ideological foundations of gender policies in the former Eastern block, this group of states was one of the outspoken proponents of codifying international women's rights. The early ratification of CEDAW by Eastern European states, thus, came as no surprise. However, socialist states also took a firm stand on defending their national sovereignty in relation to international treaties and tried to define the mandate of the Committee narrowly in concrete questions (see 5.1.2.4). Ratification went very smoothly in Latin America and the Caribbean as well: in 1983, 19 out of 33 states were States Parties to CEDAW, and since 1993, this world region has been the only one that has achieved universal ratification of the Convention. Latin America has generally had a strong voice in support of women's issues within the United Nations, e.g. in the early years of the CSW or in the drafting process of the Convention (see 4.1.2.1 and 4.2.2). Only three Latin American States Parties had entered substantial reservations, but two later withdrew them.

Bermuda, Canada, Japan, New Zealand and the United States, and after the end of the cold war, Eastern European States including the Russian Federation.
The *Developed Regions* was the third fastest group in ratifying CEDAW. Along with Eastern Europe and Latin America, that group has been supporting the strengthening of international women's rights, yet some states of this group have had a somewhat distinct attitude and favoured the principle of gender equality instead of a women-centered approach (see 4.2.2.2). Since 1990, the former Eastern European states and some of the so-called "countries in transition" that arose out of the decomposition of the Soviet Union were merged into the group. Thus, the number of ratifications to CEDAW has been growing: as of 2003, 45 out of 47 states of that group were States Parties to CEDAW, with only Monaco\textsuperscript{163} and the United States of America missing. Eleven of the 45 States Parties have entered substantial reservations to CEDAW that are valid to date, while ten have withdrawn or partly withdrawn former reservations.

African states were more hesitant in ratifying CEDAW in the beginning of the 1980s, but ratifications have steadily increased: in 2003, 50 out of 53 African States were State Parties to CEDAW\textsuperscript{164}. The leap of ratifications in the mid 1980s, jumping from 9 to 27 between 1983 and 1988 is probably related to the 1985 Women's World Conference held in Nairobi. The ideological affinity of African states to the Convention is not as direct as in the cases of Eastern Europe, Latin America and the Developed Regions. Many African states are built upon cultural or religious traditions that do not enshrine the notion of gender equality, or even explicitly ascribe women to a lower status than men. Nine out of the 50 States Parties have entered substantial reservations, and six of them refer to the potential conflicts of the Convention with religious or cultural traditions. One state has completely withdrawn its reservation, two have modified their reservations. In comparison to the high number of withdrawals of reservations in the Developed Regions, this low number indicates a more static approach among African states in terms of reservations. Nonetheless, the rise of ratifications seems to indicate a process of appropriation of the Convention within the African context.

*Asia and the Pacific* has been the world region with the slowest process of ratification. Until 1993, only 25 out of 58 states of the region were States Parties to CEDAW; however, the 1995 World Women's Conference held in Beijing seemingly worked as an incentive to ratification the same way the Nairobi conference did for Africa: ratifications jumped from 25 to 40 between 1993 and 1998. In that period of time, a number of "countries in transition" resulting from the dissolution of the Soviet Union were integrated into the Asian region. Most of them ratified the Convention soon after their constitution. The generally slow pace of rati-

\textsuperscript{163} As Monaco ratified CEDAW in 2005, the US remains the only state of *Developed Regions* that is not State Party to CEDAW.

\textsuperscript{164} Those countries missing are Somalia, Sudan, and Swaziland, yet Swaziland ratified later in 2004.
fication in Asia indicates that many states had problems in perceiving the Convention as a helpful and applicable tool in their domestic settings, e.g. those states applying Sharia law, which predominantly belong to this world region. Also, states in Oceania have been cautious in terms of ratifying CEDAW, partly because of discordant cultural traditions, partly because of the limited resources very small states have to cope with. As of 2003, six Pacific states were non States Parties to CEDAW. In the whole region of Asia and the Pacific, 47 out of 58 UN member states are States Parties to CEDAW. Of those, 17 have entered substantial reservations, which exceeds any other region. In terms of withdrawals, 6 States Parties have partially, and two have completely withdrawn their reservations, a hesitant dynamic similarly to that of the African region.

Given this general picture of ratification patterns, an analysis of the fulfillment of reporting duties provides further insights on the general attitude of states towards CEDAW. Ideally, the reporting obligation should be "considered to be part of a continuing process designed to promote and enhance respect for human rights rather than an isolated event absorbing precious bureaucratic resources, solely to satisfy the requirements of an international treaty" (Connors 1997: 7). In reality, more States Parties to human rights treaties fail to comply than comply with their periodical reporting duty – as a consequence, only very few states come close to the ideal of "a continuing process designed to promote human rights". As of September 2002, 47 States Parties to CEDAW out of a total of 174 have never been late in submitting their periodical reports. Thus, in a long-term perspective, only 27% of States Parties formally comply with their reporting obligations. Further, in 2002 there were 51 States Parties with one overdue report, 48 with two, 14 with three, 5 with four - and 9 States Parties with as many as five overdue reports. This last group is of particular concern, since those states have ratified CEDAW at least 20 years ago and have not managed to submit even the initial report. Their early ratification was not followed by the commitment to fulfill the treaty obligations.

If only those states are considered as not fulfilling their reporting obligations that have two or more reports overdue - that is, if one overdue report is considered acceptable – the picture becomes more balanced: 98 States Parties are acceptable compliers, while 76 States Parties remain in a situation of inadequate compliance (56% vs. 44%). Graph 7 shows how these compliance patterns are distributed across the world regions.

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165 Four such states have refused to ratify the Convention until 2005, namely Brunei Darussalam, Iran, Oman, and Qatar.
166 Kiribati, Marshall Islands, Micronesia, Nauru, Palau and Tonga. However, in 2004 Kiribati and Micronesia ratified the Convention.
Using this broadminded view on "acceptable compliance", the majority of developed regions (34 out of 44) fall into this category, three fifth of the Asian states (29 out of 47), only slightly more than half of Latin American states (19 out of 33), and the alarmingly low number of 16 out of 50 African states.

A look at the States Parties that have failed to submit their initial reports also shows an uneven distribution across world regions – 47 % of those states come from Africa, 30 % from Asia, 14% from Latin America, and 9% from the Developed Regions (graph 8). While in all regions (except Latin America) some States Parties only recently ratified CEDAW and thus, are only one or two years overdue with their initial report, the majority of this group of States Parties should have submitted their initial report more than five years earlier.
The numbers show that compliance patterns differ widely across world regions. Generally speaking, the world region that comes closest to ideal compliance is Developed Regions, followed by Latin America and Asia, while Africa brings up the rear. Three factors seem to be particularly influential on compliance, first, the cultural or ideological affinity to the principles of the Women's Convention, second, the acceptance of being scrutinized by an international monitoring mechanism, and third, the disposal of sufficient resources and knowledge to prepare adequate reports. In many states, these three factors are not reconciled. Some states disagree with the Convention's understanding of gender equality, others are not entirely ready to accept international scrutiny – most of those have taken very long to ratify CEDAW or have refused ratification all together. Finally, many states especially in the regions of Africa and Asia and the Pacific lack the resources to designing gender policies as well as submitting adequate reports. Accordingly, a state like Sweden that agrees with the CEDAW principles, accepts international scrutiny and disposes of adequate resources for the constructive dialogue with the Committee is in an ideal situation of compliance, while a state like Bangladesh has more difficulties: while it also accepts international scrutiny, its legal framework disagrees in fundamental questions with the Convention, and the situation of resources is insufficient.

6.1.2 States Parties engaging in the constructive dialogue

A first indication of a State's attitude towards the Committee and the importance it ascribes to the reporting procedure is the kind of delegation it sends. In the view of Committee experts, a well-informed and high-level delegation is a sign of respect and interest:
"(Y)ou can tell by the delegations how engaged they are. Now, you saw Germany yesterday 167 and you could tell that this delegation was engaged, interested, committed, was almost enjoying the discussion, and everyone was involved. But there are many delegations that you don’t get that sense of engagement." (Interview 5)

Even if there are differences in the competence of delegations, experts see a trend that States Parties are more careful in putting their delegations together. This trend is possibly connected to the increased interest in gender issues since the Fourth World Conference on Women in 1995 (Connors 1997: 8). Another reason might be that governments have learned to send well prepared delegations if they want to appear in a positive light; at least some experts have drawn this conclusion, since in their view, states occasionally sent uninformed delegations, but refrained from doing so after experiencing the highly demanding dialogue with the Committee. One of the longstanding members recalls the first presentation of France in 1987, when the official delegations consisted of two representatives only, "(b)ut during the conversation, when they saw how well prepared we were, slowly, one after another, the delegation ended up with ten members." (Interview 4)

An often-cited example of a delegation that did not meet the required standards was the one of the Philippines when presenting its initial report in 1984 (Byrnes 1989; Galey 1984; Jacobson 1991). The representative of the permanent mission of the Philippines caused considerable excitement among the experts when he

"expressed some personal views and perceptions on the role of women in the Philippines. He said that it was preferred that its women retain their femininity and gentleness because, in such a way, they had obtained many advantages and progress. It was for that reason that no women's liberation movement had existed in the Philippines." (UN Doc. ST/ CSDHA/ 5: 244f)

When Committee members expressed their objections in a subsequent meeting, considering the statement an "insult to the Convention and the Committee as well as to all experts present", the representative was replaced, and the Ambassador of the Permanent Mission subsequently sent a written apology, explaining that no insult was intended (UN Doc. ST/ CSDHA/ 5: 246).

No such faux pas has ever happened again. While it was more frequent in early years that states sent a representative of their permanent mission at the United Nations to read out the report before the Committee, this is hardly done anymore because this person is unlikely to be well-informed about the diverse national gender policies. There are still huge differences

167 The expert refers to the German presentation in January 2000.
in the composition of delegations. Some states put their delegations together from all ministries relevant to gender issues. Others seem to put a lot of effort into leaving a good international impression, while the delegation is not well linked to national decision-making bodies. In particular, states often send representatives of the national women's policy agency, but not of the ministry of labor or the ministry of justice. While such a delegation is usually sensitive to women's concerns and able to report on the steps that have been taken by the government, it depends on the status of the WPA if the delegation is linked and able to influence decision-making processes in the national context. In some cases, the head of the delegation before CEDAW ended up in articulating agreement with the demands of the experts, yet at the same time expressed doubts that those demands would be taken care of because of unfavorable political or cultural traditions. In other cases, States Parties sent the President's wife as head of the delegation. Supposedly, this indicates the personal commitment from the highest ranks, yet it remains unclear how such a symbolic way of showing respect to the Committee can be translated into public gender policies.

It has to be underlined, however, that the base for sending a high-ranking delegation is not only a questions of good will, but also a matter of resources. Developing countries and small states are in the worst conditions in this respect. Particularly states from Africa and Asia and the Pacific have benefited from the move of CEDAW's venue to New York where most of them have permanent missions. As a consequence, reporting before the Committee is more cost efficient, which makes it more likely for those states to report at all, as well as to send qualified delegations.

Some general trends can be observed in the way States Parties engage in the dialogue with the Committee: while governments tend to overestimate their achievements both in the reports and in the oral presentation, contemporary delegations have become more frank in pointing to deficits than earlier ones. It seems that states tend to better understand the complex nature of the information they are supposed to provide to the Committee. As gender equality is connected to virtually all policy fields, a sound preparation for the dialogue with the Committee requires coordination between a wide range of a state's institutions. Judging from the inadequacy of many early reports, this has not always been clear to a range of States Parties (see 5.1.2.2). Thus, the dialogue has also enhanced learning processes in States Parties insofar as many of them have become more aware of issues they had not paid attention to

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168 The Socialist states were, in general, most convinced about their own far advancement in terms of women's rights. For example, the representative of the Union of Soviet Socialist Republics stated, in introducing the initial report of the USSR in 1983, "that the legislation of the Soviet Union conformed in letter and in spirit to the Convention and even went beyond its provisions." (UN Doc. ST/ CSDHA/ 5: 85)
previously. One expert sees a particular change in States Parties' attitudes regarding violence against women:

"I am sure that our understanding of ... the trends of discrimination help to inform states which haven’t quite seen it like that. In my eight years on the Committee, the whole issue of violence has become absolutely accepted as a major human rights violation in every state. That doesn’t mean to say that they are necessarily doing much about it, but they are finding that it is a serious problem now. Eight years ago, very few states were actually looking for it. (...) And articulating that, I think, has an impact. (...) (I)t becomes part of the ordinary philosophy and understanding of the issue." (Interview 5)

The general trend to rank state sovereignty as higher than treaty obligations was more explicit in the 1980s than afterwards. In some occasions where States Parties considered a question raised by an expert as beyond the monitoring mandate of the Committee, the delegate articulated disapproval and refused to answer the question. This happened, for example, when the first report of the USSR was considered in 1983. One expert articulated the view

"that she had not received an satisfactory reply to her question concerning specific measures that might have been adopted by women in the Soviet Union with a view to prevailing upon their Government to comply with the United Nations resolutions concerning the peaceful settlements of disputes. She had the situation in Afghanistan and the suppression of liberation movements in mind." (UN Doc. ST/ CSDHA/ 5: 144)

In the view of the responding representative of the USSR, "(t)he question which had been asked regarding the situation in Afghanistan demonstrated an incorrect knowledge of that situation; she offered to discuss the issue privately with the expert who had posed the question." (UN Doc. ST/ CSDHA/ 5: 146) The expert obviously tried to wrap up her question in a way that conforms with the Committee's mandate, in so far as her asking what Soviet women had done to bring the government to comply with UN resolutions. However, the delegate interpreted it as a critique of the USSR's intervention in Afghanistan and thus, refused to answer on this basis. El Salvador reacted in a similar manner when its first report was considered in 1986. The delegation refused to respond to questions relating to the general human rights situation in the country, since it had nothing to do with the situation of women (Laitenberger 1986: 213; UN Doc. A/ 41/ 45: 42f).

In general, the insistence on national sovereignty in a juridical-political sense has been much less prevalent in the dialogue than a cultural or traditional version of States Parties' sovereignty. Some States Parties simply express the view that the implementation of the Convention has to face obstacles in the national or local traditions; for example, the representative of Uruguay stated, when presenting the country's initial report: "Full equality between men
and women in her country was hindered by Uruguayans' values, habits and attitudes." (UN Doc. A/ 42/ 38: 81) While statements like that of Uruguay imply that this "full equality" is a political goal, however hard – or slow – to be achieved, other States Parties even express the view that the provisions of the Convention are subordinated under the traditional values, or need to be adjusted to them. In this logic, Iraq declared, when introducing its initial report in 1993 that it tries to implement the Convention in a way that it is not in contradiction with Islam (Rudolf 1993: 176; UN Doc. A/ 48/ 38). In the same session, a similar statement was made by Bangladesh, which declared to subordinate the personal status of women under the norms of religious communities (Rudolf 1993: 177; UN Doc. A/ 48/ 38) as well as by the Libyan Arab Jamahiriya (Rudolf 1995: 122; UN Doc. A/ 49/ 38) and India (UN Doc. A/ 55/ 38/ Rev. 1: 8; 10) in later sessions. Kenya criticized the Convention when it presented its initial report in 1993 because in the view of the Kenyan government, CEDAW does not respect cultural practices that might deny certain rights to women, but that are necessary foundations for traditional community life (Rudolf 1993: 176). Similarly, the delegation of Guatemala justified in 1994 its refusal to implement family planning programs because in the view of the government, these had negative social implications, namely the dissolution of the family and of society (Rudolf 1995: 122).

Little has been written about the perspective of States Parties on the monitoring process as such. As the chairperson of CEDAW reports in 2002, an informal meeting of the persons chairing the Human Rights Treaty Bodies with governmental representatives showed that states perceive it as a burden to report on a variety of treaties in short periods of time (UN Doc. A/ 57/ 38: 149). This view is backed by Meyer-Ladewig (1998), a representative of the German government, when he states that it is problematic for governments if follow-up reports are requested too frequently. Connected with short periodicity is the backlog of reports before the monitoring bodies, which is problematic for the States Parties as well, especially for those that submit their reports in time, because "(i)f a long period passes between the forwarding of the report and the oral hearing considerable oral updates need to be effected." (Meyer-Ladewig 1998: 127) Regarding the dialogue itself, Meyer-Ladewig commends any practice that allows delegations to prepare thorough answers, such as the preparation of a set of questions in advance, or if time is given to prepare the answers during the dialogue, instead of answering immediately. In general, he stresses the need to allot delegations sufficient time to answer questions because otherwise, the dialogue might not develop in a fruitful way:

169 Meyer-Ladewig is a representative of the Ministry of Justice and is thus not responsible for the CEDAW reports, which are prepared under the aegis of the Ministry for Family Affairs, Senior Citizens, Women and Youth. However, his governmental perspective seems to reflect a general view.
"Situations have arisen where the committee members spent many hours asking questions, but there was little time for answering them. (...) It is not conducive to the acceptance of a critical dialogue for committee members to give the impression that they have already made up their minds, and are not prepared to give further consideration to the answers of the government representatives." (Meyer-Ladewig 1998: 128)

In the view of usefulness for the State Party, he stresses the value of the concluding observations, while previous to them, "individual questions and comments by individual members, sometimes contradictory, remained floating in the meeting room (and were) hardly suited to inducing States Parties to draw conclusions." (ibid.)

If these remarks can be generalized, States Parties seem to understand their reporting duties as additional workload to their efforts made in the policy field concerned. Rather than being interested in an ongoing monitoring process, states they strive for a time-efficient procedure that reduces their international duties as much as possible. Short periodicity between the reports is perceived as hindering efficiency, as well as providing insufficient time to explain national developments. They consider a Committee helpful if it is not prejudiced, but open to their remarks and if it provides them with a concise concluding assessment. However, this perspective constructs a governmental attitude ready to engage in the monitoring process. It may not be representative for States Parties that for various reasons do not comply with their reporting duties.

Committee experts have differing impressions regarding the attitude of States Parties ranging from general trust in the willingness of states to engage in the reporting procedure to general suspicion that most states place the issue of women's rights at low priority. On the positive side, experts do assume that States Parties "all come with the intention to implement the Convention and to show the achievements and efforts made in this respect. What happens is that they have different forms of expressing it, and that it also depends of the development of the country" (Interview 7) 170. From this perspective, States Parties seem to perceive the Committee as a helpful instrument in their efforts concerning gender equality. Other experts see states' attitudes driven by causes other than the will to engagement. One expert believes that the "reporting obligation is a mixture of an annoying international duty and the chance to make a good impression" (Interview 1). Another expert has observed greater engagement of developing countries with the Convention than of developed countries and explains this attitude with a greater need by civil society to use international instruments:

170 "vienen todos con la voluntad de dar cumplimiento a la Convención y de mostrar los logros que han alcanzado y los esfuerzos que están realizando. Lo que pasa es que tienen distintas formas de expresarlo, y también depende del desarrollo del país."
"In developed countries there is … much less awareness of our Convention. Developing countries need the Convention much more as a tool to realise their rights. For example in Germany many laws are in place and the Government is also comparatively more gender sensitive, but we have found that in many important areas … the state actors … are not even aware of the Convention. But in most developing countries, both the children’s rights Convention, and CEDAW are widely known. Perhaps it is more known because women really have to use this means to claim their rights." (Interview 3)

Even if most experts feel that the Committee and the reporting procedure is respected, some are disappointed by what they perceive as general lack of political will in most governments to take gender equality a top priority field of action. In a somewhat sarcastic comment, one expert summarizes how women's rights remain of subordinated relevance in both developed and developing countries:

"For rich states, it is actually quite a common theme, at least in the earlier times of the Committee, that they think they don’t need to worry about women, they will be right anyway. On the other hand, poor states assume they don’t have money to spend on women, as if money was the only important matter. So whatever happened with rich and poor states, women are going to be put aside to be dealt with some other time." (Interview 5)

In sum, while there is a clear improvement observable in States Parties ‘ engagement in the monitoring procedure, they do not prioritize their international treaty obligations as much as international experts would like to see it. For national governments, national priorities always come first – this attitude is even more pronounced in the issue of reservations to the Convention.

6.1.3 Sovereign right or infringement on the Convention - States Parties attitude towards reservations

According to the Vienna Convention on the Law of Treaties of 1969 (VCLT), a reservation is a "unilateral statement, however phrased or named, made by a state, when signing, ratifying, accepting, approving or acceding to a treaty whereby it purports to exclude or to modify the legal effects of certain provisions of the treaty in their application to that State" (art. 2(1)(d)). Reservations to international treaties are not only allowed, in fact, the VCLT

171 For the full texts of all current reservations entered to the CEDAW Convention, see Division for the Advancement of Women 2005e.
has made it easier for states to enter reservations since the unanimous consent of the other parties to the treaty is no longer required to admit a reservation. However, reservations have to meet the criteria of compatibility with the treaty and acceptability by the other parties. Especially in human rights treaties, the role of reservations highlights "the constant tension between encouraging universal participation in a human rights convention and protecting the integrity of the convention." (Cook 1990: 649) As Cook observes, the

"(t)olerance of reservations to international human rights conventions has been encouraged on pragmatic grounds. Treaties on human rights are likely to jeopardize the sovereignty of States Parties without at the same time offering them a commercial advantage that may render a compromise of sovereignty worthwhile. Most states are apprehensive about the possible consequences of accepting a human rights treaty, not least because such treaties may have a dynamic force and interpretation of their scope … States realize that they may not be able to withdraw and may be found in breach, with harmful or humiliating consequences." (Cook 1990: 650)

Reservations, thus, offer a possibility for states to protect their interests and make them more prone to become parties of a particular treaty. At the same time, depending on the kind of reservations entered, reservations may threaten the integrity of the treaty.

The CEDAW Convention states in article 28 that "any reservation incompatible with the object and purpose" of the Convention shall not be permitted. However, the Convention does neither clarify who is authorized to determine incompatibility of a reservation with the treaty, nor how this should be proved. Cook proposes an approach of determining compatibility that starts from the objective treaty provisions and then examines the impact a reservation would have in the specific national context:

"If, within the reserving state, the impact of the reservation is minor, … the reservation can be tolerated in the name of promoting universal membership in the Convention. If, however, the impact on women is significant in denying equality or equality of opportunity with men, the reservation must be rejected and the cause of integrity of the Convention must prevail. The significance of a reservation is determined prospectively by an interaction of qualitative and quantitative factors." (Cook 1990: 679f)

According to this proposal, a reservation stating that succession to the monarchy shall favour males over females without regard to order of birth would be acceptable since it affects only a very small number of women, notwithstanding the symbolic discriminatory weight it
enshrines. In contrast, reservations that restrict the right to stand for elections and to vote to males exclusively\textsuperscript{174}, or that prohibit women from completing service in the armed forces\textsuperscript{175} have a much stronger discriminatory impact on a great number of or even all women in the country, and are therefore not acceptable.

Committee experts and those states that have objected to reservations broadly agree on which kind of reservations are compatible or incompatible with the Convention. Incompatible reservations are those that are entered either against the Convention in general\textsuperscript{176} or against its core provisions, which include articles 2, 9, 15 and 16\textsuperscript{177}. Those articles deal with the legal and institutional framework to eliminate discrimination against women (article 2), equal rights regarding nationality (article 9), the equal legal capacity of women and men (article 15), and equality in marriage and family matters (article 16)\textsuperscript{178}. Generally speaking, reservations are more questionable if they are broadly formulated and if they go together with further reservations to other articles; on the other hand, they are more likely to be compatible with the Convention the more precise and specific they are (Cook 1990: 706).

The practice of States Parties to CEDAW to submit a high number of far reaching reservations has been harshly criticised by legal scholars (Byrnes 2002; Clark 1991; Cook 1990; Lijnzaad 1995). The scope of many of these reservations was estimated to be so wide that they actually rendered the whole Convention meaningless (Clark 1991). A recent study\textsuperscript{174} Entered by Kuwait (UN Doc. CEDAW/ SP/ 2000/ 2: 29).

\textsuperscript{175} Entered by New Zealand and Switzerland (UN Doc. CEDAW/ SP/ 2002/ 26; 29), as well as by Austria and Germany that have withdrawn their reservations in 2000 and 2001 respectively (UN Doc. CEDAW/ SP/ 2002/ 2: 59; 61).

\textsuperscript{176} E.g. Malaysia: "The Government of Malaysia declares that Malaysia's accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Shariah law and the Federal Constitution of Malaysia." (UN Doc. CEDAW/ SP/ 2002/ 2: 24) or Saudi Arabia: "In case of contradiction between any term of the Convention and norms of Islamic law, the Kingdom of Saudi Arabia is not under obligation to observe the contradictory terms of the Convention." (UN Doc. CEDAW/ SP/ 2002/ 2: 28)

\textsuperscript{177} This enumeration is a compilation of different sources representing slightly differing understandings of the "core" of the Convention, namely a proposal of Canada for the States Parties meeting in 1986 (UN Doc. A/ 41/ 608: 6); and the statement of the CEDAW Committee on reservations of 1998 that declares article 2 and 16 the core provisions of the Convention (UN Doc. A/ 53/ 38/ Rev. 1: 47).

\textsuperscript{178} All of these articles have attracted reservations, e.g. Algeria on article 2: "The Government of the People's Democratic Republic of Algeria declares that it is prepared to apply the provisions of this article on condition that they do not conflict with the provisions of the Algerian Family Code." (UN Doc. CEDAW/ SP/ 2002/ 2: 16) Tunisia on article 9: "The Tunisian government expresses its reservation with regard to the provision in article 9, paragraph 1, of the Convention, which must not conflict with the provisions of chapter IV of the Tunisian Nationality Code." (UN Doc. CEDAW/ SP/ 2002/ 2: 29) Niger on article 15 (4): "The government of the Republic of Niger declares that it can be bound by the provisions of the paragraph, particularly those concerning the right of women to choose their residence and domicile, only to the extend that these provisions refer only to unmarried women." (UN Doc. CEDAW/ SP/ 2002/ 2: 27) Switzerland on article 15 (2): "Said provisions shall be applied subject to several interim provisions of the matrimonial regime (Civil Code, articles 9 (e) and 10, final section)." (UN Doc. CEDAW/ SP/ 2002/ 2: 29) Singapore on article 2 and 16: "In the context of Singapore's multiracial and multireligious society and need to respect the freedom of minorities to practice their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of articles 2 and 16 where compliance with these provisions would be contrary to their religious and personal laws." (UN Doc. CEDAW/ SP/ 2002/ 2: 28)
concludes that reservations to CEDAW are not overwhelmingly numerous in comparison to the other Treaty Bodies (Bayefsky 2001), however, this does not mean that the situation is satisfactory. As of the year 2003, 52 out of 174 States Parties have entered reservations or declarations\textsuperscript{179}; since many states have entered more than one reservation, the total number of reservations amounts to 142. Of these 142 reservations, 34 or approximately one fourth relate to a specific procedure of dispute settlement between States Parties spelled out in article 29 (1) of the Convention. These reservations are of procedural character and clearly in accordance with the Convention. The other 108 reservations relate to substantial articles of the Convention or are formulated as general statements. 66 out of these are either general incompatible statements or made with reference to the core articles 2, 9, 15, or 16. Thus, roughly 46% of all reservations made to CEDAW as of 2003 are not in accordance with the principles of the Convention, and they were entered by 34 States Parties (19.5%). Significantly, the article which has attracted most reservations is article 16 on equality in marriage and the family (26 reservations) – obviously, this norm is much less universal than gender equality in education and employment. Most reservations on article 16 are based on religious grounds or on the autonomy of religious communities in matters of personal law.

A percentage of roughly 20% of States Parties refusing to comply with fundamental treaty provisions is obviously not an ideal situation. Both the Committee and the meeting of States Parties reacted to this problem in the late 1980s, but with limited success. The CEDAW Committee has continuously expressed its concern on broad and, in its view, incompatible reservations from very early on, especially when entered based on religious traditions. It requested in 1987 that the UN secretariat should conduct a study on "the status of women under Islamic laws and customs" (UN Doc. A/ 42/ 38, para. 580), yet this request was received in higher UN organs with great hostility and referred back to the Committee for further consideration, just to never be tackled with again (see 5.1.2.5; Byrnes 1989; Connors 1996b).

The debate in the Third Committee of the General Assembly on the matter was basically driven by two dynamics: in the first place, many Islamic states made vehement statements on the Committee's "inappropriate, presumptuous and biased" attitude. In the view of Bangladesh, the CEDAW Committee had mixed "problems relating to the status of women with Islamic Law, even though the two subjects were entirely unconnected" (UN Doc. A/ C.3/ 42/ SR. 22, para. 43). The Tunisian delegation found the Committee's behaviour uninformed concerning the contribution of Islam to human civilization (UN Doc. A/ C.3/ 42/ SR. 25, para.

\textsuperscript{179} Declarations are interpretative statements different from reservations, however, many States Parties have submitted declarations that are de facto reservations; these are classified as reservations (Bayefsky 2001).
and Pakistan saw the request for the study as an "attempt to use the Convention ... as an instrument of pressure or coercion against developing countries in general and Islamic countries in particular" (UN Doc. A/ C.3/ 42/ SR. 26, para. 80). Algeria even interpreted the Committee's request as a reflection of "intolerance and a desire to superimpose foreign cultural values on Islamic precepts" that "discouraged the constructive climate necessary to the performance of the Committee's task." (UN Doc. A/ C.3/ 42/ SR. 27, para. 1)

The view that the Committee had gone far beyond its mandate was underlined by the second dynamic, that is, the views that some delegations revealed about the right of states to enter reservations. While Tunisia denied the Committee any authority to determine whether reservations were well-founded, since "that remained the prerogative of each State in the exercise of its national sovereignty" (UN Doc. A/ C.3/ 42/ SR. 25, para. 15), the Egyptian delegate found it also inappropriate "for certain countries to call on others to withdraw reservations they had entered to some articles of the Convention ..." (UN Doc. A/ C.3/ 42/ SR. 26, para. 9, emphasis added). The delegation of Indonesia felt that "reservations should be viewed as valuable input for the Committee (...) in finding ways and means of adapting the Convention so that it became an acceptable instrument for the advancement of the status of women through progressive change." (UN Doc. A/ C.3/ 42/ SR. 24, para. 51) The views expressed in this debate are not representative for all States Parties since most did not comment on the matter. However, those who raised their voice reveal an understanding of reservations that is hardly in accordance with the Vienna Convention on the Law of Treaties: the view expressed by Egypt that only the state entering a reservation itself should be authorized to decide upon the permissibility of that reservation stands in clear contrast to the provision of the VCLT that all States Parties to a treaty are allowed to object to reservations. With an objection, a state can publicly declare if it deems a reservation entered by another State Party incompatible with the object of the treaty. Also, the understanding expressed by Indonesia that reservations may be helpful tools to "adapt" international instruments is not covered by the VCLT. Reservations are allowed to make treaties accessible to more states, yet by no means should they transform the content of the treaty.

Some States Parties opposed this "state-centred" understanding of reservations. Canada placed the question of reservations on the agenda of the third meeting of States Parties in 1986, where a resolution was unanimously adopted, urging the full respect for article 28(2) of the Convention in stating that "(a) reservation incompatible with the object and purpose of the present Convention shall not be permitted", and requesting the Secretary General to seek the view of States Parties on acceptable reservations (UN Doc. CEDAW/ SP/ 10). Only 17 States
Parties responded to the request, and none of those having made wide-ranging reservations did\textsuperscript{180}. The matter was supposed to be further discussed at the 1988 meeting of States Parties, but the decision of the last meeting was only recalled, "noting the reports submitted to the GA and the various views expressed at meetings of the GA, the ECOSOC and the States Parties" (UN Doc. CEDAW/ SP/ 14: 2). Thus, the unhappy link of incompatible reservations with Islam and the heated debate that had emerged in this respect blocked a constructive discussion on reservations regarding to the Convention\textsuperscript{181}. Since then, the States Parties meetings keep a low profile on the issue of reservations: Their activity consists in taking note of the current state of declarations, reservations, withdrawals of reservations and objections to the Convention on their biannual meetings.

Further activities regarding reservations have been carried out on the basis of individual states' engagement: as of the year 2002, 14 States Parties\textsuperscript{182} have filed objections to those reservations they consider inadmissible, and only seven\textsuperscript{183} have done so in ten or more cases. In other words, over 90% of States Parties have never made use of their right to object. While the objections are not always consistent – either in their argument or because they are directed only towards certain states and not to others (Clark 1991) – they show the commitment by the objecting states to the principles of the Convention. This is even more remarkable, as in the case of Human Rights Treaties, objecting states do not have any advantage in objecting as they might have in treaties that entail exchange relationships between states (Cook 1990). On the contrary, an objection might deteriorate the relationship with the other state. Clark therefore assumes that the high percentage of states abstaining from filing objections is based on the will of states to maintain a friendly climate with other states, especially if they are more powerful, if they are of the same region, or if the objection might be interpreted as patronizing. Another factor may be, again, that not all states dispose of sufficient resources to scrutinize the reservations submitted and draft a statement within the required twelve months of time (Clark 1991: 314).

\textsuperscript{180} Clark (1991) thoroughly analysed the answers to the Secretary General's request and concluded that the low number of statements as well as the inaccuracy of some of them were a sign that the Convention was not taken seriously at that time.

\textsuperscript{181} For a detailed discussion on the compatibility of Islam with the Women's Convention, see Connors 1996b; UNIFEM Western Asia Regional Office 1999. While it is true that many Islamic states that have ratified CEDAW have entered reservations, there are many other reservations unrelated to Islam that are equally incompatible with the treaty's aims. Also, compatibility depends on the interpretation of Islamic rules, which also explains why some states have entered more or less all-encompassing reservations with reference to Islam.

\textsuperscript{182} Austria, Canada, Denmark, Finland, France, Germany, Ireland, Mexico, Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom (UN Doc. CEDAW/ SP/ 2002).

\textsuperscript{183} Denmark, Finland, Germany, Mexico, Netherlands, Norway and Sweden (UN Doc. CEDAW/ SP/ 2002).
The objecting states usually argue against vague and indeterminate reservations, be they made on the basis of Islamic law, other religious traditions, or constitutional provisions. However, none of the objecting states has ever declared that its objection precludes the entry into force of the Convention between it and the reserving state. Sweden was most outspoken in its judgement on incompatible reservations when it stated that those reservations

"would render a basic international obligation of a contractual nature meaningless. Incompatible reservations, made in all forms of discrimination against women, do not only cast doubts on the commitments of the reserving States ..., but, moreover, contribute to undermining the basis of international contractual law. It is in the common interest of States that treaties to which they have chosen to become parties are also respected … by other parties." (UN Doc. CEDAW/ SP/ 2000/ 2: 71)

Until today, positions remain different in their interpretation of national sovereignty and treaty obligations, yet confrontation is avoided. On the one hand, there are countries that do not accept any interference of international norms with their inner constitution. On the other hand, a considerable number of States Parties that originally had entered reservations have withdrawn them in the meantime or have at least narrowed their scope: until 2003, 48 substantial reservations were withdrawn or narrowed by 30 States Parties. This position reflects a flexible, while at the same time responsible understanding of international treaty obligations. However, hardly any state that has entered a reservation concerning the core provisions of the treaty takes this stance. Most problematic in terms of reservations, it seems, is the absence of an authoritative institution that could declare reservations compatible or incompatible. Bayefsky therefore proposed that the Treaty Bodies should jointly approach the General Assembly to request an advisory opinion from the International Court of Justice in the matter (Bayefsky 2001: 68), yet the concrete influence of such an authoritative opinion on the attitude of reserving states is difficult to assess.

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184 Often, this flexibility is recognizable already in the wording of the reservation, e.g. if it points to the incompatibility of national law with the Convention that is under review or if the reservations is made on a temporary basis only (e.g. Chile, UN Doc. CEDAW/ SP/ 2002: 18). Also, the delegation of the United Kingdom explained in the Committee's 9th session in 1990 that in the government's understanding, the reservations entered were of interpretive character and under continuous review (Jung 1990: 191).
6.2 What States Parties do with the Convention "at home"– analyzing domestic compliance patterns

Beyond the international performance of states, what exactly happens with the CEDAW Convention in domestic spheres? This section gives an overview of the domestic dynamics around CEDAW. It first defines what is understood as "compliance with CEDAW", and then draws on the dynamics in 43 States Parties to CEDAW to discuss reasons for different degrees of compliance. Of the 43 states, 16 belong to Asia and the Pacific, 12 to Africa, 9 to Developed Regions, and 6 to Latin America and the Caribbean. The information on these implementation activities is taken from several studies\(^{185}\). The degree of compliance is illustrated by two categories, namely the actors involved and the concrete measures taken to implement the Convention. Then, three explanatory factors for compliance activities are examined, namely the degree of prosperity of a state; the political system of a state combined with the degree of freedom of expression and representation of interests of women within state institutions; and the "cultural match" or the affinity between international and national norms on gender relations (see Appendix 2). As additional factor, the connection between (sub)national and international dynamics through NGO activism or governmental policies was considered.

6.2.1 Specification of compliance and introduction of explanatory factors

Drawing on the arguments of Cortell and Davis (2000) on domestic repercussions of international norms, "impact of CEDAW" is understood here as change in national discourses, in the state's institutions, and in its public policies on the grounds of the Convention (see 2.2.2). Domestic impact does not require that a state has to be very advanced in promoting gender equality already, that is, impact does not necessarily mean full implementation of all

\(^{185}\) Acar 2000; Afsharipour 1999; Byrnes 2002; Cho 2000; Dairiam 2003; Fabian 2004; Foster 2000; Heyns and Viljoen 2001; Hong and Tanaka 2004; IWRAW 1996; McPhedran et al. 2000; Mugwanya 2001; Fmilla Díaz 2000; Pradhan Malla 2000; Roerink and van Dijk 2000; Rudneva 2000; Schöpp-Schilling 2000; Shalev 2001; UNIFEM 1998; United Nations/ DAW 2000a; United Nations/ ESCAP 2000; Waldorf and Bazilli 2000; Weiss 2003; Yoneda 2000. These studies often follow different intentions, a fact that makes systematisation difficult. For example, McPhedran et al. 2000 are primarily interested in NGO-strategies of implementing CEDAW; Heyns and Viljoen 2001 want to draw conclusions on the impact of all Treaty Bodies; Fabian 2004 discusses the impact of women's rights norms on post-communist Eastern European states; Afsharipour 1999, Mugwanya 2001; Shalev 2001 and Weiss 2003 look at single countries; some studies focus on impact of the Convention, others look what has been changed in accordance with the Convention, but not necessarily based on the notion of implementation.
provisions of the Convention. Instead, impact means to produce domestic change under the guidance of the Convention. To emphasize domestic actors and action, this section uses the term "compliance with CEDAW" instead of "impact of CEDAW", as the latter expression suggests that the treaty could have domestic impact on its own and does not mention the actors who work for this impact.

Based on different forms of domestic action, five categories of "compliance with CEDAW" are distinguished: A high degree of compliance means that in a state where gender equality had not been relevant, activism based on CEDAW changed both the public discourses and public institutions and policies to a significant extend. The international norms are fully accepted\textsuperscript{186} and have transformed the domestic context. A moderate/high degree of compliance includes two different dynamics: either the international norms are widely accepted in domestic discourses where other norms were more prevalent previously, or alternatively, CEDAW influences domestic contexts which already enshrine gender equality norms, but the Convention helps to refine the understanding of these norms. In both cases, significant change takes place in public institutions and policies. In the case of a moderate degree of compliance, the norms enshrined in CEDAW are generally accepted in domestic discourses, sometimes with singular exceptions. The norms do produce change in public policies and institutions, but to a limited extend. Is compliance with CEDAW moderate/low, international gender norms enter a national discourse to a limited extend and produce only very selective change in public policies and institutions, e.g. in a court ruling that does not have any further consequences. Compliance with CEDAW is low where national actors integrate CEDAW provisions only to a limited extent in national discourses and policies and where, as a consequence, the Convention does hardly resonate in the domestic sphere.

This classification was developed as a "middle ground" between a systematic and highly demanding and a rather open definition of impact: Dairiam (2003) develops a comprehensive understanding of obligations of States Parties including measures to achieve de jure and de facto equality that is disaggregated into a list of possible concrete steps to be taken. Based on this understanding of compliance, she concludes that none of the states analysed has made a cohesive effort to implement the Convention, but rather ad-hoc efforts and selective

\textsuperscript{186} It is often difficult to clearly define when international norms are "fully accepted" within a state. For example, the fact that women are raped in all states of the world does not mean that no state has internalised the norm that violence against women is a violation of basic human rights. Some states have accepted the norm; this can be expressed in a variety of policies, e.g. in consistent legislation against rape, trial procedures that respect the victim, and comprehensive measures in the fields of prevention, medical and social care for victims, and treatment for perpetrators. In contrast, other states have failed to take public measures to deal with widespread violence against women and thus, have not internalised the norm.
legal changes. Heyns and Viljoen, on the other hand, define impact of the Human Rights Treaty Bodies much more broadly as "any influence that these treaties may have had in ensuring the realization of the norms they espouse in the individual countries". (Heyns and Viljoen 2001: 485) They address the difficulty to draw a clear causal link between legislative change and the treaty system, partly because of the nature of the available data, partly because of the tension between official reasons and non-official reasons, and underline the fact that international treaties usually unfold impact in those states that show commitment to the norms enshrined in the treaty, while states with a bad record in human rights standards often escape criticism (Heyns and Viljoen 2001: 488). The classification developed here aims at drawing a sophisticated picture on the various strategies employed to implement the Convention and on the different dimensions of impact these strategies have caused. The following table summarizes the classification:

Table 1: Classification of compliance patterns and their influence on public discourses, public institutions, and public policies

<table>
<thead>
<tr>
<th></th>
<th>High compliance</th>
<th>High/ moderate compliance</th>
<th>Moderate compliance</th>
<th>Moderate/ low compliance</th>
<th>Low compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Public discourses</strong></td>
<td>Significant influence</td>
<td>Significant influence, with exceptions</td>
<td>Significant influence, with exceptions</td>
<td>Limited influence</td>
<td>Limited influence</td>
</tr>
<tr>
<td><strong>Public institutions</strong></td>
<td>Wide ranging change</td>
<td>Significant change</td>
<td>Limited change</td>
<td>Selective/ no change</td>
<td>No change</td>
</tr>
<tr>
<td><strong>Public policies</strong></td>
<td>Wide ranging change</td>
<td>Significant change</td>
<td>Limited change</td>
<td>Selective/ no change</td>
<td>No change</td>
</tr>
</tbody>
</table>

The degree of compliance depends on two descriptive categories, namely the actors involved and the concrete measures taken to implement the Convention (Appendix 2). Four types of actors making use of the Convention within a State Party could be identified: the government and/ or the legislature as those state actors that develop public policies and legislation; the judiciary as the state actor that fulfills a control function of the executive and legislative branch of the state; non-governmental actors that are active either on the local, the national, or even transnational level; and a coalition of actors, e.g. between the government and non-governmental actors or the judiciary and non-governmental actors. The second category, "description of action", summarizes the activities that the identified actors have carried out to implement the Convention. Thus, we are faced with different degrees of compliance if an NGO has used the Convention to raise public awareness regarding violence against women, or if a joint initiative between NGOs, government and legislature not only led to higher
awareness regarding violence against women, but also to the adoption of legislation and public policies to combat the problem.

To identify reasons for domestic compliance, three explanatory factors are examined regarding their possible influence on domestic use of CEDAW: First, the degree of prosperity of a state. The degree of prosperity gives insights on a state's general priorities in public policies, and more concretely, it is an indicator of a state's available resources to implement the Convention. The basis to determine the degree of prosperity is the Human Development Index (HDI) as published in the Human Development Report 2003 (UNDP 2003). The HDI is a mixed index developed by the United Nations Development Programme (UNDP). It is composed of life expectancy, education (adult literacy rate and school enrolment ratio) and gross domestic product per capita. UNDP ranks the 175 states for which data was available in three groups, one of high (1-55), one of intermediate (56 to 141) and one of low (142-175) prosperity. While this grouping is somewhat arbitrary and due to the need to draw a line somewhere, it is used here to classify the degree of prosperity of the 43 states.

The second factor is a combination of the political system of a state and the degree of freedom of expression that is granted. The political system is classified in three categories, namely, democratic (3), democratic with authoritarian or traditional elements (2), and authoritarian, which includes Socialist and People's Republics (1). In addition to the characteristics of the political system, the degree of freedom of the press according to the organization Freedom House was divided in three categories (free=3, partly free=2, not free=1) (Freedom House 2005). Freedom of press is an indicator of state-society relationship and of the possibility for NGOs to make public statements or pressure the government. The two factors combined provide a measurement of political systems allowing, hindering or impeding open negotiations about social needs and interests (measure from 2-6). An important characterization of the political system is further the existence and status of a state's women's policy agency, as the WPA can be interpreted as the institutional expression of women's interests (Appendix 2).

Because information on the status of WPAs within each political system is scattered and difficult to compare, it could not be included in the measurement of the political system.

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187 In contrast to earlier measurements of "development", the HDI recognizes that development can't be equalled with the increase of income, but that it depends on what the income is used for, and if it is used for basic needs of the majority of the population or not. However, the HDI remains a problematic measurement, because it does not fully embody this comprehensive understanding of development. Instead, it mixes monetary and non-monetary factors, which results in classifying more wealthy nations automatically as more developed.
188 The classification of the women's policy agency in appendix 2 follows the study of Mintrom and True (2001). While the study looks comprehensively at gender mainstreaming institutions across the globe, it provides only two categories to group WPAs, namely high level machineries ("stand-alone government ministries …, offices within the head of state's department …, or quasi-autonomous state agencies such as national commissions") or
The third factor is the "cultural match" or the affinity between international and national norms on gender relations. According to Cortell and Davis (2000), an international norm is most likely to be implemented in a domestic context if it "resonates with ...domestic understanding, beliefs and obligations." (Cortell and Davis 2000: 73) As a consequence, the probability of compliance would decrease the lower the cultural match between international and domestic norms. To outline an affinity between the Convention and national belief systems, three elements are combined: first, the gender-related development index (GDI), which disaggregates the HDI by gender and is related to the HDI ranking\(^{189}\); second, the Gender empowerment measure (GEM), which combines the percentage of female representatives in Parliament, legislators, senior officials, managers, professionals and technical workers, as well as the ratio of estimated female to male earned income. Like the HDI and the GDI, the GEM is a measurement introduced by UNDP, yet it is available for only 70 out of 175 states. The third element to identify the degree of normative affinity is information on traditions contradictory to the CEDAW principles, for example on incompatible reservations to the Convention or on a legal system containing elements that are discriminating against women.

The following section examines if these three factors display any correlation with the degree of compliance with CEDAW. There are further factors discussed in the literature on international norm implementation (2.2.2; Cortell and Davis 2000; Zürn 1995). For example, the connection between local and international dynamics through NGO activism, whether or not the state has assumed other institutional commitments in the area of concern, and whether or not state or other influential leaders display supportive rhetoric for international norms. As the information available on these factors did not allow making reliable statements on each state, they are not included in the comparative test. However, as these and other factors do influence the dynamics in specific domestic contexts, they are discussed in the presentation of case studies, where the focus is on the mix of factors influencing compliance.

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\(^{189}\) Accordingly, the Human Development Report shows the GDI in relation to the HDI, e.g. +4 would mean that the GDI is 4 ranks higher than the HDI, which would indicate a relatively high degree of gender equality. However, as there is no gender-disaggregated data for all states, the HDI and GDI ranks are not identical and the relation gets partially distorted. For the purpose of this study, the GDI rank is classified in high (1-52), intermediate (53-114), and low (115-144).
6.2.2 Influence of domestic factors on compliance dynamics

Along the 5 levels of compliance, the 43 states considered are distributed as follows:

The principal result of this distribution is that a high or high/moderate degree of compliance with CEDAW occurs rarely, namely in 6 of 43 cases. In most states, CEDAW has had either moderate (19) or low/moderate (14) impact. The number of states with a low degree of compliance (4) is relatively low, however, it has to be assumed that it is higher in the entirety of States Parties, as the literature on which this selection of cases is based focuses on states where some kind of reaction to the international treaty is traceable.

It is noteworthy that there are no specific regional patterns of compliance: In all world regions, virtually all levels of compliance can be found, with the particularities that the only state in which a high degree of compliance has occurred – South Africa – belongs to the African region, and that states from Latin America and the Caribbean are not represented in the highest and the two lowest categories; they all show either a moderate or high/moderate degree of compliance. As a tendency, states from Asia and Latin America fare better than states from the Developed Regions and Africa: more Asian and Latin American states are classed in the levels of high, high/moderate and moderate compliance, while states from Developed Regions and Africa are more strongly represented in the moderate/low and low levels.190

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190 12 Asian, 6 Latin American, 4 Developed, and 3 African states belong the levels high, high/moderate and moderate. In the categories moderate/low and low, 4 Asian, 0 Latin American, 5 Developed, and 9 African states are gathered.
In how far can this picture of compliance be explained by the previously discussed factors? Graph 10 illustrates the relationship between prosperity as measured in the Human Development Index\textsuperscript{191} and compliance patterns in the 43 States Parties:

\textsuperscript{191} Highly developed states rank from 1-55, those of medium development from 56 to 141, and those of low development from 142-175 (UNDP 2003).
Graph 10: Degree of compliance with CEDAW in relation to HDI ranks

Impact 1-5 (low - high) vs HDI in ranks
It is noteworthy that the 11 states with a high HDI rank\textsuperscript{192} are quite evenly distributed along all levels of impact. This indicates that there is no direct relationship between high prosperity and a high level of compliance. However, prosperity and impact are connected in another way: the 24 states with a medium HDI rank\textsuperscript{193}, while represented in all levels, are concentrated in the moderate compliance level (16 out of 24), and the eight states with a low HDI rank\textsuperscript{194} display either moderate/low or low compliance, with Nepal being the only one exception figuring in the high/moderate level. There is a general correlation between prosperity and compliance in the three middle levels of impact: the average HDI rank of states in the high/moderate level of compliance is 53, in the moderate level 87, and in the moderate/low level 104. The highest impact, however, took place in South Africa, which has an intermediate HDI rank of 111. Also, the lowest compliance category does not display any correlation with low prosperity, as the average HDI rank of states in this category is relatively high (68), and significantly higher than in the moderate and moderate/low compliance category. Thus, while higher prosperity does not necessarily lead to an increased impact, it seems that lower prosperity does infringe states abilities to implement the Convention. This correlation notwithstanding, highly developed states also rank in the low compliance levels.

The political system and freedom of expression do correlate with the impact of CEDAW to a certain extend. Graph 11 shows the relationship between the 5 levels of impact and a combined measurement of the nature of the political system (1 = authoritarian, 2 = semi-democratic, 3 = democratic), and the freedom of press (1 = no free press, 2 = partly free press, 3 = free press\textsuperscript{195}). The combination of the two factors (ranging from 2-6) intends to provide a sophisticated measure of the political environment: freedom of press, standing for freedom of expression in general, complements the institutional dimension of the political system.

\textsuperscript{192} Australia, the Netherlands, Canada, Japan, Finland, Germany, South Korea, Hungary, Costa Rica, Chile and Croatia.
\textsuperscript{193} Malaysia, Panama, Mauritius, Colombia, Brazil, Venezuela, Samoa, Ukraine, Fiji, Philippines, Jordan, Tunisia, Turkey, China, Vietnam, South Africa, Indonesia, Egypt, Botswana, Morocco, India, Vanuatu, Papua New Guinea and Bangladesh.
\textsuperscript{194} Cameroon, Nepal, Pakistan, Zimbabwe, Uganda, Senegal, Tanzania and Zambia.
\textsuperscript{195} Freedom house provides long-term rankings over the last 5-10 years. As in some states the situation has vacillated between two categories, this is expressed in an intermediate measurement (1,5 or 2,5) in graph 11.
Graph 11: Degree of compliance with CEDAW in relation to political system combined with freedom of press

Impact 1-5 (low-high) political system 1-3 (authoritarian - democratic) and freedom of press 1-3 (not free - free) combined
Based on the division "democratic" (5.5-6), "democratic with reservations" (3.5-5) and "authoritarian" (2-3), the sample contains 13 full democracies, 21 democracies with reservations, and 9 authoritarian systems. Full democracies are almost evenly distributed across all compliance levels, thus, similarly to the states with high HDI ranks, fully democratic systems are not per se best compliers. Only one democracy with reservations appears in the high/moderate compliance level, while most of them are represented in the moderate level (14 out of 21). The majority of authoritarian systems are moderate/low compliers (6 out of 9). If we look at the average political system rank among best compliers, the only state with high compliance is a full democracy, and in the high/moderate category of compliance, the average political system rank is within the span representing full democracies (5.6). In contrast, there is no authoritarian system in the two highest compliance categories. The average political system rank gets lower as compliance decreases: in the moderate impact category, it adds up to 4.5, and in the moderate/low category it declines to an average of 4. The lowest compliance category, however, shows a higher political system rank of 4.5.

This picture leads to the following conclusion: there is an average correlation between better compliance and more democratic systems, or, conversely, between worse compliance and more authoritarian systems. Only the lowest compliance category marks an exception in this trend, as two of the four states in it are full democracies. It is further noteworthy that democracies with reservations have the potential to produce a significant degree of compliance (e.g. Nepal in the high/moderate category, or India, Jordan, or Turkey in the moderate category), thus, constituting a full democracy is a supportive, but not a necessary predisposition for good compliance.

The cultural affinity or distance between national understandings of gender norms and the Convention influences compliance, however, it is not as unequivocally relevant as the nature of the political system. The measurement to verify the "cultural match" is a combination of the GDI and GEM rank of each state, and of traditions explicitly contradictory to the CEDAW principles. Six states of the sample show a high "cultural match" with CEDAW, four have a high-intermediate, 15 an intermediate, 11 a low-intermediate, and seven a low cultural affinity with the Convention.

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196 Australia, Canada, Costa Rica, Germany, Finland, the Netherlands.
197 Chile, Croatia, Hungary, Philippines.
198 Brazil, Botswana, China, Colombia, Fiji, Japan, Mauritius, Panama, Republic of Korea, South Africa, Tunisia, Turkey, Ukraine, Venezuela, Vietnam.
199 Bangladesh, Cameroon, Egypt, India, Indonesia, Jordan, Malaysia, Morocco, Papua New Guinea, Samoa, Zimbabwe.
200 Nepal, Pakistan, Senegal, Tanzania, Uganda, Vanuatu, Zambia.
Graph 12: Degree of compliance with CEDAW in relation to "cultural match"
The first feature that calls attention in graph 12 is that most of the five "cultural match"-levels are distributed across all impact levels. This is particularly interesting for the high and high/ moderate categories: the state with the best compliance only displays an intermediate cultural match (3), and in the second highest category, there are two states with a high, two with intermediate and one with low cultural match. Thus, good compliance is possible at all levels of cultural affinity. The three middle compliance categories show an average correlation with cultural affinity (high/ moderate compliance: 3.4, moderate compliance: 2.7, moderate/ low compliance: 2.3). Not in accordance with this trend is the highest compliance category where the level of cultural affinity is relatively low (3), as well as the lowest compliance category, where the level of cultural affinity is relatively high (3.75). Thus, while a higher level of cultural affinity enhances compliance, a high cultural match is not an indispensable requirement for high impact.

In sum, all three tested factors play a role for compliance. Most supportive for good compliance is an open political system that enables civil society activism, while authoritarian systems make low compliance very likely. Both a higher degree of prosperity and cultural affinity with the Convention enhance compliance, but to a lesser extend than an open political system. States with low prosperity and a low cultural match are still capable to perform significant compliance. None of the three factors alone is indispensable for good compliance. The following section therefore discusses the impact of a combination of factors on compliance in four cases.

6.2.3 South Africa, Nepal, Panama, and Japan: the impact of a mix of factors on compliance in four cases

An analysis of the complex compliance dynamics in selected States Parties complement the discussion on single explanatory factors and underline the importance of additional non-quantifiable factors. The four cases of South Africa, Nepal, Panama, and Japan illustrate patterns of high and moderate/ high compliance under differing circumstances.

In South Africa, both governmental and civil society organizations made intense use of CEDAW. In the context of regime transformation from Apartheid to democracy, governmental institutions and NGOs cooperated to ensure the representation of women in the new Constitution; in doing so, they made reference to CEDAW. Parallel to this process, NGOs lobbied for ratification of the Convention - which took place in 1995 - and provided their interpreta-
tions of the Convention as input for new legislation to confront gender-based discrimination. The legislature was receptive to international standards and used CEDAW, among other international instruments, in its overall reformation of the legal system to ensure equal treatment of all citizens. Particularly due to NGO activism, it had become clear that the legal system under Apartheid was not only based on racist, but also on sexist assumptions. Thus, to make the legal system more gender-equal, a range of discriminatory laws were abolished or amended, e.g. in the fields of property and labor rights, and new laws were enacted, e.g. on domestic violence. Also, the government introduced temporary special measures in the public service, established a monitoring committee for obligations under CEDAW, and trained the NGO sector in the meaning and use of CEDAW. In the light of traditions conflicting with the CEDAW provisions, e.g. customary marriage law, public debates were held as to how to combine traditions and international standards (Foster 2000; UNIFEM 1998: 17; 32). In sum, we are faced with a fairly systematic use of CEDAW in the context of regime transformation, even if the de-facto situation differs widely from the new legal standards.

In the South African case, prosperity and a high level cultural match have not been the decisive factors for good compliance. Instead, the crucial factor is the post-Apartheid political situation open for re-negotiation of social relations, including gender relations, to establish a society based on equality. Three elements were crucial in this process: first, the fact that women were well organized. Especially black women used their organizational structures of resistance, and as they had previously accepted to fight against Apartheid first and postpone their gender-specific demands, they were determined to push their claims through. The patriarchal norms they were confronted with are a proof for the relatively low cultural affinity with international gender norms in South Africa. Second, both civil society actors and members of the government disposed of transnational connections and knowledge of international standards, which they stressed in the rebuilding of the state. Third, state leaders were rhetorically supportive to gender equality. They had assumed other international commitments in this regard and established a high level WPA soon after the first elections.

Nepal went through democratizing processes in 1980s and 1990s, without reaching the stage of fully democratic political system. Since 1990, the Constitution guarantees fundamental rights in reference to international standards, among them CEDAW. In 1991, Nepal ratified the Convention and as a consequence, the Women's Policy Agency scrutinized the compatibility of existing laws with CEDAW. One result of this scrutiny was the introduction of a bill on domestic violence, another one the amendment of inheritance laws in 2002. The latter legal change was based on intense and broad awareness raising and lobbying activities by the
part of NGOs, and it signifies a great success, even if not all provisions that were discriminat-
ing against women could be eliminated. Nepali NGOs are involved in transnational activism
and training, which strongly supported them in developing powerful strategies (see 8.3.2.3).
For instance, the NGO *Forum for Women, Law and Development* has specialized in public
interest litigation before the Nepali Supreme Court to challenge discriminatory legal provi-
sions invoking the CEDAW Convention. In some of the cases, the judgment of the Supreme
Court followed the reasoning of the NGO, e.g. in interpreting marital rape as a crime, or in
recognizing international treaties as superior to domestic law (Pradhan Malla 2000; UNIFEM
1998: 22). The case of Nepal offers a less systematic example of using CEDAW than South
Africa, however, a wide range of actors has been involved, and legal changes have been far
reaching. Similarly to South Africa, the de-facto situation regarding gender equality leaves
much to be desired.

Given the low development level of Nepal, prosperity has not been a relevant factor in
the implementation of international standards, and the scarcity of resources is likely to hamper
de-facto enforcement, as Nepal's commitment to CEDAW is based on "ratification without
infrastructure" (Pradhan Malla 2000: 84). Nepal's cultural match with CEDAW is low, which
creates the potential for far reaching social change, but also for deeply rooted resistance. The
crucial factors for the compliance were the democratization process of the political system
after decades of dictatorship, which opened space for human rights claims. The political lead-
ership rhetorically supported gender equality and took up other international commitmen-
ts in this regard, especially in the context of the Beijing conference. In this ideologically supportive
climate, NGOs have played a major role: they established transnational cooperation and be-
came experts in translating international standards into the Nepali context. In doing so, they
have been holding the government accountable and have not been prepared to accept its
friendly rhetoric without deeds. Still, the general situation of poverty has not allowed funda-
mental changes, especially in providing and protecting economic and social rights for women
and the population more generally. As for the low cultural match, the Nepali case is a particu-
larly suited example to show that no country is *in its entirety* reluctant to international
women's rights standards, but that virtually everywhere around the world there are women's
organizations promoting these values. Even if they are not the most powerful social actors,
they often enjoy a high degree of credibility.

Panama ratified the Convention in 1981. The first attempts to spread information
about the new instrument came from non-governmental actors who also used the Convention
to initiate a broader public discourse on discrimination against women in Panama. During the
1980s, one CEDAW expert from Panama was particularly active in this respect. Also, NGOs started to get in touch with transnational women's rights networks and received CEDAW-related training. In the 1990s, NGOs and the government started to cooperate in using the Convention. Among other things, it served to develop the governmental Women in Development Plan 1994-2000. The Women's Policy Agency created in 1995 has the mandate to monitor the implementation of CEDAW, yet possibly due to limited resources, the follow-up measures carried out by the WPA have been limited. In the second half of the 1990s, some laws were passed that make explicit reference to CEDAW, most notably the first law on equal opportunities for women, the law on sexual harassment, and the laws on political quotas. In a few instances, CEDAW was also invoked to claim unconstitutionality of certain legal provisions before the Supreme Court (Pinilla Díaz 2000).

In the case of Panama, we are faced with strong NGO commitment regarding the Convention in the 1980s, at a time when the discourse on discrimination against women was entirely new, and when the understanding of a human rights more generally had only started to develop. The 1990s brought a new dimension, as the government got more involved in using CEDAW. The fairly open political system enhanced this change, yet two other factors seemed to be more important: first, the strong international impulses in terms of women's rights, and second, the continuous NGO activism around women's rights that had established transnational connections from the early 1990s on.

Japan ratified the Convention in 1985 and in the process of ratification; it changed a number of laws in the field of employment, nationality rights and education. While this was a significant step, it was not far reaching enough from the point of view of the non-governmental sector. NGOs had pushed very hard for the ratification of CEDAW and had first met with a reluctant government, precisely because it was foreseeable that wide-ranging legal changes were necessary. Finally, ratification was achieved due to joint lobbying of women's NGOs and women politicians. NGO protests on insufficient legal changes were backed by critical remarks of the CEDAW Committee, for instance concerning the equal employment law that lacked any prohibition regarding discrimination against women in recruiting. NGOs used many channels to raise awareness on the Convention and the structural violations of women's rights in Japan and established transnational connections with other NGOs. In the 1990s, they brought cases of discrimination in employment before the courts and claimed that the government was violating CEDAW because of insufficient protection from discrimination. As a consequence of this activism that was strongly supported by transnational networks,

Japan is a special case in so far as it combines a high degree of prosperity with an intermediate degree of cultural affinity with the CEDAW Convention. This is expressed not only in laws and traditions that are based on the inferiority of women, but also by Japanese authorities’ understanding of their obligations under the Convention: some judges claimed that CEDAW did not constitute an immediate, but rather a procedural obligations for Japan, and refused to use CEDAW in their interpretations of discrimination cases (Yoneda 2000). It might have been exactly the tension between prosperity and discriminatory practices that mobilized women’s NGOs. The political context has enhanced the resonance of this mobilization: on the one hand, Japan is a democratic political system with reliable political and judicial institutions, on the other hand, international impulses created a certain degree of governmental commitment, which was expressed among other things in the establishment of a high level WPA in 1994. The driving forces in implementing CEDAW have been women’s rights activists together with women politicians and transnational supporters, while governments and the legislature supported their claims only reluctantly. Thus, Japan is an example where CEDAW has been a focal point on re-negotiating gender norms. As this debate has taken place in a situation of high prosperity, chances are higher than in other cases that the legal changes are materially implemented.

6.2.4 Supportive domestic conditions for compliance: recognizing complexity

In the previous sections, two perspectives were combined, the first one discussing single factors enhancing compliance, the second one elucidating the combination of a variety of factors making up the specific compliance dynamic in selected countries. Based on these insights, the following general conclusions can be drawn on supportive conditions for good compliance with CEDAW:

1) The political context has to offer space for negotiating or re-negotiating social principles. This space might be provided by democratic institutions (e.g. Japan, Panama), it might be created in processes of democratization or political opening (e.g. Nepal), or most radically, in regime change (South Africa). Reliable state institutions, e.g. an independent judiciary or representative political parties are also supportive (Cortell and Davis 2000).

2) The rhetorical support of governments for international gender norms, combined with the understanding that international commitment might imply the transformation of do-
mestic policies is crucial. All governments of the cases presented showed this kind of com-
mitment, except Japan: Japanese authorities clearly deemed their sovereign national interests
higher than international commitments, and they had to be challenged by public pressure to
act according to the CEDAW principles. This attitude is widespread among states across all
continents, cultures, and degrees of prosperity. However, as the Japanese example shows,
governmental commitment can be the result of civil society demands and does not have to be
entirely "voluntary" (Risse and Ropp 1999).

3) In most cases of high and high moderate-compliance, civil society organizations
with transnational connections play an extraordinary role in the compliance process. Not only
do they have the capacity to "import" international norms and to develop support strategies
based on their transnational cooperation. Even more vital seems to be their role in interpreting
international norms from within their domestic contexts to give them contextualized weight
(Ackerly 2001; Keck and Sikkink 1998; Risse et al. 1999). In exceptional cases, this function
of translation can be effectively performed by governmental institutions (see 7.2.3).

4) While a high level of prosperity is not a prerequisite for good compliance, it is ob-
vious that states with very scarce resources have smaller means to design meaningful imple-
mentation. Thus, if more prosper states introduce legal changes, they have better chances to
enforce them.

5) The "cultural match" between domestic and international gender norms has implica-
tions on compliance; however, there is no simple correlation as suggested by Cortell and
Davis (2000), in the sense that a higher cultural match leads to better compliance and vice
versa. The cases discussed in this chapter - South Africa, Nepal, Panama and Japan – as well
as the comprehensive case studies of Chile and Finland presented in chapter 7 indicate that
compliance with CEDAW is possible at different levels of ideological affinity or distance. As
a matter of fact, only one of these cases – Finland - displays a high cultural match with the
Convention. A conclusion of these dynamics is that states with a lower cultural match are not
likely to fulfill the whole spectrum of the Convention's provisions - which might be expected
by committed states with a high cultural match -, but they might use it as a starting point in
their efforts to eliminate gender-based discrimination. Accordingly, actors within these states
might not consider implementing all provisions of the Convention, but pick those with par-
ticularly high relevance in the domestic context: in the case of Nepal, the focus of NGO-
activism was on amending discriminatory inheritance rights, while in Japan, the most pressing
issue was employment-related discrimination against women. This conclusion is highly rel-
vant in two ways: First, it indicates that the notion of a "cultural match" might be too static a
concept to capture domestic dynamics. In all national contexts, a variety of different and overlapping "cultures" coexist, some of which may connect with international norms even in states where convictions rejecting these norms are predominant. Second, as this diversity of positions exist, it is more important for compliance with international norms that there is the possibility to represent diverse normative positions than a general affinity with those norms in a given state.

To complement these results, it is insightful to look at those states with a low profile in compliance under good conditions. What kind of dynamics are taking place in states with an high "cultural match", an open political system, transnationally connected NGOs, governmental commitment towards gender equality – be it rhetorical or long internalized -, and with a degree of prosperity that would allow significant enforcement? Among the states in the sample, Canada represents such a case. Upon ratification, the government conducted a compatibility study of Canadian laws with CEDAW that deemed virtually the whole legislation in accordance with the Convention. The only exception was based on the Canadian federal system; thus, Canada ratified CEDAW in 1981 with one reservation that was soon withdrawn. In the 1990s, Canadian NGOs became interested in CEDAW and prepared several studies regarding the Convention's domestic implementation. They concluded that CEDAW had hardly been invoked to design public policies or to draft and amend laws. While the judiciary did make reference to CEDAW in a few court cases, the Convention was usually used as an additional, and not as the main source to interpret gender norms (Waldorf and Bazilli 2000).

Under the best conditions for good implementation, the Convention played only a bit part in the Canadian domestic context. The main reasons for this are a high cultural match with CEDAW and a sophisticated framework of legal and other policy measures to prevent discrimination against women that was already in place before CEDAW was ratified. Thus, the state of Canada considered itself in compliance with CEDAW even before the moment of ratification. CEDAW was seen as additional legitimacy of already implemented principles. The act of ratification was more guided by the notion to support international standards than to make active use of them. While the Canadian women's rights standards are remarkable, they have nevertheless not lead to a de-facto situation of gender equality; among other things, NGOs point to intersecting discrimination as suffered by indigenous or disabled women. Yet, Canadian governments do not make use the CEDAW monitoring procedure, and the concluding comments of the Committee in particular, precisely because they are similar to their domestic provisions.
Thus, contrary to the argument that a high cultural match is the best precondition for implementation of international norms, the case of Canada shows the opposite: high affinity with international standards can decrease active appropriation of these standards, insofar as states construct themselves as "advanced" without the need of an international monitoring instrument. In the field of gender equality, this position is taken by a number of states from the Developed Regions: they construct themselves as role models in demarcation to other states with a less satisfying or even insufficient record in women's rights. While the "others" should take international scrutiny seriously, the "women-friendly" states often do not consider such an attitude necessary for themselves. Strictly speaking, this position represents an understanding of superior national sovereignty, yet in new clothes: it is not, as realism would suggest, based on power, but on the construction of belonging to those who share international norms, that is, to the "good ones".

6.3 Why states do not ratify the Convention - a closer look at the domestic debate in the United States

As of May 2005, eleven states\textsuperscript{201} have refused to ratify the Convention. The exact reasoning for a state's decision to refrain from ratifying a multilateral treaty is usually hard to trace, as ratification is a voluntary act and its rejection does not need any form of explanation\textsuperscript{202}. However, in the case of the United States, the only state of the Developed Regions that has not ratified CEDAW, documentation is available not least because of the controversies the issue has caused. The US is in a somewhat paradoxical situation in respect to CEDAW: its delegation was very outspoken in the drafting process of the Convention, and particularly in the 1990s, the government cultivated an international image of the US as a leading proponent of women's rights. At the same time, fundamental critique of the Convention from within the political system has prevented ratification for about 24 years. Interestingly, the critics maintain that ratification of the Convention would jeopardize freedom of religion, an argument that

\textsuperscript{201} Brunei Darussalam, Iran, Marshall Islands, Nauru, Oman, Palau, Qatar, Somalia, Sudan, Tonga, and the United States of America.

\textsuperscript{202} For the domestic discussion on implementation of international human rights norms in Iran, see Mokhtari 2004. Women's organizations and parts of the reform movement had lobbied for ratification of CEDAW without reservations, and the Parliament decided in 2003 to ratify CEDAW with a reservation limiting Iran's obligations under the Convention to actions that did not contravene Islamic law. However, the Council of Guardians rejected this legislation, and the Expediencen Council has yet to decide upon it (Mokhtari 2004: 22). Similarly to the argumentation developed in this study, Mokhtari maintains that the notion of a "cultural match" between domestic and international norms is too static to grasp the different strands of domestic discourses. In the case of Iran, the concept conceals the activism of Iranian women's organizations showing a strong inclination towards international women's rights, because the domestic context in general is hostile towards these international norms.
had been put forward mostly by Islamic states in the drafting process (see 4.2.2). The following presentation of the domestic debate in the US allows drawing general conclusions on states' reasons to reject ratification. Next to disagreement with the norms enshrined in the Convention and mistrust in the monitoring body, the dynamics suggests that another domestic pattern of reacting to international norms is to misinterpret them.

After President Carter had signed the Convention in 1980, it was sent to the Senate for ratification. Both the Reagan and Bush administration did not support ratification, and hence during the following twelve years "CEDAW went nowhere in the United States" (Zierler 2004: 29). During Clinton's presidencies, several symbolic statements\(^{203}\) to enhance the ratification of the Convention were made, and CEDAW was tied into the broader context of the administration's commitment for women's rights. In this situation, the Foreign Relations Committee of the Senate held hearings on ratification in 1994. It submitted a favorable report, but recommended ratification with several reservations\(^{204}\), special interpretations and declarations. In spite of this recommendation, the Congress did not vote on ratification, as it interpreted the Convention as an impediment to deal independently with domestic affairs. Instead, the issue was re-referred to the Foreign Relations Committee for renewed consideration. In 2000, two resolutions regarding CEDAW were adopted in the Senate, the first one supporting ratification and calling for a new hearing, the second one vilifying the treaty and firmly rejecting its ratification. The last hearing in the Foreign Relations Committee took place in June 2002 and resulted in a 12-7 vote in favor of ratification including reservations and declarations on some of the Convention's provisions. Again, the Senate as a whole has not yet acted upon this recommendation; the situation is similar to the one in 1994, with the only difference that the current Bush administration has never publicly supported CEDAW. Thus, the possibility that the United States become a States Party to the Convention remains unlikely.

The arguments of opponents and supporters concerning ratification have been repeated in the course of time and can be summarized as follows: CEDAW has to be rejected, because

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\(^{203}\) On March 8, 1998 Clinton urged for ratification of the treaty because it was in accordance with US law that already provided strong protection for women, and because it has helped women around the world. In his view, it was a matter of principle to sign CEDAW, because "we remain alone in our hemisphere, alone among the industrialized nations of the world, apart from 161 other nations alongside nations like Sudan and North Korea in not ratifying this treaty." Similarly, Albright called ratification a priority of the administration, because it would symbolically strengthen the United States' activities concerning women's rights around the world (Zierler 2004: 32f).

\(^{204}\) Among other issues, a reservation was proposed as to not accepting external guidelines for military structures and the role of women in it. Also, the general tendency of human rights treaties to gear explicitly at changing domestic legislation collides with the strong resistance of the Congress that has an interest in protecting its role in crafting legislation and in retaining independence from international conditions (see Zierler 2004: 3). The full text of proposed reservations has been published by the Working Group on Ratification of the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (2005a) on their website.
it represents a narrow concept of women's rights. This narrowness is sometimes referred to as "the West's radical feminism" (Leo cited in Zierler 2004: 37), sometimes as "cultural colonialism" (Balmforth 2002) – thus, it does neither represent US-American values nor those of other cultures around the world. To make it worse, the interpretations of the CEDAW Committee reinforce this biased perspective – the most prominent example that almost all opponents cite is that the Committee criticized Belarus for celebrating mother's day because the measure would reinforce stereotyped gender roles.\(^{205}\) In the view of Jesse Helms, one of the strongest opponents, the Committee is a "silly or even dangerous" institution that "demeans motherhood and undermines the traditional family" (cited in Zierler 2004: 35). Another indicator for the Committee's biased view is - according to the opponents - its attacks against religion and its invention of new rights like lesbianism – "even though such 'rights' have little popular support throughout the world" (Balmforth 2002).

The argument of CEDAW's missing legitimacy has been made in several contexts, based on populist and even false assumptions: as far as lesbianism is concerned, the notion of freedom from discrimination based on sexual orientation has gradually become part of international human rights law, even if this debate constitutes a recent and still very controversial development (Sanders 1996). It does not simply become void because of its "little popular support", which would likewise de-legitimize efforts to prevent caste-based or racial discrimination in many states of the world. Another accusation of the Convention's limited legitimacy was that it is "the work of international bureaucrats determined to impose a worldwide make-over of family relations and 'gender roles' … The trick is to create 'customary international law' out of marginal views, constantly repeated on the world stage." (Leo cited in Zierler 2004: 37). This statement does both withhold that the Convention is a result of a complex intergovernmental drafting process, and thus, an agreement of states, not of "international bureaucrats", and it reveals a distrustful attitude towards international processes of soft law creation. This suspicion is widespread in the United States and goes far beyond the CEDAW Convention.

Another weighty opposing argument is that the Convention offers nothing new to US-American women, but constitutes a threat to civil rights and liberties: whereas the US Constitution tries to balance prevention of discrimination and the right to speech and freedom of religion, the Convention calls for an obtrusive government to protect only one side of these

\(^{205}\) In the 2002 hearing in the Senate's Committee, one of the proponents of ratification, Representative Carolyn B. Maloney, has criticised this accusation as taken out of the context: "The (CEDAW, S.Z.) committee rightly said that honouring 'the noble role of the mother' and setting up Mother's Day observances is no excuse for laws that keep pregnant women from working or deny them job and pension benefits." (Maloney 2002)
principles (Balmforth 2002). This argument emphasizes civil and political rights and constructs the role of the state as one of non-interference in personal affairs. In this framework, a range of economic and social rights enshrined in the CEDAW Convention as well as the appeal to change stereotypical attitudes appear as demand for "obtrusive governmental action". As a matter of fact, the protection of economic and social rights is totally alien to US-American human rights culture: not only has the US not ratified the *International Covenant on Economic, Social and Cultural Rights*, but it has also declared in the context of its obligations under the *Convention on the Elimination of Racial Discrimination* that "economic, social and cultural rights, are not explicitly recognized as legally enforceable 'rights' under U.S. law." (UN Doc. CERD/ C/ 351/ Add.1: 70). Thus, regarding economic and social rights, a huge, if not unbridgeable "cultural mismatch" between international and US-American human rights standards can be observed (Felice 2002).

The supporters of ratification try to minimize these cultural differences. Their mostly used argument highlights the leading role of the United States in promoting women's rights domestically and internationally. As the United States' record regarding women's rights is advanced and in accordance with the Convention, ratification would not involve any legal or other change. Only rarely do proponents of ratification mention that de-facto discrimination of women in the US still exists, and that ratifying CEDAW would underline the necessity of governmental commitment to abolish it (Maloney 2002). Another powerful argument in terms of the domestic resonance of CEDAW is that ratification is endorsed not only by many civil society organizations, but also by a considerable number of states and cities that have passed resolutions to advocate ratification. The most far-reaching support for the Convention is the San Francisco city ordinance on the implementation of the CEDAW principles on the local level (UNIFEM 1998: 26f), which has been serving as a model for other cities to develop similar policies (Lozner 2004).

In general, supporters of ratification stress much more the international than the domestic relevance of this step. The argument is that the US, being the only Western state that has not joined the treaty, has been isolating itself and has gotten into the "wrong crowd" of notorious human rights violators. Thus, ratification would not only symbolize internal commitment, but would also add to the United States' positive image of a women's rights promoter (Koh 2002). To go even further, most supporters argue that the US must be part of CEDAW if it wants to be credible as the leading nation in promoting women's rights worldwide. The international activities of the US to prevent women's rights violations - including pressure the US might decide to exert - will have more legitimacy if the US accepts the same international
standards as the vast majority of states.\footnote{A particularly articulated example for this position gives Representative Lynn Woolsey in the 2002 hearing: "Women around the world are depending on the U.S. to show support for CEDAW because U.S. support will strengthen CEDAW's purpose and enhance its credibility. ... U.S. ratification puts us in a position where we can push for fuller compliance." (Woolsey 2002)} The possibility to send US-American experts to the Committee will provide an additional way to influence other states' women's rights records. Notably, this argument has been reinforced after the September 11 attacks, as the protection of women particularly in Afghanistan was increasingly used to justify US foreign policies.\footnote{In this rationale, CEDAW supporters literally implored the Senate's Committee with statements like: "If we as a country are serious about helping women in Afghanistan, we will ratify the CEDAW treaty." (Maloney 2002)} This argument, however, entirely misinterprets the obligations the United States would assume with ratification, as they are limited to domestic implementation of the CEDAW provisions.

Apart from developing own arguments, supporters have made efforts to defend the treaty against the attacks of the opponents. They tried to clarify alleged misunderstandings of the Convention's provisions and were eager to assure that even in the unlikely case that the Committee would recommend the United States to change existing laws and policies, this could never constitute a binding obligation, but only a constructive proposal.

While this debate displays some interesting cultural idiosyncrasies of the United States - in particular, the deeply rooted reluctance towards any international instance that could claim a superior standing -, it does not differ very much from the attitudes of many other states of the Developed Regions (see 6.2.4). As others, the supporting voices in the United States believe they already have achieved the standards set forth in the Convention, thus, it is most important to show international leadership and to positively influence other, less advanced states. Contrary to other Western states, the opposing voices in the US are very strong in claiming that the US would not need international guidelines, and they question the legitimacy of the Convention's provisions in general. The international argumentation of the supporters constitutes a substantially false argument that escapes from addressing the possibility that the treaty obligations might contradict US policies, e.g. in the area of economic and social rights, and from discussing the consequences that would have to be drawn in such a case. The opponents, on the other hand, do understand the issue of conflicting international and domestic norms. However, they completely misinterpret the mandate of the Committee, which is advisory and not imposing: if the US changed any of its policies based on the dialogue with the CEDAW Committee, this would have to be an entirely voluntary domestic act.
6.4 Dimensions of compliance – a summary

Not surprisingly, States Parties show a variety of ways regarding international compliance with the Convention. The pace of ratifying CEDAW and the fulfillment of reporting obligations varies across world regions. It seems to be influenced by ideological affinity to the Convention's provisions as much as by the lack or disposal of sufficient resources. States of the Developed Regions have been fast in ratifying, have entered a low number of reservations, and have the best turnout in submitting timely reports. All Latin American and Caribbean states ratified the Convention and entered a very low number of reservations, yet many of them lag far behind with submitting reports. Asian and Pacific states have been somewhat hesitant in ratifying CEDAW and have entered a high number of substantial reservations, yet show the second best performance concerning reporting discipline. In Africa, slow ratification and a considerable number of reservations based on culture or religion add to a relatively poor profile regarding reporting discipline.

The quality of delegations States Parties send to enter in dialogue with the Committee has, as a general tendency, improved over time. Experts find that delegations have become more aware of the complexity of their tasks and interpret this as a learning process. If states refer to their national sovereignty as impediment to implement the Convention, they usually point to cultural and religious traditions. States Parties' understanding of the monitoring procedure is that it should not be time-consuming and give sufficient space to the state's presentation; thus, they perceive it more tailored according to their interests than the Committee does.

States Parties' attitudes regarding reservations show diverse interpretations of treaty obligations. One group of states has entered reservations that are arguably not compatible with the Convention, a second group has entered reservations that do not concern the Convention's core provisions, and a small group of states objects to fundamental reservations of other States Parties. A discussion on the common understandings of admissible reservations was initiated, yet didn't lead to a constructive debate, partly because Muslim states perceived it as a pretext for singling out and criticizing Islam. As a consequence, States Parties continue to have different opinions on reservations, yet they avoid to explicitly addressing them.

This illustration of States Parties' attitudes relates in two ways to the theoretical debates in chapter 2: First, the constructive dialogue with the CEDAW Committee serves to a certain extent as a platform for joint interpretation of the meaning of women's rights as well as for learning processes of governments. This observation supports the assumption that a considerable part of States Parties does contribute to CEDAW's constitutive dimension. States do understand they have joined a multilateral agreement; they do comply with its requirements
and do not exclusively act according to their national interests. Also, a non-coercive monitoring mechanism has the potential to emphasize a joint problem-solving perspective and may unfold a significant degree of influence, at least on the level of the constructive dialogue. Second, states develop differing constructions of their national sovereignty facing their obligations under CEDAW: some follow the neo-liberal interpretation of sovereignty as pursuing exclusively national interests; thus, they make compliance with CEDAW contingent upon domestic cultural traditions, or they refrain from objecting to reservations of other States Parties because they consider it more relevant to maintain good relationships with these states. Other states show an attitude that comes closer to the understanding of "cooperative sovereignty" (see 2.1.3.5): they fulfill their reporting duties, try to benefit from the dialogue, and protest against too far-reaching reservations to protect the integrity of the treaty. These differences in finding an appropriate balance between national interests and international treaty obligations became most pronounced in the discussion on admissible reservations, the result of which has been to avoid open confrontation (see 6.1.3). This outcome could either be interpreted as the subordination of international norms under national interests, or as the attempt to maintain the inclusiveness of the treaty as a platform of negotiation.

The analysis of domestic compliance of States Parties reveals that of the 43 States Parties considered, the majority shows a moderate and low/moderate degree of compliance, while only seven states show a high or high/moderate degree. As supportive domestic conditions for good compliance with CEDAW and thus, as factors that enhance the regulative dimension of the CEDAW regime could be identified:

- A political context that offers space for negotiating or re-negotiating social principles and that allows the representation of women's interests. In authoritarian regimes, a high degree of compliance is least likely.

- The rhetorical support of governments for international gender norms combined with the understanding that international commitment might imply the transformation of domestic policies. This commitment does not have to be entirely "voluntary", but can be produced to a certain extent by public pressure.

- Civil society organizations with transnational connections. Not only do they have the capacity to "import" international norms and to develop support strategies based on their transnational cooperation. Even more vital seems to be their role in interpreting international norms from within their domestic contexts to give them contextualized weight. In exceptional cases, also governmental institutions can effectively perform this function of translation. This finding confirms the importance of transnational activism in international
norm creation (see 2.2) and emphasizes the relevance of this activism in the domestic contextualization of international norms (see in more detail chapter 8).

- While a high level of prosperity is not a prerequisite for good compliance, wealthy states have better chances to design meaningful measures of implementation, especially regarding the economic, social and cultural rights enshrined in the Convention.

- Compliance with CEDAW is possible at different levels of ideological affinity. States with a lower cultural match are not likely to fulfill the whole spectrum of the Convention's provisions - which might be expected by committed states with a high cultural match -, but they might use it as a starting point in their efforts to eliminate gender-based discrimination. Accordingly, actors within these states might not consider implementing all provisions of the Convention, but pick those with particularly high relevance in the domestic context. This conclusion indicates that the notion of a "cultural match" might be too static a concept to capture domestic dynamics, as in all national contexts a variety of different and overlapping "cultures" coexist. Thus, the possibility to represent diverse normative positions is more important for compliance with international norms than a general affinity with those norms. The cases of States Parties with a high cultural match and a low degree of compliance underline the ambiguous relationship between cultural affinity and norm implementation: they tend construct themselves as "advanced" without the need of an international monitoring procedure, yet consider this procedure relevant for other states that are worse compliers. Thus, the construction of high cultural affinity can produce non-compliance combined with an understanding of national superiority. The case of the United States as a non-State Party to CEDAW reveals this position in its extremes: the US is a state with a self-construction of high affinity to international women's rights, yet at the same time, with a normative disapproval regarding economic and social rights. As these sets of norms overlap, the domestic human rights culture in the US is only partly supportive for women's rights and thus underlines the argument that international and domestic normative contexts are more likely to overlap than either "match" or "mismatch".

The case of the US further reveals some of the reasons for states that refuse to ratify the Convention, in particular, reluctance towards any form of international control on domestic policies, and misinterpretation of the coercive potential of the international monitoring procedure. The first reason may inhibit participation in CEDAW as an international women's rights regime on the long run, yet any state's misunderstanding of the advisory nature of the procedure may be altered by providing information on the procedure and thus increase its transparency.
7. Tracing national dynamics around CEDAW: the cases of Chile and Finland

Chapter 6 presented an overview of compliance patterns of States Parties with CEDAW and discussed variables that possibly enhance the implementation process. This perspective constitutes a useful first approach to domestic dynamics taking place in response to international women's rights norms, in so far as it sheds light on general trends in States Parties. One particularly interesting trend is that a political system that allows interpreting and negotiating international women's rights norms is more important for the implementation of CEDAW than a general cultural affinity with the norms enshrined in the Convention (see 6.4).

Chapter 7 builds up on this comparative approach of testing single and combined variables: to capture the complex dynamics that *in their entirety* produce domestic impact of international norms, the analysis follows the specific compliance processes in two domestic cases. In doing so, it focuses on characterizing the constellation of domestic actors and hegemonic structures as well as on the governmental and transnational strategies developed to link CEDAW with the domestic contexts of Chile (7.1) and Finland (7.2)\(^{208}\). The two states were chosen because they are comparatively good compliers representing different cultural contexts\(^{209}\). This cultural difference implies differing connections between domestic and international gender norms: the normative understanding of gender relations and women's rights in Chile has developed detached from international discourses for a long time, while the Finnish debate runs parallel and is well-connected with the international development.

The specific dynamics of compliance in both cases are mapped out as follows: first, the characteristics of each domestic context are fleshed out along the three variables that were introduced in chapter 6, namely the nature of the political system, socio-economic prosperity, and the cultural match with international norms, especially regarding the rights of women (7.1.1, 7.2.1). Second, the international compliance patterns are reconstructed from a domestic perspective (7.1.2, 7.2.2), and third, the strategies to make use of CEDAW are illustrated (7.1.3, 7.1.4, 7.2.3, 7.2.4). The discussion of these contextualized strategies as well as the obstacles they are confronted with shows that implementation of international norms is often a result of specific actor constellations and the purposeful linking of debates (7.1.5, 7.2.5).

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\(^{208}\) Both case studies are based on empirical fieldwork, document analysis and expert interviews.

\(^{209}\) For a detailed explanation of the selection process, see 3.1.
7.1 International women's rights in Chile - strategies and obstacles for the use of CEDAW

7.1.1 The national context

Chile's turbulent history has brought the country a lot of tensions and contradictions: The nation went through a long period of democracy, was shattered by political instability that culminated in dictatorship, and re-established its consensus-oriented political culture afterwards. However, the post-dictatorial political stability is enmeshed in socio-economic exclusion and the overrepresentation of conservative values. The human rights culture in this national context is far from coinciding with the international understanding of human rights: it is shaped by authoritarianism, the moral power of the Catholic Church, and a specific national understanding of human rights that is restricted to political rights and traumatically linked to dictatorship. Not surprisingly, proponents of women's rights do not represent a strong political force. While both governmental and non-governmental activism to enforce women's rights draw strongly on international gender norms, a wide range of powerful social actors oppose international women's rights standards in defense of a model of complementary gender roles "by nature". The subsequent "snapshot" serves to illustrate the current political and normative Chilean context that is a mix of future-oriented governmental initiatives, some of them predominantly symbolic, combined with the official doctrine of forgetting the past, and the need of Chileans to be able to live their lives in dignity and free from human rights violations.

A snapshot from Santiago

The official celebrations of International Women's Day 2001 are impressive: the government invites the public to a ambitious event in the courtyard of the Moneda, which is not only the seat of government, but since Allende's death in it during the coup in 1973 also the building most connected to Chilean political history. The invitation seems to say: "Women, come in and take the Moneda!" Not only a huge (invitation-holding) crowd is gathering inside, but the President himself, his wife, the director of the women's policy agency SERNAM and most other cabinet members are present. I doubt that in my own country the 8th of March would make so many high profile politicians feel bound to attend a celebration. Here, the 8th of March is used to enthusiastically spread the word that the government supports women's issues: The director of the Women's Policy Agency SERNAM and the President of the Republic give hands-on speeches around domestic violence, the wage gap and the invaluable contribution of women to the development of the country. Even the taboo-word "abortion" is
mentioned, if only in the context of its necessary prevention. At the end of the event – and this is a great example of Chilean antenna for symbolic politics - all ministers are called by name to sign a "compromise" for the women of Chile (each one has to visibly put his/ her signature on a huge poster). The most moving part of the event is the performance of "Mama Soul", a band composed of four young women. They do not shy away from naming the political context of the event: the singer opens saying that fifteen years ago, it was a dream of all Chilean artists to play in the Moneda, and she thanks the President for the opportunity. As she announces the last song that deals with the dictatorship, she dedicates it to her father who was killed during that time. For a moment, she looses her composure. In these 30 seconds, the national celebratory mood vanishes. She is not the only one crying - many people in the audience lower their heads and weep their tears. The song is an open refusal to the official rhetoric of forgiving „no queremos olvidar ni perdonar – solo queremos justicia y verdad!“ (We don't want to forget and forgive – we only want justice and truth!) Outside of the building, a counter-event is taking place on the square facing the Moneda: on International Women's Day, a few women and men hold up posters claiming to release women political prisoners – those locked up during dictatorship and afterwards. They do not intend to enter the Moneda, instead their protest resembles a vigil. Nevertheless, a line of carabineros outnumbering the protesters has taken position, seemingly to shield the Moneda and to make sure that the silent protest would not disturb the official event.

7.1.1.1 Democracy and exclusion: political and socio-economic characteristics of Chilean society

After centuries of Spanish colonization, Chile became an independent state in 1810. The political development of Chile has been both praised as sustainable institution building that resulted in the most stable democracy in Latin America (Nolte 1994; Valenzuela 1999) and has been criticized because of its highly exclusionary, authoritarian and elitist character (Craske 1999; Thorp 1998). Chile's independence did not represent a rupture with the colonial order, but the political elite maintained a political culture of hierarchy and authority. Within these authoritarian structures, the governing classes accepted democratizing innovations to a certain extend, e.g. the creation of working class parties since the early 20th century. Thus, "Chilean democracy emerged without strongly held democratic values. But the practice of democracy itself instilled norms of give-and-take, tolerance, and respect for fundamental liberties" (Valenzuela 1999: 209, emphasis added). The experience of "doing democracy" over a
long period of time is indeed exceptional for Latin America, as most nation building processes on the continent were shaped precisely by the abuse of political power and accordingly, by the mistrust in state institutions\textsuperscript{210}. In the Chilean case, the democratic development resulted in stable institutions, yet was based on the exclusion of large sectors of society, in particular the poor, women and of indigenous people (Craske 1999: 26)\textsuperscript{211}. In the second third of the 20\textsuperscript{th} century, the party system had become fairly representative for the population: in addition to the conservative, land-owning sector and the political center representing the interests of the middle class, communist and socialist parties had emerged out of the growing number of industrial and mineworkers. As the electorate was almost equally divided over the three strongly polarized political currents, governments were always built by coalitions, and the political process was shaped by the need of consensus building. The breakdown of democracy in 1973 resulted from the "erosion of the country’s system of political compromise and accommodation" (Valenzuela 1999: 216), as the political center became torn between the left and right wing that aimed at either revolutionizing or maintaining the traditional social order.

The socio-economic developments underlying these difficult political processes were shaped by profound changes during the whole 20\textsuperscript{th} century. Chilean economy was initially based on rural production, but increasingly fuelled by industrialization and the export-oriented mining of raw materials, especially copper. Because of the country's export orientation, the global economic crisis of the 1930s hit Chile extremely hard, and lead to the introduction of import substituting industrialization to make the country less dependent from world market prices for commodities. While the following decades brought about economic growth, import substitution finally also lead the whole continent into economic crises. Especially during the second third of the 20\textsuperscript{th} century, Chilean society was transformed by industrialization and mass migration to the cities with wide-ranging social consequences: based on economic growth, more jobs were created, and because of the need of skilled labor, the level of education improved significantly. Due to the needs of the new urban settlers the service sector began to expand. Women benefited in particular from these developments, as they became better educated and entered into the labor market, many of them in the service sector. At the same

\textsuperscript{210} For example, Werz (1999) points to the instrumental character of Constitutions in Latin American nation building processes: while they were often inspired by egalitarian values, they basically addressed the European-influenced upper class and did not relate to the blatant inequalities of Latin American societies. If they were used in politics, they usually served as instruments to increase political power, not as a framework to control it.

\textsuperscript{211} One example for Chile's exclusionary structures is the right to vote, which for a long time was restricted to literate men over 21. In 1846, they amounted to 2\% of the population, in 1925 to 10\%. Suffrage for literate women was introduced in 1952, which extended the right to vote to about a third of Chilean adult population. Only in 1970, suffrage was granted to illiterate adults, still the greatest part of Chilean men and women at that time (Arenhövel 1993; Valenzuela 1999).
time, working conditions especially for low-skilled workers were often precarious and lead to far-reaching claims for social justice by workers' movements (Thorp 1998). In authoritarian Chilean society, the claim to grant socio-economic rights for all Chileans caused troubling tensions.

It was the project of the Unidad Popular government of president Allende to establish such equal living conditions in introducing socialism under democratic rules. However, its often shortsighted economic policies not only contradicted the interests of capital and investors, but also alienated the moderate part of its already fragile support basis. Thus, political polarization and economic crisis - both fueled by the right wing opposition and international players, such as US-American intelligence - reached their climax in 1973 (Nohlen 1973; Thorp 1998). The widely unexpected military coup and the subsequent 17 years of dictatorship lead to a complete destruction of the country's long lasting political institutions as well as to radical economic reconstruction. With relentless repression and a seemingly unlimited budget, the military regime transformed the Chilean political system in what it called "authoritarian" or "protected" democracy (Imbusch 1998). It imposed a militaristic understanding of national unity and patriotism and fought against any form of critique, e.g. the accusation of human rights violations. In terms of economic reconstruction, Chile was transformed into a neo-liberal system based on privatization, world market integration and structural adjustment. The cuts in subsidies and jobs in the public sector as well as the breakdown of small businesses that were no longer able to compete caused high levels of unemployment. For both men and women, job opportunities and working conditions dramatically deteriorated, however, women were hit harder, as their jobs in the public service sector were the first ones to be cut. In 1982, 40% of the marginalized households were headed by women (Valenzuela 1990: 216).

The economic crisis culminated in 1983 and unleashed countrywide social protests. They started with collective organizing of survival – e.g. soup kitchens in the shantytowns – and developed into politicized social movements with the goal to overthrow the regime. Nonetheless, the opposition was ultimately too fragmented to seriously threaten the regime.

212 Contrary to the neoliberal doctrine, the economic reconstruction required highly interventionist public policies. As Koch (1998) shows, public expenditure increased during dictatorship while the state had to "assist the birth of market relations: first by means of repression, second by means of creating institutional conditions that allowed to subordinate politics under economics, and third, as crisis management, whenever the dramatic consequences of a misunderstood 'liberalism' had to be ironed out." (Geburthilfe der Marktbeziehungen: erstens durch Repression, zweitens durch die Schaffung von institutionellen Bedingungen, in deren Rahmen das Politische immer mehr zugunsten des Ökonomischen zurückgedrängt wurde, und drittens in seiner Eigenschaft als „Krisenmanager“, wenn es darum ging, die dramatischen Auswirkungen eines falsch verstandenen „Liberalismus“ auszubügeln.”) (Koch 1998: 67)
This led to a process of transition to democracy that was by and large guided by the logic of the military regime. It scheduled a plebiscite to affirm or reject the continuation of dictatorship for 1988 out of which the moderate opposition emerged victorious, while the radical opposition refused to participate and called a boycott. The victory can be interpreted as a defeat for extreme positions and was certainly the first step back to Chile's democratic tradition (Nolte 1994; Valenzuela 1999: 230). However, critical voices identified the quantity of fundamental concessions that had to be made to the military regime as the birth defect of a deficient democracy (Lechner 1992; Meschkat 1995; Moulian 1994; 1997).

The subsequent 15 years of democracy can be interpreted as a cautious return to Chilean consensus-finding politics. The democratic governments213 have all been based on a broad coalition that had emerged out of the opposition to dictatorship – the \textit{Concertación de los partidos por la democracia}. All three administrations have maintained policies implemented by the military, in particular the neoliberal economic model that was “extraordinarily important to maintain investors’ confidence throughout the transition.” (Thorp 1998: 245) In contrast to dictatorship, economic growth was to be complemented with social expenditures aiming at a socio-economic model of "growth with equity"\textsuperscript{214}. This policy led to a decline in the poverty rate: from 33\% in 1990 to 23\% in 1994 and 17\% in 2000\textsuperscript{215} (CEPAL 2002: 64). Today, Chile supersedes most Latin American countries in providing for basic needs, which finds expression in a high rank of the Human Development Index\textsuperscript{216}, that is, rank 34 out of 175 (UNDP 2003). Nonetheless, Chile's economic growth did not translate into a comparable rise in real wages, which remained below the level of 1972 in the late 1990s (Schild 2002: 178). Also, Chile's record in income distribution has remained uneven\textsuperscript{217}, and the quality of jobs has deteriorated. According to statistics of the \textit{Economic Commission for Latin America and the Caribbean} (CEPAL), more than half of the workforce is in precarious employment and forms the majority of the poor (CEPAL 2000 cited in Schild 2002: 177f). Thus, poverty is not anymore

\begin{footnotesize}
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\item However, as Imbusch (1998) points out, social policies were significantly restricted by the instructions of the business sector that insisted in maintaining the macroeconomic framework of neo-liberalism. Thus, projects of redistribution, e.g. the reform of business taxation to finance poverty reduction measures were transformed into much more limited programs following the priorities of the business sector.
\item The poverty rate includes the two categories "poor households" with an income less than two times the sample of goods, and "indigent households" that do not dispose of the income equivalent to one sample of goods (CEPAL 2002: 64).
\item The Human Development Index is a mixed index composed of life expectancy, education, and gross domestic product per capita (see 6.2.1).
\item Perry reports that the drastic increase in Chile's unequal income distribution took place already in the 1970s and 1980s, however, the 1990s did not show "signs of distributional recovery", as the polarization increased slightly: as of 1990, the wealthiest fifth of Chilean population earned 17 times as much as the poorest fifth, in 2002, it was 18.3 times as much (Perry 2001: 2-13; 400).
\end{enumerate}
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caused by the exclusion from, but based on the inclusion in the market system (Koch 1998). Schild has described the particularly negative impact of this development on the majority of women, who "are not only the poorest of the poor, but ... the poorest of poor workers" (Schild 2002: 189): while their economic activity has increased, their jobs are of very poor quality both in formal and informal employment\textsuperscript{218}. Social services, e.g. health care and pensions plans, have been privatized, with the consequence that those with the lowest wages are excluded from them because of their insufficient means to purchase them. The Asian crisis of 1997 and the resulting economic downturn have furthermore challenged any existing the welfare state conception in Chilean politics. Instead, "(t)he exclusionary focus of redistributive policies on the poorest sectors ... has left vast sectors of working people – the working poor and parts of the middle class – vulnerable to the vagaries of the open economy." (Schild 2002: 194)

The political record of democratic consolidation is – to say the least – ambiguous. Some governmental attempts to democratize political structures and state institutions were successful, e.g. the re-establishment of elections on the local level to counterbalance centralism, as well as the reform of a number of laws and the judicial system as a whole that had been tightly linked to dictatorship. Other elements of political democratization, however, did not succeed, especially those that aimed at curbing the over-representation of conservative interests and the political power of the military. Until today, the Senate not only consists of elected Senators, but also of Senators designated for lifetime by the outgoing military regime. They distort the real distribution of power and have blocked a number of reform projects, among them many in the field of gender policies.

The question how to address the human rights violations of the military regime was certainly the most difficult task in the early years of democratic rule, as it bore the danger to jeopardize the fragile atmosphere of cooperation. A truth and reconciliation commission with a very limited mandate was installed\textsuperscript{219}. To the disappointment of many Chileans, the chapter of human rights violations was officially closed with the publication of the commission's re-

\textsuperscript{218} Formal jobs held by women are often characterized by low wages, temporary contracts, sexual discrimination, and most employers' neglect of legal provisions for the benefit of all workers, but especially of women workers. "Poor working women are the real-life casualties of the 'modernization' of labour through its casualization and flexibilization", as it takes place especially in the forestry, fruit and fishery industry, where women are over-represented in the lowest wage categories. Besides, women are increasingly involved in the "new informality", that is subcontracted, poorly paid, and highly exploitative work especially in the export oriented textile and shoe industries (Schild 2002). As a certain amount of women have entered the labor market in high-skilled jobs, the resulting demand for domestic workers has attracted an increasing number of female migrants especially from Peru, who work under most precarious conditions because of their insecure legal status.

\textsuperscript{219} The Commission could only look at the last years of dictatorship, as an amnesty law blocked investigation of the early and arguably most brutal years of dictatorship. Also, its function was only to list crimes, but not to publicly identify or even punish the perpetrators (Imbusch 1998).
port, while the still powerful representatives of the former regime as well as its beneficiaries never acknowledged any responsibility. While the political center and left have been working hard for the reestablishment of democratic structures, the right wing never fully broke with its anti-democratic legacy.

In sum, Chile's return to democracy enshrined a profound learning process that re-established the country's consensus-oriented political culture; this has been an exceptional development in Latin America (Thorp 1998: 246). However, the political stability comes with socio-economic exclusion, overrepresentation of conservative values, and with a traumatic relationship to the dictatorial past that prevents the creation of an integral human right culture.

7.1.1.2 The cultural heritage of authoritarianism: Chile's normative fabric

In manifold ways, Chilean society has been shaped by authoritarian structures morally fostered by Catholicism. Regarding the construction of gender roles, a notion of fundamental difference between men and women, manifested in the role model of the *Machismo* for men and of the *Marianismo* for women has been crucial. The *machismo*-ideology emerged in several Latin America states in connection with nationalist projects and symbolizes the ability of men to dominate in all spheres of life (Zapata 2000). In contrast, the *Marianismo* is rooted in the Christian ideal of self-sacrificing motherhood represented by Mother/ Virgin Mary as the highest expression of womanhood (Craske 1999). During the 17 years of military rule, authoritarian values were strongly reinforced and a range of social developments of the 1960s and 1970s were irreversibly stopped. As a staff member of the current Women's Policy Agency SERNAM resumes, the military regime reversed the progressive steps in terms of gender equality that had been taken before dictatorship:

"The dictatorship in Chile is revolutionary in the sense that it achieves a cultural retrogression (...). They came with an ethical project. This was implanted, and the period of seventeen years was also a closure of legislative development. Before, there were proposals regarding divorce ... Maybe we would even have abortion legalized ... Chile was a pioneer in providing public access to contraception, in advice centers, ... and all that died off." (Interview 17

220 "La dictadura en Chile ... es muy revolucionaria en términos de que logra un retroceso en lo cultural (...). Ellos venían acompañados de una propuesta valórica. Entonces se quedó enraizada, ... hubo un periodo de 17 años, también de cero desarrollo legislativo. Porque antes de eso hubo proyectos de divorcio ... Y a lo mejor tendríamos legalizado el aborto ... Chile fue pionero, en la anticoncepción a nivel público, en los consultorios, ... y todo eso quedó como muerto."
Until today, it remains dangerous to speak up against those long-lasting consequences of the military regime. The best example is journalist Alejandra Matus’ "Black Book on Chilean Justice" that reveals the entanglement of the incumbent high officials of Chilean judiciary with the dictatorship. Immediately after its publication in 1999, all copies of the book were confiscated and Matus was accused to violating the State Security Law according to which it is a crime to insult public authorities (Committee to Protect Journalists 1999). The book – publicly available via various Internet sites – has remained officially banned in Chile, while Matus has been forced to choose between thirteen years of exile or imprisonment in Chile (Lebowitz 2001). Under these conditions, it is not surprising that Chilean media refrain from criticizing the past, yet this attitude ultimately reinforces the traumatic bond between past and present²²¹.

For the context of this study, especially two consequences of dictatorship are of importance: First, the reinforcement of the moral power of the Catholic Church. During dictatorship, the Church managed to establish a good relationship with the regime and at the same time, actively supported the opposition in their human rights claims. In the late 1980s, the Church withdrew from it political position as a human rights defender and turned back to promote those religious values it deemed necessary for the reconstruction of national unity. Because of its engagement during dictatorship, the normative positions of the Catholic Church are widely respected and practically untouchable. In the creation of public policies – and gender policies in particular -, statements of the church are excessively influential, and often taken as the "final word". Arguably, the separation of state and church has remained insufficient in post-dictatorial Chile (Interviews 17; 20). In addition, the high authority of the Catholic Church has contributed to create a political culture that does not enhance civil society structures. Thus, the return to democracy has resulted in a process of “modernization without modernity” (Rios Tobar 2003: 257). Second, the understanding of human rights is very much linked to national experiences and differs considerably from international standards. The idea of human rights has become extremely politicized and polarized: it is either equaled with the

²²¹ A refreshingly new and sarcastic voice in Chilean media scene is the satirical magazine “The Clinic”. It was started in the context of Pinochet's arrest in 1998 and the title alludes to the British hospital in which the ex-dictator received medical treatment. It is one of the rare publications that dare to make fun of the military regime and of the democratic officials' attitude towards the past. See, for example the following announcement: "Historic agreement between all sectors: years of dictatorship will appear as empty pages in school text books. If nobody knew anything during this strange time, it is because in reality nothing happened, so why keep digging around in the issue? The minister of education described this agreement as historical". ("Acuerdo historico entre todos los sectores: Años de la Dictadura serán páginas blancas en libros escolares. Si durante este extraño tiempo nadie sabia nada es porque en realidad no pasaba nada, entonces para qué seguir dándole vueltas al asunto. La ministra de Educación calificó el acuerdo como histórico"). (The Clinic 2001: 2)
gloss violations of human rights performed during dictatorship, or constructed as an illegitimate political position closely linked to communism, as a Chilean judge explains:

"Here, Human Rights mean the Disappeared, the Vicaría de la Solidaridad, the communists. It has been very restrictive, and we have to overcome this, but it is very difficult … . Because if the judges invoke Human Rights in a number of judgments, they feel that they are taking a political stance that they should not and do not want to take. (…) Human Rights are two words that scare judges." (Interview 21)

Furthermore, the understanding of human rights is not as inclusive as the international standards proclaim. Human rights in Chile are civil and political rights – notably the right to life, freedom from torture, and freedom of expression; however, socio-economic rights, women's rights, the rights of indigenous people, the freedom from discrimination are not thought to be part of the concept. Thus, while Chile has not come to terms with the human rights violations committed during dictatorship, other profound structures of inequality are even less acknowledged. As many politically active Chileans lived in exile, they got involved with international human rights debates and have engaged in bringing the concepts – e.g. the idea of discrimination - back home. However, it is also the context of neoliberalism that inhibits an inclusive understanding of the concept of rights. As an NGO activist cuttlingly remarks, "economic, social and cultural rights are a stone in the shoe of neoliberalism that has been unleashed in this country. They are bothering everybody." (Interview 22)

7.1.1.3 Moral superiority and politicized motherhood: women's organizations and the institutional representation of women's interests

Chilean women have not only been affected by the country's political and socio-economic development but have been actively involved in shaping it, both in autonomous organizations as well as in institutional party politics and in government. A striking feature of women's activism in Chile as well as in other Latin American countries is what Alvarez has first called "politicized motherhood" (Alvarez 1990): a style and motivation of doing politics that is rooted in caring for others as opposed to being selfishly interested in attaining power, and thus, in a self-construction of being morally superior. This self-construction draws on the

222 "Derechos Humanos aquí es de detenidos-desaparecidos, la Vicaría de la Solidaridad, los comunistas. Ha sido restrictorio, y hay que ir superando eso … . Porque los jueces sienten que al invocar los derechos humanos en muchos fallos están asumiendo una actitud política que no quieren y deben asumir. (…) Derechos humanos son dos palabras que asustan a los jueces."

223 "Derechos económicos, sociales y culturales son una piedra en el zapato por el neoliberalismo destapado que hay en este país, ya a todos les molesta."
religion. Marianismo-ideal and is opposed to the image of a male policy style that is egoistic, aggressive and patronizing. While the notion of doing politics in responsibility for others is a promising approach particularly for designing redistributing social policies, it has limited the potential to represent the interests of women themselves (Franceschet 2001).

Historically, there are two main sources of women's political activism in Chile: the middle and upper class struggle for educational and voting rights for women, which basically ended with the achievement of (literate) women's suffrage in 1949, and poor and working class women's protests for better living conditions. This second strand of activism has been ongoing since the early 20th century, often alongside with the struggle of male workers (Valdés and Weinstein 1993: 48f). The institutionalization of the Centros de madres (Mothers' Centers) initiated under the Christian Democratic Frei administration (1964-70) especially targeted women in shantytowns, both to provide space to meet and small means of income generation and to diminish potential protest by transmitting conservative values. Both the Allende and the Pinochet governments perpetuated this form of women-as-mothers-policy, even if the notion of empowerment was stronger under Allende and the notion of indoctrination dominated under Pinochet (Valdés and Weinstein 1993: 69f).

Women became politically active under dictatorship in reaction to extreme repression and economic deprivation. Most forms of women's organizations rooted in their roles as mothers and caretakers, however, they politicized these seemingly private roles and thus opened a political space, precisely because they were not deemed political actors by the regime. Also, women's organizations promoted unity among oppositional groups in later stages of the transition, when inner conflicts had started to divide the opposition (Hellmann 1995; Waylen 1994). Broadly speaking, women got active in three forms of oppositional organizations: First, the women-dominated groups of relatives of disappeared persons. Their courageous public shaming of the regime had highly politicizing effects both on the previously "a-political" women themselves and regarding the mobilization of other resistance groups. Second, basic needs organizations such as soup kitchens and health posts emerged in the shantytowns to collectively react against the deteriorated living conditions. Those Organizaciones de Economía Popular (OEP) were initially set up by men and women together, but due to their limited possibilities to create income soon became feminized. Similarly to the human

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224 Under the Unidad Popular government (1970-73), an entirely different form of female political activism emerged, namely the powerful mobilization of middle and upper class women against the government's Marxist policies and the supply shortages they caused. The "marches of the empty pots" and other activities of these women became famous and contributed significantly to the overthrow of Allende's government (Bauer 1990: 133f). As this explicitly conservative and later pro-dictatorial activism of women did hardly add to Chilean gender policies as developed in post-dictatorial Chilean democracy, it is not dealt with here in further detail.
rights groups, the OEP had significant politicizing "side effects": they opened a semi-public space in which opposition against dictatorship flourished, and they allowed women to acquire new skills and to collectively become aware of their needs as women. The third strand was comprised of feminist-political organizations targeting women's rights explicitly. They had their strongest roots in educated middle class circles, but some of them also emerged out of the working class and popular movements. These organizations both gave important impulses for a vision of democracy that should overcome gender hierarchies in public and in private and often served as umbrella organizations. However, their understanding of women's liberation as a crucial part of a truly democratized future was considered secondary by most parts of the opposition.

Especially the last strand of women's activism was the point of departure for gender policies in the new democracy. At the end of transition in the late 1980s, mostly middle class feminists joined in the Coalition of Women for Democracy and participated in the project of the moderate opposition to elaborate an agenda for democracy. They were successful in integrating a list of women's demands into that agenda, e.g. the establishment of a women's policy agency (Waylen 1996). Women from the radical part of the opposition and poor women did not play a significant role in this process; partly they deliberately chose not to participate, partly they were actively marginalized by the reemerging political parties, and partly their activism focused on the protest against dictatorship, while a national project of democracy building was not within their scope (Gaviola et al. 1994: 188; Hellmann 1995: 312f; Serrano 1990). Thus, while women partly participated in the crucial phase of transition, this participation could not prevent the re-erection of a masculinist political culture that structurally inhibits both formal and substantive representation of women (Franceschet 2001).

Within the ambivalent and exclusionary framework of Chilean democratization, public gender policies have been developed in a comprehensive manner for the first time in the country's history. The Servicio Nacional de la Mujer (SERNAM), Chile's women's policy agency (WPA) is the most important institutional innovation in this context. It was created in 1991 upon the demand of the women's movement, as well as in response to Chile's international commitment under CEDAW. At the same time, the conservative opposition opposed the "ministry of feminists" as a threat to the family (Waylen 1996). Accordingly, the design and mandate of the agency can be read as a compromise: it was established as an independent institution, but within the Ministry of Planning. Its director has ministerial rank and is member

225 The Spanish name of this coalition, Concertación nacional de mujeres por la democracia, makes an allusion to the coalition of oppositional parties that later was elected for government, the Concertación de los partidos por la democracia.
of the cabinet. SERNAM's function is "to design and coordinate public policies at sectoral and inter-ministerial levels in the pursuit of greater equality for women, and more generally to work for the full integration of women into the development process" (SERNAM 1994: 8), but it does not have the mandate to implement policies. SERNAM disposes of its own budget, but it has been very limited with initial US$ 2 million equaling 0.1% of the national budget. While this budget has significantly increased, Parliamentary budget debates sometimes resulted in disciplining the agency in not granting funds for seemingly too "progressive" policies (Baldez 2001). To gain some independence from these constraints, SERNAM has been relying on complementary funding from foreign governments and non-governmental organizations that sometimes even exceeded national allocations. From the point of view of the movement, mayor demands of women could not be transferred into the new WPA, which led to an alienated relationship between some sectors of the movement, especially autonomous organizations, and SERNAM (Baldez 2001; Rios Tobar 2003). This tension notwithstanding, a significant number of SERNAM's staff was recruited among the moderate segments of women activists.

In the first years, SERNAM focused on four issues: first, legal reforms to abolish direct discrimination against women and to better represent their interests. For example, basic rights for mostly female seasonal and domestic workers were laid down; a law on domestic violence was passed, and the provisions for fathers' parental leave were extended. Second, information centers for women's rights (CIDEM) were set up across the country. They were initially conceptualized as space of participation for women, but ended up in providing advice regarding rights and services. Third, SERNAM developed a support program for female heads of households with diverse income-generating measures to fight feminization of poverty, and fourth, it engaged in awareness raising on domestic violence and its prevention. Based on these first years of experience, SERNAM elaborated the Plan on Equality of Opportunities for Women (Plan de Igualdad de Oportunidades para las Mujeres) as a comprehensive framework for public gender policies for the years 1994 to 1999. A second plan followed for the period of 2000-2010. Main areas of concern in both Equality Plans are awareness raising.

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226 For example, the 1996 budget debate was influenced by SERNAM's position paper for the Beijing women's conference in 1995. The paper had caused a vehement public dispute for using the term "gender" instead of "sex", as this was supposed to justify homosexuality, for talking about different forms of the family, as this could threaten the "real" heterosexual two-parents family, and for talking about reproductive rights (Zwingel 1997: 118f).

227 Baldez (2001) underlines that the demands of the movement already constituted a compromise, as the Coalition of Women for Democracy left the issues of abortion and divorce off its agenda to avoid jeopardizing chances for passing more moderate reforms. Instead, the crucial claims were legal changes to improve women's legal position, increased participation of women in the political system and in the labor market, and the creation of a women's policy agency (Waylen 1996: 109).
around women's rights according to Chile's international responsibilities; the enhancement of women's economic independence, especially of women in precarious working conditions such as seasonal and domestic workers, female heads of households and small business owners; the establishment of a culture of equality, which entails the revision of hierarchical gender concepts in curricula and the promotion of education based on equal gender roles; participation of women in decision making; the improvement of health services for women, both related to physical, psychosomatic and reproductive health; and the cooperation of different public institutions to promote gender equality (SERNAM 1994; 2000).

While being guided by international standards, SERNAM's impulses are tailored according to the conservative political context. Thus, most legislation of the last decade dealing with women's issues addresses women as wives and (working) mothers, while it has resulted much more difficult to challenge the primary notion of motherhood and marriage, e.g. in legislation regarding reproductive rights, divorce, and prevention of gender-based discrimination. Bills that do have a feminist core are framed "as fitting into a pro-family agenda" to make their approval more likely. For example, the 1998 parenthood law (Ley de Filiación, No. 19.585) gives children born in and out of wedlock equal status before the law. This law changes the traditional pattern of the mother's exclusive responsibility for raising children while the father, in the case that the couple is unmarried, may refuse any form of collaboration. According to estimations of SERNAM, this change will affect about one million Chileans (Interview 18). Nonetheless, not much emphasis was laid on this dimension of responsible fatherhood. Proponents of the law preferred to underline the improvements for the children and avoided any argument that could fuel the opposition's conviction that the law would threaten the family (Franceschet 2001); "family" in the conservatives' understanding implies a married couple, while the law contributes to institutionalizing unmarried parenthood which is deemed a problematic matter. Also, virtually all laws regarding women's rights were watered down in comparison to the bills initially submitted: the law on domestic violence (Ley de Violencia Intrafamiliar, No. 19.325), undoubtedly one of SERNAM's great successes, was transformed from a bill addressing gender hierarchies expressed in domestic violence into a law dealing with violence within the family, as if it was committed by all family members alike. Materially speaking, it was not helpful to the (almost exclusively) female victims, as it was passed without providing funds for shelters and psychological services, and as it primarily focuses on reconciliation between the spouses. However, it should also be mentioned that the use of the law has contributed to bringing the widespread and devastating dimensions of domestic violence to a broad public consciousness. A lawyer specialized in domestic violence
considers this cultural change highly relevant for the social acceptance of domestic violence, an acceptance that was absent before the creation of the law:

"This law served to cause a cultural change. (...) While there was no law, domestic violence did not exist. (...) Today, the matter is respected and socially accepted. In the beginning, people even believed that violence was a concern of poor people. (...) Today we have data. For me, this is the main benefit of the law, that it provoked this change, and respect." (Interview 20).

More recently, the law has been amended to correct some of its deficiencies, among other aspects, the insufficient means for psychological counseling (UN Doc. CEDAW/C/CHI/4).

The limited state feminism SERNAM represents results both from the conservatism inherent in Chilean political institutions and from the power structure of SERNAM itself (Baldez 2001; Waylen 1996). The WPA is a relatively weak state actor that needs to carefully negotiate even the smallest innovations towards gender equality to sidestep the potential blockade of conservative forces (Franceschet 2001; Zwingel 1999). In addition, the number of women Parliamentarians who could strengthen women's interests in the legislative process has remained limited, even if internal quotas of some parties have helped to increase their percentage. Arguably, SERNAM represents itself a conservative gender ideology, as it has been under the control of the Christian Democratic Party (PDC) since its inception (Baldez 2001). The PDC not only imposed its own Church-oriented gender values against the views of its main coalition partners, the Socialist Party (PS) and the Party for Democracy (PPD). Also, it had no interest in fostering a participatory relationship between SERNAM and women's rights organizations. Thus, the CIDEM information centers set up by SERNAM have received limited funding, while a parallel organizational structure under the leadership of the first lady with a much higher budget was created: The Foundation for Promotion and Development of Women (Fundación para la Promoción y Desarrollo de la Mujer - PRODEMU) aims at revitalizing the tradition of the mothers' centers and promoting family

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228 “Esta ley sirvio para hacer un cambio cultural. (...) Mientras no habia ley, para nadie existia la violencia intranuclear. (...) Hoy dia ... hay respeto por el tema y es un tema socialmente aceptado. Al principio incluso se creia que la violencia era un tema de los sectores populares. (...) Hoy dia hay cifras. Para mi ese es el beneficio principal de la ley, que provoco este cambio, el respeto.”

229 The percentage of women in Parliament rose from 7.5% (9 seats) in 1995 to 12.5% (15 seats) in 2001. In the Senate, 3 women represented 6.5% in 1993, and 2 women represented 4.1% in 2001 (Interparliamentary Union 2004).

230 Both the PPD and the PS introduced quotas for internal decision making posts by the late 1980s, and the PDC followed in 1995. Only the PPD, however, has used quotas for electoral lists (Franceschet 2001).

231 For example, according to a 1994 survey, 81% of PDC’s legislators opposed legalized abortion in any case, while only 18% of the PPD and 0% of the PS did. They strongly preferred a regulated legalization (73% PPD, 92% PS), a solution that only 19% of PDC legislators choose. Thus, the PDC’s position in this matter was much closer to the rightwing opposition parties (total opposition RN: 75%, UDI: 92%, regulated legalization RN: 25%, UDI: 0%) than to its coalition partners (Fuentes 1999: 201).
oriented values especially among poor women. However, PDC party priorities are not the only relevant forces in the inner hierarchy of SERNAM. Not only did the two PDC directors develop widely differing profiles. Also, SERNAM has been headed by Adriana Delpiano (PPD) and the independent Cecilia Pérez after the 2000 election, but this has not brought about any significant change in the agency's policies. In general, the Chilean case indicates that it is almost impossible to establish a WPA that promotes gender equality in a political and cultural environment where both conservative forces and organized women draw so strongly on the notion of gender difference.

The number and coherence of civil society women's organizations has decreased with democratic consolidation. Among other factors, this has been due to a shifted priority of international funding towards the newly emerging democratic institutions such as SERNAM, or towards specific projects designed by professional NGOs (Rios Tobar 2003). As a consequence, basic needs organizations and other movement activities lost their financial basis and many ceased to exist. Likewise, SERNAM has established relationships of cooperation with NGOs disposing of expertise in gender issues, but not with organized women as citizens and experts of their own situation. This has lead to a kind of alienation between the WPA and women's movement organizations, especially those of the popular sectors. Civil society actors articulating women's demands can be divided into two strands: on the one hand, there are the professional gender experts, either forming NGOs or research institutes. They conduct research and trainings in their specialized areas and cooperate with public institutions in the preparation of gender policies. On the other hand, a range of women's organizations expresses its disapproval with the neo-liberal version of institutional democracy including SERNAM, and most of them refuse to cooperate with state institutions. Instead, they aim at creating own spaces that allow self-expression and build counter publics to the neo-liberal mainstream. This approach is more oriented towards the material and emotional well-being and the potentials of each individual and envisages the living conditions of those women who are marginalized by political institutions and socio-economic conditions. Thus, their activities often focus on the expression of "ordinary people's" needs and thoughts, e.g. in local media projects or theater groups. A large part of these self-enhancing activities takes place in popular sectors. Some organizations, e.g. Tierra Nuestra and the Network of Women in Social Organizations (Red de Mujeres en Organizaciones Sociales – REMOS), also engage in making women in poor conditions visible.

232 While Soledad Alvear stuck to the general PDC line, Josefina Bilbao turned into an energetic women's rights proponent. For example, she defended the government's position paper for the fourth world women's conference in Beijing in 1995 and she was the first representative of a government who signed the Optional Protocol to CEDAW in 1999. Both actions caused harsh criticism in the Chilean public, particularly voiced by conservative politicians, conservative media groups and the church (Molina 2000; see also 9.2.2)
neighborhoods aware of their international and constitutional rights, "as popular women suffer from everything that the (CEDAW, S.Z.) Convention forbids." (Interview 24)

In sum, Chilean proponents of feminist ideas or gender equality are divided by the general exclusionary structures of society and thus, do not represent a strong political force. While both SERNAM and non-governmental women's rights activist draw strongly on international gender norms, religious moral values remain predominant in Chile. Not only the media, the Church and conservative political parties oppose international women's rights standards, but also new civil society groups have formed to defend their faith and traditions against what they deem inappropriate international norms. In this specific normative context, legal and de-facto changes to promote gender equality could be acquired, yet they remain hesitant because they have to satisfy the conservative political sector.

7.1.2 International interaction with CEDAW: Governmental and non-governmental reporting and the Committee's response

Chile ratified CEDAW in 1989 in the last weeks of dictatorship. While there is not much research on the reasons the military regime might have had for this ratification, it can be assumed that it aimed at giving one last good impression to the international community to correct its image of a blatant human rights violator (Interview 17). All implementation measures resulting from the ratification of CEDAW, however, were left to the subsequent democratic governments. Commensurate with their generally highly receptive attitude to international standards, post-dictatorial Chilean governments have shown high commitment in reporting to CEDAW. In an almost timely manner, the first through fourth reports were submitted in 1991, 1995, 1998 and 2004, and for the two constructive dialogues with the Committee that took place in 1995 and 1999, Chile sent high ranking and well-informed delegations. For the 1995 dialogue, the only shadow-report submitted was produced by the transnational NGO International Women's Rights Action Watch (IWRAW), while the 1999 dialogue was informed by three shadow reports, two of them from Chilean NGOs, the third one by IWRAW. This increased civil society engagement in the dialogue had repercussions on the Committee: while experts reacted rather benevolent to Chile's post-dictatorial efforts in 1995,

233 “Porque mujeres populares sufren de todo lo que prohíbe la Convención.”
234 As Keck and Sikkink (1998: 79f) show, the Chilean coup was an event of high relevance for the emergence of a transnational human rights movement. In this context, the Chilean case received extraordinary international attention and scrutiny along the 17 years of dictatorship.
235 The 1999 delegation was headed by SERNAM's director Josefina Bilbao and included experts of the ministries of health and labor and of the Presidential Inter-ministerial Coordination Division on Gender Equality.
they had set their expectations much higher in 1999 and evidently used the NGO positions to formulate their concerns (UN Doc. A/ 54/ 38/ Rev.1: 66f).

The initial Chilean report of 1991 (UN Doc. CEDAW/ C/ CHI/ 1) is short, does not meet the reporting guidelines and lacks statistical data, yet it is written in an openly critical tone regarding the past, e.g. expressed in the formulation that the military regime spread "a cultural pattern which favors a sexist organization of society" (UN Doc. CEDAW/ C/ CHI/ 1: 4). After naming the most relevant discriminatory structures of Chilean society – legal discrimination in many fields, the wage gap, feminization of poverty, violence against women, the unsatisfying situation in terms of reproductive rights, and as a result, a high number of unwanted pregnancies and illegal and unsafe abortions – the main actions of the new democratic government are listed, among them, the creation of SERNAM, the initiation of legal reforms, programs to support poor women and to prevent violence against women. It concludes with the statement that CEDAW is "the measure of the country's internal advances in these fields." (UN Doc. CEDAW/ C/ CHI/ 1: 21) For its oral presentation in the CEDAW Committee's 14th session in 1995, the Chilean delegation submitted updated information for the years 1992-1995. National NGOs were not yet involved in the international procedure at that time - as a matter of fact, it was even difficult for them to get hold of the report236 - but the transnational NGO IWRAW submitted additional information collected from national NGOs. Similarly to the official report, the shadow report of IWRAW describes the legacy of dictatorship with its devastating effects on women, yet sometimes goes into more detail, e.g. in its portrayal of the precarious working conditions of women, socio-economic inequalities and the consequences of human rights violations under dictatorship. Also, the shadow report expresses doubts about SERNAM's authority and its political position, e.g. it criticized the WPA's low profile in the development of a divorce law (IWRAW 1994: 12f). In its Concluding Comments following the constructive dialogue, the CEDAW Committee acknowledged the political will of the government, expressed particularly in the creation of SERNAM and the measures regarding poor and rural women. The experts requested the next report to be more comprehensive and to include information on the implementation of legal reforms. The Committee expressed concern with still existing legal discrimination, the lack of women in political decision-making, and the reproductive health situation, especially the consequences of illegal abortions. Concrete recommendations were the adoption of a divorce law and the liberalization of abortion to prevent maternal mortality (UN Doc. A/ 50/ 38, paras. 105-159).

236 Information of an activist of La Morada (Interview 22).
In the second constructive dialogue that took place in 1999, the second and third periodic reports of Chile (UN Docs. CEDAW/ C/ CHI/ 2; CEDAW/ C/ CHI/ 3) as well as updated information were considered. Three dimensions were particularly relevant in the governmental presentation: First, the proceeding of legal reforms. Maybe of highest symbolic value was the change of the Constitution. After some years of Parliamentary negotiations, article 1 Chilean Constitution could be changed from "Men..." to "All persons are born free and equal in dignity and rights" ("Las personas nacen libres e iguales en dignidad y derechos" instead of "Los hombres..."). Additionally, article 19 was complemented with the phrase: "Men and women are equal before the law." ("Hombres y mujeres son iguales ante la ley.") (UN Doc. CEDAW/ C/ CHI/ 3: 9) In 1999, the change entered into force upon the approval of the Senate. Further, some directly discriminatory laws were eliminated, e.g. the prohibition for women to work underground, and the statutory offence of adultery that could only be committed by women. Further, some important laws reflecting a new public gender sensitivity entered into force, most notably the law on domestic violence, new parental leave provisions, and the parenthood law aiming at the enhancement of responsible fatherhood (see 7.1.1.3). In the field of labor, legal measures were taken to prevent discrimination against pregnant women, and to oblige employers to provide child care facilities if they employ more than 20 female workers. A range of other bills were in preparation or pending in the legislative process, e.g. a law enabling divorce, an anti-discrimination law, a law on sexual harassment, and a quota law for political decision making posts. Both reports also inform about insufficient legal reforms and failures: most relevant is the amended marriage law that provides the possibility of legal equality of men and women upon getting married, but still upholds the discriminatory "sociedad conyugal"237 which is entered by the overwhelming majority of couples as any other form of marriage has to be chosen explicitly. Also, the project to legally protect pregnant high school and university students from being expelled first failed because of the opposition in the Senate, and in its finally adopted version, only applies to public schools and not to private educational institutions.

The second important feature in the governmental reports is the absence of comprehensive public policies regarding reproductive rights. Both reports point in their introductory statement to the problematic situation of reproductive health and the high number of illegally

237 There are three forms of marital property regimes: The sociedad conyugal provides for joint ownership of property by husband and wife, whereas the husband is the administrator of all of the couple's property, which severely compromises the wife's rights in terms of ownership, purchases, management, administration, possession, and disposition of the couple's assets. This regime is the most common, but at the same time the one most discriminatory to women. The other two regimes are participación en los gananciales – joint ownership of jointly acquired assets –, and separación de bienes - separation of assets (La Morada et al. 1999: 19).
performed abortions, however, they do not name any concrete policies to deal with the problem. The 1995 report only shortly mentions that pregnancy-, pre- and post-partum related services exist (UN Doc. CEDAW/ C/ CHI/ 2: 37); the 1998 report seems to reflect a more comprehensive understanding of female health and presents the "women and health" program that goes beyond the reproductive functions of women and includes mental health measures (UN Doc. CEDAW/ C/ CHI/ 3: 29f). Public policies to provide access to contraception are not mentioned in either of the reports. Instead, both reports describe campaigns enhancing the understanding of the social role of parenthood, with the aim to reduce the high number of teenage pregnancies. The 1998 report adds another measure: as studies had verified that the main reason for high-school drop out of girls is pregnancy, the government introduced "special days for dialogue on emotional health and sexuality" in high schools. Thus, pregnancy-prevention measures start to focus on education and information, but do not entail access to contraception or even abortion.

As a third tendency, both reports underline the governmental commitment regarding poor women (e.g. free access to a certain degree of public health care; income-generating programs), and in reference to CEDAW article 14, they list the joint ministerial efforts to support rural women, especially seasonal workers, with educational, health-, and childcare programs as well as in enhancing their political organization (UN Docs. CEDAW/ C/ CHI/ 2: 37f; CEDAW/ C/ CHI/ 3: 32f).

The two shadow reports submitted by Chilean NGOs\(^{238}\) critically discuss the information submitted by the governmental reports. The following major problems are emphasized: First, despite the Constitutional reform, the concept of non-discrimination is not rooted in Chilean judicial culture, which makes an anti-discrimination law indispensable, as well as laws regarding sexual harassment and political representation. Second, SERNAM has to be upgraded. While it is a WPA committed to international standards, most of its policies remain ineffective, e.g. the law on domestic violence. Third, the segregation of the Chilean educational system into private and public schools impedes the protection of pregnant students in private schools from expulsion. Also, the sexual education programs in high schools are not far reaching enough because of the government's fear of the conservative opposition. Fourth, equal employment policies do not consider de-facto discrimination of women. For example, the employer's obligation to provide childcare facilities often works as a barrier to hire

\(^{238}\) One of them was written by *La Morada*, the *Comité de America Latina y del Caribe para la Defensa de los Derechos de la Mujer* (CLADEM), the *Foro Abierto de Salud y Derechos Sexuales y Reproductivos* and supported by the Center for Reproductive Law and Policy (CRLP) (La Morada et al. 1999). The second report was submitted by the *Instituto de la Mujer* (Instituto de la Mujer 1999). The third report of IWRAW refers to both reports mentioned and provides a summary more than additional information (IWRAW 1999).
women, or is ignored altogether; also, employers bypass maternity leave provisions by hiring women on a fixed-term basis. Fifth, the legal conditions of marriage are highly discriminatory: not only is there no possibility to divorce, but also is the reform of the marriage regimes not sufficiently communicated to ordinary people. The report of La Morada et al. points to the comment of the Human Rights Committee on this situation that declared the Chilean marriage law discriminatory as long as a couple can choose a discriminatory form of marriage (La Morada et al. 1999: 19). The field that is most harshly criticized by both NGO reports is the situation of reproductive health. Apart from the generally inadequate medical services for poor people, the self-determination of women regarding their reproductive rights is severely hampered: The access to and information about contraception is restricted and often only accessible after the first pregnancy. Condoms are predominantly distributed among "risk groups". Emergency contraception (the "day after" pill) is not accessible whatsoever. As a result, one third of all pregnancies end in an abortion, 40% of which are performed by women under the age of 18. The reality of abortion is that poor women are forced to undergo it in most dangerous conditions. Thus, they are over-represented both among those women who suffer from or even die of the complications and among those who are punished for the crime (see The Center for Reproductive Law and Policy et al. 1998). The report of the Instituto de la Mujer argues that this situation impedes women to enjoy their Constitutional right to physical and mental integrity (Instituto de la Mujer 1999: 7). Both reports claim better access to contraception and the liberalization of abortion.

In its Concluding Comments, the CEDAW Committee reiterated to a certain extent the concerns and recommendations it had articulated after the first constructive dialogue with Chile. It valued the legal reforms as well as the government's political will to implement international standards, but nonetheless found that traditional gender stereotypes pose severe obstacles in this effort. In particular, experts expressed concern about the discriminatory marriage law and the absence of a law on divorce, of the high number of teenage pregnancies, of the low political participation of women, of the precarious working conditions of many women, and of the reproductive rights situation. As in its first Concluding Comments, the Committee recommended the introduction of a divorce law and better protection of reproductive rights, including abortion. It requested the government to include more de-facto information on the living conditions of rural women in the next report as well as evaluations on the effectiveness of public gender policies (UN Doc. A/ 54/ 38/ Rev. 1: 66f).

The fourth Chilean report (UN Doc. CEDAW/ C/ CHI/ 4) submitted in 2004 has not yet been considered before the CEDAW Committee, yet it deserves a comment because of the
continuities and new tendencies it enshrines. One innovation is that it dedicates special chapters to discriminated groups of women such as girls, indigenous, disabled and elderly women and mentions the growing relevance of female immigrants. In terms of legislation, some reforms in accordance with CEDAW took place, for example, the now comprehensive legal prohibition to expulse pregnant students from both public and private schools. Some of the important anti-discriminatory bills are still pending, in particular the sexual harassment bill of 1994, and the quota bill of 1997. The most fundamental legal change is the adoption of the civil marriage bill that now enshrines the possibility to divorce – submitted to the Senate in 1995, it took the second chamber nine years to proceed it. In the context of modernizing public administration, SERNAM has been launching a website with special information for women; interestingly, the report lists this innovation also under the chapter "participation", indicating that the website is thought of as a way for women to articulate their opinions regarding public policies. At the same time, the CIDEM information centers have been integrated in the general public service structure, but the report doesn't reveal if the transformation corresponds to a change in funding for the functions the CIDEM centers had provided. A range of public policies follows an incentive-logic, e.g. the new media award for the best anti-discriminatory presentation of women. The "hard facts" in the field of economy and health have not significantly improved: Women are over-proportionally employed under precarious working conditions and as a result, often cannot participate in pension and health care plans – this is even more true for rural and indigenous women. Also, the wage gap between men and women amounts up to 50% in the high-income categories. The government has reacted to this situation with rather "gender-neutral" measures, e.g. with the creation of unemployment insurance in 2001, the strengthening of small businesses, and continuous efforts to improve the living and working conditions of seasonal workers. In response to the CEDAW Committee's concerns, the issues of health and violence are dealt with comprehensively in the fourth report: The women and health program concentrates on reproductive health measures and provides, among other things, contraceptive methods for approximately one million women. The public resources to deal with mental and violence-related problems of women have increased, and dental care programs have been initiated of which mostly poor women have benefited.

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239 According to the new law, Chileans can end a marriage by annulment or by divorce. Three categories allow for divorce: grave non-fulfillment of obligations regarding marriage or the children (domestic violence is one form of such grave non-fulfillment), mutual agreement of both parts, and the wish to divorce of one of the spouses. The law entered into force in November 2004 (SERNAM 2004). Previously, a marriage could only be annulled, which was a hypocritical official act declaring that the two spouses had never been married. However, such annulment was costly and could not be afforded by lower class couples. Also, it was out of question for a spouse who depended economically on the other, as a never existing marriage could also not result in maintenance payment.
Contrary to the Committee's recommendation, the incumbent government does not intend to legalize abortion because of the conservative opposition. The figures of women experiencing violence remain high, which has brought the government to increase the number of advice centers from 13 to 36 across the country. However, there are still no public shelters for women.

How do domestic actors perceive the rather intensive reporting procedure? In the description of a representative of SERNAM, the CEDAW process is a positive impulse for the WPA's work and for national policy development. The process-orientation of the obligations under CEDAW is, in principle, understood and accepted:

"The minister told us … that the preparation of the report is not the most important thing, but the period between one report and another. In that time, every public institution should become aware of the international commitments we have assumed and to comply with them." (Interview 18)

While the reports were prepared in cooperation with other relevant ministries, it remains unclear if public institutions besides SERNAM assume the same integral understanding of the reporting duty. Civil society organizations only indirectly contributed to the official report, but were invited to comment on it after its completion (Interview 18).

The main incentives of NGOs to produce shadow reports were, on the one hand, to cause internal diffusion of international women's rights, especially because the CEDAW Convention is not very well known. On the other hand, NGOs wanted to criticize the government's international presentation from a civil society perspective, as they found the governmental reports to whitewash shortcomings in their obligations under the Convention. Encouraged by the transnational NGO IWRAW, several NGOs made a joint effort to contributing to the CEDAW monitoring procedure and found it worthwhile for several reasons. First, they saw their work bear fruits as Committee members took up their points of critique in the dialogue and in the Concluding Comments (Interview 23). The focused mandate of the Committee was considered more supportive for national change than other international processes, e.g. the negotiations within the world conferences, where progressive positions are often watered down for the sake of reaching a compromise. In contrast, the Committee's recommendations can be better used for concrete activism "at home" as they are tailored towards the national situation (Interview 23). Second, the authority of the CEDAW experts added weight to arguments NGOs had repeatedly voiced in the national public where they were not taken seri-

240 "La ministra nos decía … lo más importante no es el momento de hacer el informe, sino el periodo entre un informe y otro, para que cada institución publica tome conciencia del compromiso que tenemos. Y lo cumpla."
ously. While this support is potentially useful for future strategies, NGOs were aware of and rather critical towards the "special international treatment":

"I can go to New York, there, the minister greets me and considers that my position makes sense, but when I say the same things to her here in Chile it bothers her. I find it quite elitist to be able to go there where the government acknowledges you as NGO and here, it doesn't." (Interview 22)

Third, the cooperation with IWRAW and national NGOs helped to create a transnational network on women's rights. Chilean NGOs expressed the view that this cooperation has broadened their own perspective in learning about the situation in other countries, and it established contacts that have proved to be highly useful for the activism in the national arena.

While NGOs assume that the reporting procedure could influence national policies to a certain extend, they also express doubts about the government's commitment. Obviously, the government has an interest in giving a good international impression, but the disposition for concrete problem solving seems less pronounced. Also, NGOs observed that the government tried to hide the challenging questions the Committee had posed from the national press and instead launched press releases that only talked about the benevolent reception by part of the Committee (Interview 22).

In sum, the Chilean government has significantly improved its interaction with the Committee, especially regarding the quality of its reports. NGO involvement has further added to an intensive constructive dialogue that led the CEDAW Committee to both commend some of the trends taking place in Chile and to articulate severe concerns on other developments. The WPA as the governmental actor coordinating international reporting values the dialogue, and so do women's NGOs. Especially the latter ones perceive the constructive dialogue as a possibility to critically discuss Chilean public gender policies that is lacking in the country itself. However, it is doubtful in how far the international debate can be translated in a constructive way into the domestic context, partly because of the limited commitment within governmental institutions, partly because of the deeply rooted disapproval of the powerful conservative sectors regarding international women's rights norms.

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241 "Yo puedo ir a Nueva York, y ahí la ministra me saluda y le parece que tiene sentido lo que hago, y cuando se lo digo aquí en Chile se molesta. ... Entiendo que es una cosa bien elitaria, ... poder sentarse allá para que el gobierno te reconozca como ONG y acá no."
7.1.3 Domestic application of the Convention by state institutions

7.1.3.1 The Convention as "instrumento fundante"242 – the approach of SERNAM

In how far does the Chilean government make use of the Convention beyond complying with its reporting duties? Taking into consideration that an international monitoring instrument hardly ever becomes the one cause for domestic change, the Chilean case displays a moderate level of national impact (see 6.2.2). CEDAW has often been part of the normative base for public gender policies: The founding law of SERNAM itself (No. 19.023) refers to CEDAW article 2c stating that "effective protection of women against any act of discrimination" has to be ensured through "competent … public institutions". Article 2g of the law defines the evaluation of public policies with the end to guarantee the implementation of the Convention as part of the mandate of SERNAM. Subsequently, SERNAM has made use of CEDAW especially in introducing gender sensitive legislation. In the view of a staff member of SERNAM, CEDAW as well as other international treaties have served as strong argumentative support against the cultural resistance regarding gender equality so prevalent in the Chilean context:

"In a ministry … which has the mandate to incorporate a gender perspective into public policies, the international instruments on human rights of women are nothing but fundamental. Because they are one element in the negotiations with the institutions that design public policies and that are, for cultural reasons, very resistant to this focus. (...) The international component, everything that has to do with the accumulated experience of the world's women's movement, and what this movement has achieved … all these achievements are weapons that we can rest on in our work." (Interview 18

The international framework of women's rights and non-discrimination is the base for SERNAM's work. Apart from CEDAW, the WPA also draws on Latin American instruments and other UN Human Rights Treaties – however, in the words of a staff member of SERNAM, CEDAW is particularly useful because "it is less polemic than Beijing (the BPFA, S.Z.). In the end it allows to achieve the same with words that are less controversial in Chile.

242 "Founding instrument" (Interview 17)
243 "En un ministerio ... cuya mision consiste en velar por la incorporacion de un enfoque de equidad de genero en las politicas publicas, los instrumentos internacionales de derechos humanos de la mujer son nada mas que fundamental. Porque es un elemento de la negociacion con las instituciones que desenan politicas publicas y que son muy resistentes a este tipo de enfoque por razones culturales. (...) El componente internacional, todo que tiene que ver con la experiencia cumulada, por el movimiento de mujeres en el mundo, y lo que el movimiento de mujeres ha logrado … estos son armas que nosotros tenemos para resbaldar en el trabajo con las otras instituciones publicas."
(...) without touching taboo terms." (Interview 18) If assessed in terms of legal results, international norms have proved to be useful in subjects that are compatible or at least reconcilable with prevalent Chilean gender norms. The law on domestic violence is an example: once the widespread dimensions of the phenomenon became public, the national cultural norms did not prevent acting against violence in the family – as the family forms the sacred nucleus of society and the weakest members of should have the right to be protected. In addition, Chile's international obligations underlined the need for action (Interview 20). CEDAW has had a similarly reinforcing function in other fields, e.g. in education, regarding measures to eliminate stereotypical gender roles, and in improving the situation of poor and rural women.

In contrast, where international norms collide with domestic norms, CEDAW was hardly suitable to produce legislative change. This is especially true for the field of reproductive rights, as this set of rights is associated with the prevention of motherhood, and thus points in the opposite normative direction of the idealization of motherhood so cherished in Chile. The strategy of SERNAM in this regard is to make use of the international confrontation to gain small achievements: for example, it used the indignant media coverage regarding the Committee's recommendations to legalize abortion to push for less controversial, but still important components of reproductive rights, namely for free access to sterilization and comprehensive sexual education for teenagers. While this strategy of slowly widening reproductive rights has been successful up to a point, it also has its limits: one example is the attempt of SERNAM and the Ministry of Health to provide emergency contraception which failed because of resistance from pro-life civil society groups. In the view of feminist NGOs

244 “es menos polémico que Beijing. En el fondo te permite lograr lo mismo con palabras que en Chile son menos combatibles (...) sin tocar terminos tabu.”

245 In 2001, a highly controversial debate on the public distribution of emergency contraception (the "day after pill") took place. Its proponents declared the pill as comparable to other contraceptives already in use, as its function is to prevent the fertilized ovum from nesting in the uterus. According to international standards, human life starts only after nesting, thus, the pill would not be abortive. However, the Church and conservative parties (including parts of the governing Christian Democratic Party) deemed this an artificial separation and instead claimed that life would start with fecundation. Further, the opponents feared that approving the pill would open the way for legalizing abortion. Proponents, on the other side, stressed the function of the pill as emergency contraception that should be allowed to be used after a violation, or to help reduce teenage pregnancies (Aravena 2001) After the pill was officially accepted by the Ministry of Health, pro-life NGOs filed an appeal before the Appeal Court which was not accepted, but a few months later approved by the Supreme Court. The government stuck to its general support of emergency contraception and approved another type of the pill (instead of Postinor, Postinor-2), however, it did not provide public access to this pill: "At the moment, the pill of emergency contraception is neither available in the public health service, nor in the attention centers for women who suffered a violation. There are no information campaigns regarding this method, and there is still disinformation about emergency contraception among the health care providers and among the population in general." (Actualmente, las PAE (pastillas anticonceptivas de emergencia, S.Z.) no están disponibles en los servicios de salud pública, ni en los centros que atienden a mujeres víctimas de violación. No se realizan campañas de difusión acerca del método, y aún hay desinformación sobre las PAE en los/as proveedores/as de salud y en la población en general.”) (Schiappacasse 2002) In July 2004, another judgment was passed that rejected the commercializing
working on this issue, not only the national normative climate is problematic, but also the hesitant attitude of SERNAM itself. For example, the *Foro abierto de salud sexual y derechos reproductivos* (Open Forum for sexual health and reproductive rights) presented a proposal for a skeleton law on sexual and reproductive rights in the year 2000. It was based on CEDAW and other international instruments, however, the *Foro* had to realize that it could not count on SERNAM as a powerful ally to support the initiative in the legislative process, as the WPA did not want to be associated with the *Foro's* position on reproductive rights that is explicitly based on the self-determination of women (Interview 23). Thus, if SERNAM draws heavily on the international human rights framework in some areas, it does not do so in others. This attitude is not consistent with the international understanding of the indivisibility of human rights.

**7.1.3.2 The negligence of international human rights standards within the Chilean judiciary**

Apart from the government and legislative bodies, the judiciary is, theoretically, the most relevant national actor to incorporate international norms into the domestic legal system. In Chile, the relationship between international and national law is defined in article 5 of the Constitution. Accordingly, the state accepts that its national sovereignty is limited by the respect of "essential rights that arise from the human nature … guaranteed in the Constitution as well as in the treaties ratified by Chile that are into force." This provision is not explicit about the hierarchy between international and national law – however, the majority of legal interpretations estimate that international treaties are both superior to the Constitution and to ordinary laws, while another opinion classes them subordinate to the Constitution, but superior to ordinary laws (Medina and Mera 1996; Veloso 2000: 110). In any case, once a treaty is ratified and published in the *Diario Oficial*, it becomes effective and may be used in domestic rulings (Veloso 2000: 108f). From this moment on, non-compliance with the treaty cannot be justified with conflicting national laws (Medina and Mera 1996: 55). The role of the judiciary in this process is, first, to be aware of the effective international treaties to be able to use them, and second, to react in a corrective way if domestic laws are not in accordance with international obligations (Chiarotti 2000: 22).

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246 "los derechos esenciales que emanan de la naturaleza humana … garantizados por esta Constitución, así como por los tratados ratificados por Chile y que se encuentren vigentes."
This framework would allow a variety of interventions by part of the judiciary, especially if national laws can be interpreted as deviating from international standards. However, Chilean judges and lawyers have hardly made any use of CEDAW. Three reasons can be identified for this neglect of international standards: First, the international human rights framework is a highly problematic concept because of the country's recent past (see 7.1.1.2). Many of the international principles are not part of the national culture of rights, for example, the principle of non-discrimination. In one concrete court case, a pregnant unmarried student who was expelled from the private university where she was studying successfully sued the university. The case was not, however, based on the principle of discrimination, but on property rights, as the parents of the student had already paid her tuition fees. A Chilean professor of international law and member of the UN Human Rights Committee relates that she asked the attorney why he did not invoke the norm of discrimination, but he did not even understand the question: "He said 'But why discriminatory?' After I explained it to him he said, 'Ok, fine, but the courts will never accept that, while property rights are sacred.' So I believe that the courts have not been exposed to the challenge to use norms of CEDAW." (Interview 19) Apart from the low priority the courts have been attributed to non-discrimination, it also does not pay off for an individual to invoke the anti-discrimination norm before a court, as the Chilean legal system does not provide for any form of compensation (Interview 21).

The second reason is that Chilean lawyers and judges usually apply Chilean law and have only limited knowledge about international norms, let alone gender-specific norms. Awareness is usually higher if a domestic law mentions the international norms it is based on; maybe this is the reason why the Convention on the Rights of the Child has been used to some extent in Chilean courts, as the parenthood law draws intensely on it (Interview 21). In the case of CEDAW, some (female) judges have exceptionally made reference to it, "to interpret some norms of the domestic violence law in favor of women, … but there are not many cases, and they have not reached higher courts, but were dealt with recently in first instance rulings." (Interview 20) Yet most judges are not aware on international gender norms, and civil society actors have not challenged them in invoking these norms: neither individual women nor women's organizations have made use of international standards to claim their rights (Interview 20).

247 “Me dijo: 'Pero porqué discriminatorio?' Después que yo le expliqué me dijo, sí, claro, puede ser, pero los tribunales no van a aceptar eso, mientras el derecho de propiedad – sagrado. Entonces yo creo que los tribunales no hayan sido expuestos al desafío de usar normas del CEDAW."
248 “para interpretar algunas normas de la ley de violencia intrafamiliar en favor de las mujeres, … pero no son muchos casos, y tampoco han llegado a los tribunales superiores, son recien fallos que empiezan en primer instancia.”
Third, not only ignorance, but also resistance regarding women's rights is widespread among the judiciary. A Chilean member of the international association of women judges explains that when she was planning to provide trainings for Chilean judges on gender equality norms, she had to conceal the content of the seminar to reach the target group:

"If we had talked about human rights, it would have been suspicious, if we had talked about violence against women, it would have been suspicious as well because we would have been discredited for being feminists. (…) So we disguised … this seminar. We chose topics that were discussed in the light of legal protection – strangely, all cases turned out to be cases of discrimination against women." (Interview 21)

To the extent that younger lawyers and judges join the judiciary, this attitude may gradually change. Lawyers trained during democracy have received a more international education, and they have not lived through the repression and personal intimidations judges experienced during dictatorship. Thus, they are better prepared to leave the culture of obedience behind and understand their duties as the interpretation of norms in the best interest of all citizens (see Interview 21).

7.1.4 Provoking opposition and enhancing feminist critique – CEDAW's repercussions within civil society

While CEDAW as an international treaty does not address any other national actor than the state, its ideal of achieving de-facto gender equality is impossible to reach without the involvement of civil society actors. In Chile, CEDAW has caused significant repercussions within society, both regarding actors rejecting its implementation and actors using it to strengthen feminist arguments and to produce de-facto change in the spirit of the Convention. Both groups of actors follow goals much broader than the law-oriented logic of state institutions, that is, they push for a comprehensive vision of society, namely the model of Christian family order in the case of CEDAW opponents, and self-determination for women in the case of CEDAW supporters.

The protests against the Convention have centered on the Concluding Comments issued by the Committee and on other international events such as the Chilean signature of the Optional Protocol to the Convention (see 9.2.2) or the Beijing+5 conference. The arguments

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249 “(S)i hablamos de derechos humanos, era sospechoso, si hablamos sobre violencia contra la mujer, también era sospechoso porque éramos unas feministas (…) Entonces este seminario … lo disfrazamos … Elegimos materias que hubiera sido discutidas por el recurso de protección …. que curiosamente resultaron ser casos de discriminación contra la mujer.”
brought forward are repeated in each occasion – especially the accusation that Chile's international commitment implies the approval of legalizing abortion (see 9.2.2; Molina 2000; Interview 18). The social groups behind this refusal are well equipped to cause impact in public opinion, as they represent political and moral power and control a huge part of Chilean media. In addition to the conservative parties, the Church and the media, a range of civil society organizations has formed since the mid-1990s to proclaim the protection of unborn children and of the heterosexual family including its "natural" division of labor between husband and wife (Molina 2000). The conservative opposition has been successful in producing an extremely polarized public climate and in forcing SERNAM into a defensive position, yet the WPA has also learned to strategically use the attacks. For example, in reaction to the protests around the Optional Protocol, SERNAM publicly clarified that it did not support abortion and sought the dialogue with female right-wing Parliamentarians to discuss the problem of unwanted pregnancies. The WPA took this opportunity to make publicity for its policies regarding this problem, and stressed the need for comprehensive sexual education and access to contraception – thus, while abortion remains an untouchable topic, other measures regarding reproductive rights that used to be rejected as well are increasingly understood as necessary (Interview 18).

The women's rights organizations that support CEDAW have two main goals in using the Convention in their work: on the one hand, they want to proliferate knowledge and awareness among women regarding their rights, on the other hand, they aim at developing strategies to concretely improve women's lives, which sometimes, but not necessarily include activities to influence or correct public policies. In both fields, international norms serve as a crucial source to create alternative visions. This study draws on the positions of three different organizations that have been using CEDAW explicitly in their work: the first one is REMOS (Red de mujeres en organizaciones sociales – Network of women in social organizations), a network that was founded in 1995 and according to its own estimations represents 5 to 10 000 organized women living in shanty towns. REMOS starts working from the living conditions of women as articulated by themselves and uses international instruments to elucidate the gender- and class-based forms of discrimination poor women have to deal with (see Interview 24). The second organization is La Morada, one of the old-established feminist women's NGOs founded in 1983. It has been working in the areas of citizenship, mental and sexual health, and education and culture and runs a legal and psychological advice center as well as an independent radio station. Human rights in a comprehensive sense have been one of the

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250 To communicate with its members, REMOS publishes a bimonthly journal but it has no Internet presentation, most likely because of lack of resources and because its target group does not have easy access to the electronic medium.
main foci of La Morada’s activism (Interview 22 and La Morada 2005). The third organization is the Foro abierto de salud y derechos sexuales y reproductivos (Open Forum for sexual health and reproductive rights). It was founded in 1989 and functions as an umbrella organization for the improvement of women’s health and against discriminatory public policies regarding sexual and reproductive rights. Since its foundation, the Foro abierto has continuously been working around the issue of abortion and is one of the rare voices that publicly pleas for its de-penalization (Interview 23 and Foro abierto de salud y derechos sexuales y reproductivos 2005).

All three groups try to increase knowledge on international women's rights and make them accessible to ordinary women. Poor women are a special target group: REMOS cooperates with the juridical personnel of La Morada to learn about the comprehensive meaning of CEDAW and other international instruments, and it passes this knowledge on to the women of its member organizations. In the experience of REMOS, public institutions do not take care of informing poor women about international standards. Thus, the network cooperates with social organizations in the neighborhoods to reach as many women as possible, because "if there is no knowledge, there is no right" (Interview 24). The goal of this information is to give the Convention and the Beijing demands practical and context-related meaning and to initiate awareness raising and learning processes. For example, the Convention is used in combination with collective pedagogical methods: in workshops, women describe what they dream of – e.g. a life in freedom from poverty, violence and organized crime – and hear other women with similar dreams of a better life. In learning about the Convention, they realize that their dreams are actually their rights. On the long run, REMOS intends to empower the women through these collective processes.

Likewise, the Foro abierto uses international norms on reproductive rights to offer an alternative to the doctrine of the Church. To give just one example how this idea is put into practice: over a period of time, the Foro organized a weekly vigil in the main plaza of Santiago to publicly mourn for aborted fetuses. The intention of this commemoration was to open a public space to talk about the reasons of women to undergo an abortion, and about the grief and guilt connected to it. The reaction of many women showed that the official condemnation has not helped them to prevent an abortion, but left them alone with their feelings of remorse:

"The majority of the people have never talked about the topic, they have never talked about abortions they went through themselves, and many women … live it with a lot of shame. There were women who approached us and told us that they had six abor-

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251 “Si no hay conocimiento, no hay derecho.”
tions, and that they had been carrying this burden of guilt ever since. (...) What I hear is that in the beginning, there is a rejection to the word 'abortion' and to abortion as an option. It is very, very negative. But if you start a conversation with any person … an abortion will come up in her life. It is in everyone's history." (Interview 23)

In this and other activities, the *Foro abierto* aims at changing public language and at reframing abortion as an issue of health and of the right of women over their own reproductive capabilities. Based on international agreements, the organization tries to make reproductive health understood in its comprehensive meaning and *beyond* the single issue of abortion. In this context, "everything that is the Convention is coherent with our work." (Interview 23)

*La Morada* intends to use the international framework to re-establish a domestic language of rights. In the organization's view, public policies lack participation of ordinary citizens, and do not follow a rights-based logic:

"In a country like ours, … participation … is not real participation. We believe that it is very important for women to recuperate the logic of rights, because what happened … after Beijing is that everybody focuses on public policies … that are not necessarily rights, but programs, very specific, particularly designed for very poor women. (…) Public policies are decisions … with hardly any incidence of the citizens." (Interview 22)

What *La Morada* wants to promote is the notion of participating citizens "in permanent development, who have necessities, and who want to advance in dignity" (Interview 22), not citizens as beneficiaries only. In this, the Convention and the whole international human rights framework are helpful, especially as they are interpreted and proliferated by transnational women's rights networks. The work of these networks is indispensable for *La Morada's* work, its focus on information exchange and support for domestic action in the spirit of international standards goes beyond the North-South divide often so conflictive for non-governmental cooperation:

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252 "La mayoría de la gente no ha hablado del tema, no ha hablado de sus propios abortos, y muchas mujeres … lo viven todavía con mucha culpa. Entonces se acercaron mujeres, que contaron que habían tenido seis abortos, y que llevan esa cruz en la espalda. (…) Lo que yo escucho es que sí en principio hay un rechazo al aborto como palabra y como posibilidad. Es algo que es muy, muy negativo. Pero si tu empiezas a conversar un poquito con cualquier persona … va a salir un aborto en su vida. Entonces, es algo que está en su historia."

253 "todo lo que es la Convencion es coherente con nuestro trabajo."

254 "En un país como el nuestro, ... la participación ... no es participación real. Creemos que retomar la lógica de derecho, es muy importante para las mujeres, porque lo que ha ocurrido ... después de Beijing ... , es que se centran todas las políticas públicas (que) ... no son derecho necesariamente, ... son más bien programas, muy focalizados, destinados especialmente a mujeres de sectores muy pobres. (…) Las políticas públicas son decisiones ... donde la incidencia de la ciudadanía es bastante poca."

255 "en permanente desarrollo, que tienen necesidades, y que lo que se quiere es avanzar la dignidad"
"I highly appreciate the work of IWRAW Minnesota, it has nothing to do with resources and donations, but ... I can ask for information and they are able to show me what happened here and there, and they familiarize me with the international system so that I can use it in my country." (Interview 22)

Both the Foro abierto and La Morada used their shadow report for domestic publicity awareness raising activities, e.g. they organized a celebration and launched a publication on women's rights in which they strongly supported the ratification of the Optional Protocol to the Convention. In addition, La Morada invited the CEDAW chairperson to Chile and arranged meetings with SERNAM officials, Parliamentarians and judges (Interviews 22; 23). The Foro abierto also engages in influencing political decision makers on the regional and national level, and it prepared a skeleton law on sexual and reproductive rights that was submitted to Parliament in 2001 by four Parliamentarians. For this proposal, CEDAW was one major baseline. The Foro has organized several events to make the proposal public among civil society and to gather voices of support because in the organization's view, the most important effect of the law would be that the whole population, not only feminists, become aware of their reproductive rights.

In sum, women's NGOs want to provoke cultural change and engage in a range of activities – awareness raising among women, changing discriminatory language, lobbying politicians and influencing legislative processes. As the task is enormous, all means, including international norms, are utilized to work on it. In a long-term perspective, changes are perceivable, even if they are slow. CEDAW and the Committee of experts play a part in this process to the extent that they are integrated into transnational strategies of domestic actors. Those civil society organizations promoting values different from international women's rights norms also refer to CEDAW in their strategies, yet in the opposite way: for them, the Convention is as a mechanism alien to and inappropriate for the idiosyncratic normative context of Chile.

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256 "Yo valoro inmensamente el trabajo del IWRAW Minnesota, que no tiene nada que ver con recursos ni donaciones, ... sino con (que) ... yo puedo ... pedir información y me pueden mostrar lo que ocurrió acá, lo que sucedió allá, y me van haciendo conocer el sistema internacional, para poder usarlo en el país."

257 The ley marco basically identifies an unsatisfactory situation in Chile regarding sexual and reproductive rights and lays out the right of any citizen to enjoy his or her sexuality based on liberty, autonomy and equality. In doing so, it does not refer to any Chilean law, but draws on the international human rights framework and CEDAW specifically. Often, the exact language of the Women's Convention is used, e.g. regarding the elimination of cultural stereotypes or in defining discrimination (Propuesta 2000).
7.1.5 Strategies and pitfalls for the implementation of international gender norms - lessons from the Chilean case

For the Chilean context, the three explanatory factors for compliance with international gender norms discussed in chapter 6.2 – degree of prosperity, openness of the political system including representation of interests of women, and cultural affinity between domestic and international norms - can be described as follows:

Prosperity: Being one of the wealthiest countries of Latin America, Chile has produced steady economic growth during the last 15 years, even if curbed by the Asian crisis of the late 1990s. This growing prosperity has materialized in a higher on-average living standard and in poverty reduction; however, income distribution has become more uneven, the percentage of the "working poor" has risen, and social security as well as educational systems have developed into a two-class system. Thus, large parts of Chilean population (and more women than men) do not benefit from the country's socio-economic prosperity.

Political system: After the rupture caused by 17 years of dictatorship, the political system succeeded in returning to democracy, however, it displays a range of exclusionary factors: conservative interests are over-represented, other perspectives, most notably those of social movements, women and the poor are marginalized. In addition, public opinion is dominated by conservative media groups; thus, the political conditions for participation and representation of the interests of all citizens are distorted. In the case of women's interests, one indicator for their political under-representation is the low number of female Parliamentarians. This misrepresentation is also reflected in the Women's Policy Agency SERNAM: while it is a great achievement of the democratic transition and tightly connected to international standards, it is also a product of the political power of conservatism in Chile. As the mandate of SERNAM is to design and coordinate public gender policies, but not to realize them, the WPA is forced to negotiate with other public institutions that are often not willing to work for gender equality within their portfolio. Also, SERNAM tailors its policies according to what can realistically be achieved, which has lead to its low profile in controversial ethical questions such as the legalization of abortion.

Cultural match: Due to the authority of the Catholic Church and long-established authoritarian social structures, the gender norms prevalent in Chile are only partly compatible with international gender norms. In particular, the principle of non-discrimination, the right of women to have control over their own bodies, and the idea that men and women should have equal rights and responsibilities within marriage and the family are not harmonizing with the Chilean context, where the social valorization of women remains tightly connected to their
role as mothers. Every international impulse that *interferes with motherhood* is rejected, as the debate on reproductive rights illustrates, while every impulse that *enhances motherhood* has good chances to be integrated into public policies, e.g. decent education, certain types of health programs, poverty reduction measures for single mothers, or prevention of domestic violence. As the "custodians" of traditional family values are powerful in all social sectors, a development towards the fulfillment of international gender norms seems unlikely, especially since those actors enhancing international norms, most notably women's NGOs and SERNAM, form only a weak counter-balance.

Under these conditions, which strategies succeed in bringing international women's rights to Chilean women, and which don't? CEDAW has produced domestic change in two dimensions: first, SERNAM has strategically used it to push for legal changes and for modifications of traditional gender stereotypes. These changes can be described as a shift from "motherhood under any circumstances" towards "responsible motherhood" or even "responsible parenthood". However, the role of men within the family is only starting to gain relevance in public debates, and has often been used as a pretext to slander "incomplete" families. International gender norms, and CEDAW in particular, have been used to support motherhood and also to improve the conditions of being a mother. Where this normative shift materialized into public policies instead of stopping short at the rhetorical level, it certainly improved the lives of many mothers. Examples for these improvements are: the income-generation programs for single mothers, which were opposed by the right wing as a support of the wrong form of families and as a result, are limited in terms of funding; all measures to publicize and ostracize domestic violence; the women and health program that acknowledges the physical and psychological burdens of giving birth and raising children; all legal changes that aim at improving reconciliation of work and family responsibilities, while the real effects of these legal provisions are often ruined by employers who do not comply with them; sexual education to prepare teenagers to their family responsibilities and to reduce teenage pregnancies; and the parenthood law that will at least partly ease the burden of single mothers, as it provides more effective measures to make biological fathers assume responsibility for their children.

Second, the WPA and women's organizations have used CEDAW where it *collides* with Chilean traditions, but in a more subtle way. This is especially true for the field of reproductive rights that has been constructed in Chile as the contradiction of responsible motherhood, even if it contains many more elements than just the prevention of pregnancy. In a highly disapproving climate regarding virtually all issues of reproductive rights, be it abortion, contraception, sterilization or sexual education, both SERNAM and several women's
NGOs used the international discourse to extend the discursive space on the matter. Governmental and non-governmental actors follow different strategies in doing so: SERNAM disassociates itself from radical positions, especially the legalization of abortion, but uses the public attention to explain and defend other reproductive health measures like public distribution of contraceptives or sexual education of teenagers. The NGOs working in the field come closer to the international normative framework: they defend the norm of women’s reproductive self-determination, including abortion if adequate. On the long run, this position will be indispensable to transform the reproductive rights situation; however, if the groups working in the field cannot count on any institutional support, the position might not be powerful enough to get heard.

A highly substantial change in terms of gender roles within the family represents the recent legalization of divorce. International impulses were undoubtedly relevant for this shift. While the marriage law remains discriminatory to a certain extend, the amendment is based on a real-life-perspective on marriage and does not anymore uphold the Christian ideal of it. It admits that it is in the interest of all citizens to dissolve a marriage without losing entitlements arising from the union.

Looking ahead, are the current achievements going to be as much as Chile will get out of the international women's rights framework, or is further change conceivable? Strategically, it is advisable for those actors supporting international standards to use the now accepted idea of "responsible motherhood" to strengthen the idea of non-discrimination and change of roles within the family, and slowly push for reproductive self-determination, as this is the most delicate field. "Responsible motherhood" could be extended to a model of "responsible womanhood", entailing professional responsibility based on equal pay and equal treatment in the workplace and the need of role models for girls; another extension could be responsible fatherhood and manhood. Also, the importance of the family entails a point of contact with fair working conditions for women as much as for men and the possibility to provide for one's own family. It remains an open question if CEDAW will be a crucial incentive in this process of social change. Conceptually, it entails the ingredients, yet if it can be effectively used also depends on a supportive political context, as much in Chile as on the international level, and on the strength of transnational non-governmental mobilization.
7.2 Gender equality and international women's rights – the use of CEDAW in Finland

7.2.1 The national context

Gender sensitivity - typically Finnish?

In a German standard publication on political systems in Western Europe, the description of Finland starts as follows:

"Four special features make the Finnish political system stand out within Western Europe: First, Finnish women obtained universal suffrage as early as in 1906. Second, Finland was successful in maintaining and developing a Western European identity during the cold war period, although it kept at the same time close ties with the Soviet Union. A third characteristic is the long time participation of communists in several governments between the mid 1960s and the early 1980s. Fourth, the first national environmental minister worldwide coming from a Green party was nominated in Finland in 1995." (Auffermann 2003: 187)

Fitting into the general image of the Nordic welfare states, Finland is characterized here as a gender-sensitive, conciliatory and pluralistic nation. While it is unusual in mainstream political science to consider the political participation of women an outstanding feature of any political system, in the case of Finland, it is almost impossible to separate "general" from "gender-oriented" politics. This is partly due to the crucial roles Finnish women have traditionally played in public and community life, and partly due to the logic of the "women-friendly" Finnish welfare state that defines typical women's tasks such as childcare and social work to a great extent as public duties (Borchorst 1994; Hernes 1987; Siim 1988). In Finland, women's status has been lifted within a general attempt to decrease all kinds of social inequalities. Thus, it has been relatively consensual to promote women's issues if constructed as contributing to the goal of gender equality. In contrast, claims based on women's interests as different from those of men did not match with the normative framework of political decision-making. Hence, despite the very high standard of Finnish women's socio-economic independence, structural discrimination against women, e.g. expressed in the wage gap or violence against women, has been difficult to recognize and to transform. Feminist scholars have called this...

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258 "Vier Besonderheiten heben Finnlands politisches System in westeuropäischen Rahmen hervor: Erstens erhielten die finnischen Frauen bereits im Jahre 1906 … das allgemeine Wahlrecht. Weiterhin gelang es Finnland, während der Ära des kalten Krieges eine westeuropäische Identität … aufrechtzuerhalten und zu entwickeln, obwohl es gleichzeitig besonders enge Beziehungen zur Sowjetunion unterhielt. (…) Als dritte Besonderheit ist hervorzuheben, dass in Finnland zwischen Mitte der 60er und Anfang er 80er Jahre über lange Perioden hinweg Kommunisten an der Regierung waren (…). Viertens stellen die finnischen Grünen seit Frühjahr 1995 den weltweit ersten grünen Umweltminister auf Ebene eines Nationalstaates."

7.2.1.1 Political and socio-economic egalitarianism: developments towards the Finnish welfare state

Before World War II, Finland was a predominantly rural society with most Finns living in the countryside and working in agriculture (Setälä 1992). While industrialization slowly started to take place in the first half of the century and literally flooded the country from the 1950s on, the roots and values of an agrarian society have remained relevant: in particular, Finnish social structure has been more egalitarian and community oriented than societies with stronger bourgeois features; the distinction between the public and the private has not played a pronounced role in organizing social relations; and all members of society – including women – have been constructed as strong and indispensable workers contributing to the common good (Nousianinen and Niemi-Kiesiläinen 2001; Setälä 1992). This community orientation curbed the development of individualism and led to an understanding of the individual in relation to the collective. For women, this has been a mixed blessing: it meant on the one hand that they have enjoyed the status of legal subjects from early on, but on the other hand, this happened "at the cost of the protection of their individual rights: women have been allowed rights to the extent that such empowerment was necessary for the needs of the community, e.g. the kinship group, the estate, the nation state." (Pylkkänen 2001: 107) While this community dependence certainly affected the status of men as well, women's work was still not as highly valuated as men's, and women's legal status was, while comparatively high\textsuperscript{259}, not on equal footing with men's.

Finnish egalitarianism and community orientation are partly rooted in the country's political history: under the long period of Swedish rule until the beginning of the 19th century, farmers were not in serfdom and could establish their own local collective structures. The subsequent Russian occupation generated a nationalist Finnish movement for independence at the end of the 19th century which had two significant effects on Finnish political culture: first, it encouraged Finns to organize in political parties, trade unions, interest groups and cultural

\textsuperscript{259} For example, Finnish marriage law has been influenced by the central position of the peasant "matron" and is not entirely based on the bourgeois notion of the male head of household. As early as in 1889, married women were conceded the right to "control their own income and private property in order to meet the needs of the family more effectively" (Pylkkänen 2001: 123). However, it took married women until 1929 to gain entire legal independence (Pylkkänen 2001; Setälä 1992)
and social organizations, and to build coalitions for the common goal of independence (see Auffermann 2003). Second, the attempt to unify all social forces went hand in hand with a democratization project: in 1906, when Finland still had the status of a Russian grand duchy, the electoral system was changed from a four estate system to universal suffrage. This change extended the right to vote and to stand for election to Finnish women at a very early stage\(^\text{260}\)
 but also to most Finnish men as the former system had excluded ordinary male workers from suffrage as well (Setälä 1992: 3). Thus, Finland changed from one of the most authoritarian electoral systems in Europe to the most democratic one, a change to the benefit of Finnish men and women of all social classes (Bergman 1998).

The struggle for national independence succeeded in 1917 and was followed by a short civil war between "red" working class and "white" middle class fractions won by the "whites". As a result, the middle class tried to increase its normative influence on the urban and rural working classes. The crucial idea of this project was to improve the conditions of the working class through education, yet education was not understood as a neutral lifting of knowledge, but as a way to make the middle class model of life the dominant one. Women played a crucial role in this process: on the one hand, bourgeois women's organizations taught working class women how to lead a cultivated household and what this meant for adequate child rearing; working class women, on the other hand, were the most important transmitters of the new life style into their communities (Pylkkänen 2001; Setälä 1992). The model of the non-employed female family caretaker was not only constructed as best representing female "decency", but also as a symbol for European-style modernity, in demarcation to the Finnish double income model which was considered appropriate for a poor, agrarian society (Bergqvist et al. 1999b: 145). Arguably, the "housewife-model" did not so much change the de-facto situation of Finnish women being a significant part of the labor force, however, the understanding of bettering the nation through (gendered) adult and child education gave rise to the later welfare state policies. Women politicians in the first half of the 20\(^{th}\) century engaged predominantly in social policies directed towards mothers and children. In doing so, they shaped the notion of "political motherhood", that is motherhood understood not merely as individual activity, but also a public responsibility (Bergman 1998: 107; Kuusipalo 1992).

The democratic political system set up after Finnish independence was a mixture of authoritarian, participatory and consensus-oriented elements. On the one hand, a semi-presidential system was established that granted wide-ranging competences to the President,

\(^{260}\) The first state granting women the right to vote was New Zealand as early as in 1893, however, Finnish women obtained universal active and passive suffrage in 1906 and thus, were the first ones in the world to vote and to stand for election (Setälä 1992: 2).
especially the exclusive authority over foreign affairs. Regarding domestic politics, the President's powers were not clearly separated from the government's responsibilities. Thus, the executive power of the government was relatively weak in comparison to the President's. On the other hand, the Finnish political system also strengthened democratic traditions "from below", e.g. in the person-oriented electoral system of proportional representation: while parties present lists of candidates, there is no proposed order of ranking candidates by the party and voters can vote for single candidates. Thus, the composition of the legislative is very closely tied to the voters' personal preferences. Another element of the electoral system fostering participation is that parties do not have to reach an electoral threshold to enter Parliament. A multi-party system emerged in the early 20th century and most of today's political parties came into existence at that time261. Finally, a particularly Nordic expression of democratic control is the absence of a Constitutional Court in Finland. The task to interpret Constitutional provisions lies with the Parliament, which shows the preference to have an elected body performing this fundamental task rather than a non-accountable body consisting of nominated judges (Auffermann 2003; Bergman 1998). In sum, "the collective agrarian tradition, opportunities for education and social upward mobility within the state rather than in the competitive civil society, … and the united campaign against Russian repression" (Pylkkänen 2001: 115) brought about a strong and inclusive Finnish state as the central body representing the interests and values of a homogeneous people262.

The period following the World War II was shaped by new economic and political developments: economically, Finland went through a lightening-speed industrialization process: within few decades, a still predominantly agrarian economy was radically transformed by the fast-growing timber, metal and later electronic industries. The export-orientation of Finnish economy and its high competitiveness has led to a fourfold rise of the country's living standard since World War II and has served as the material base for the development of the Finnish welfare state (Auffermann 2003). Politically, the consequences of World War II brought

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261 The Social Democratic Party (SDP) was founded in 1899 out of the workers' movements. In 1918, the Communist Party followed, however shortly after its foundation in 1918 it was declared illegal. Only after World War II did the Finnish People's Democratic League that included the Communist Party unfold significant political influence. The foundation of the Swedish People's Party (RKP) in 1906 was a result of the 19th century language conflict. The Agrarian Union was created in the same year to represent the rural population – however as its rural clientele diminished with industrialization, the party went through reforms and splits and was renamed to Center Party in the 1960s (KESK); finally, the 1918-founded National Coalition Party (KOK) represented the urban middle class (Auffermann 2003).

262 In the first half of the 20th century, the overwhelming majority of Fins lived in rural areas and belonged to the Lutheran church; ethnic minorities of Sami and Roma were existing, but represented an infinitesimal percentage of the population and did not play a significant role in national politics; apart from the rural – urban division, the linguistic cleavage between the Finnish speaking majority (approx. 90%) and the Swedish speaking minority (approx. 10%) was crucial in Finnish history, yet it was more intense in the 19th than in the 20th century, when the Swedes still represented the political elite of the country (Auffermann 2003; Pylkkänen 2001).
Finland to pursue a foreign policy of "active neutrality" and to establish relations with the East and the West. The reparations Finland had to pay to the Soviet Union were transformed into stable trade relations and accelerated Finnish industrialization. The close relationship with the Soviet Union had both internal and external consequences for Finland: internally, the difficult international balance Finland had to maintain required broad national unity and thus reinforced the political culture of consensus orientation. Internationally, Finland was strongly engaged in the United Nations and the CSCE as well as in the Nordic cooperation, both to be able to mediate between Eastern and Western Europe and to guarantee security and welfare to the Finnish people (Auffermann 2003). Finland's neutrality prevented it from joining the European Union and the European Human Rights system until the block confrontation came to an end (Scheinin 1991).

Most importantly, the post war period transformed the Finland into a welfare state regime, especially since the 1970s. Its main purpose has been to provide the opportunity of participation through social citizenship that is based on socio-economic equality of all citizens. Education and social security have been considered the most important elements for this goal, thus public expenditures in these sectors were substantially expanded. The Finnish social security system is tax based and thus relies on high employment rates (Bergqvist et al. 1999a). The expansion of the social sector has produced a specific integration of women of which two dimensions need to be emphasized: first, the state has provided an ever-increasing job market for women, as teaching and social work have turned into female professions. This has led to a highly segregated labor market where jobs for women are sufficiently available, but with considerably lower salaries than men's. This segregation – and accordingly, the difficulty to compare male and female work - has made the wage gap between men and women impossible to overcome until today. With a view to the comparatively high level of income equality in Finland, Nousiainen and Niemi-Kiesiläinen conclude that "(t)he paradox of the Nordic labour market seems to be that the processes that produce equality in general are not well suited to bringing about gender equality." (Nousiainen and Niemi-Kiesiläinen 2001: 10) Thus, the welfare system has brought Finnish women economic independence and emancipation, but on a lower level than Finnish men (ibid.). Second, the high female employment rate has decreased women's capacity to perform unpaid reproductive work. In the 1960s, the earlier middle-class role model of the "mother citizen" was replaced by the "female working citizen" and by the public understanding that family work must not be a private matter shouldered by individual women. Accordingly, the state became an institution of "social mothering": it provided public services to support parenting and to enable mothers - and ideally, fathers as well - to live in a
more self-determined and independent way (Nousiainen and Niemi-Kiesiläinen 2001; Bergman 1998).

Underlying these changes was a new discourse on social equality and the state stimulated by the antiauthoritarian social movements of the 1960s. While these movements never became as radical in Finland as in other countries, they gave important impulses for equality policies of the subsequent decades (Holli 1992). The rapid modernization of the 1960s brought about "single issue movements", especially movements for peace, environmental protection and "sex equality" as it was termed at that time. Their aim was to move away from the authoritarianism and uniformity of the 1950s and to improve society as a whole through rational knowledge (Holli 1992: 73). With different foci, the single-issue movements expressed the opinion that all individual interests were necessary and fruitful for society as a whole and needed to have a voice in the collective. Social inequalities should be leveled in such a way that sex (or class or ideological background) would cease to make a difference. The crucial guarantor for this understanding of individual self-fulfillment and social justice was the state. Accordingly, the state as institution was never opposed – it "was considered neutral as such, although in the hands of 'wrong' people, such as representatives of outdated attitudes or of bourgeois hegemony. In the hands of the radicals the state would be a reformistic and active defender of everybody's best interests." (Holli 1992: 80) Civil society action was not considered necessary as such, but only to indicate the state's lack of agency.

After its heyday in the 1980s, the Finnish welfare state went through fundamental changes in the 1990s. Politically, the end of the cold war changed its position both towards the successor states of the Soviet Union and Western Europe. Finland abandoned its imposed neutrality doctrine, maintained economic and security cooperation with Russia if on a much lower level, and established new political and economic relations with the Baltic states. Further, Finland decided to join the EU - a decision that arguably was the dominating and most contentious foreign policy issue of the 1990s. In terms of military policy, the country has remained neutral so far and has continued its peace-keeping engagement within the United Nations. Especially in the context of EU integration, foreign policy issues have become more intertwined with internal decision-making processes. Consequently, the Constitutional reforms of the 1990s have weakened the President's authority in foreign affairs and have conferred both the Prime Minister and the Parliament more influence (Auffermann 2003). Further, the normative character of the Constitution was strengthened by integrating economic, social and educational rights not only for Finnish citizens but for everybody under Finnish jurisdiction.
Economically, the early 1990s hit the country with a severe crisis. This was partly due to the collapse of trade relations with the Eastern block, but partly also to the deregulation of financial markets in the 1980s that led to inflation and overheating of the economy followed by banking collapse and consumer retrenchment. The GDP growth turned negative in 1991 (-6.4 %) and 1992 (-3.6 %) and the unemployment rate rose up to 17.9 % in 1993; this resulted in significant cutbacks in the welfare system – in fact, of the cuts in public programs, 70% affected social services (Aalto and Holli 2005; Stephens 1996). While the economy has recovered through the second half of the 1990s, the relationship between welfare state and its citizens has changed: the state has delegated much of its earlier welfare provisions back to individuals, the market, and the third sector (Aalto and Holli 2005; Kauto 2000). Arguably, women were hit particularly hard by this development, as many lost their jobs in the public sector and as the reduction of social services has increased their burden of reproductive work.

In sum, Finnish egalitarian collective culture established among a fairly homogeneous people, the national unity arising from the fight for national independence, and the opportunities of social mobility and education results in building an inclusive nation state. The industrialization process following World War II is the base for developing a welfare state that constructs care work as a public task. In the process of creating a high degree of socio-economic equality, the state is the main actor, however, political and economic changes of the 1990s lead to a reduction of the state's extended welfare provisions and to a reconstruction of the state-citizen relationship emphasizing individual responsibility.

7.2.1.2 The Finnish normative fabric – fertile soil for international human rights

The normative context of Finland provides a fertile soil for rights claims of disadvantaged groups, yet without focusing on particularity and difference, but on the (homogeneous) collective and on the share each group and individual should have of it. In this sense, the normative discourse does not follow a liberal tradition of human rights that stresses individualism; instead individual rights are always constructed in relation to the community. The egalitarian welfare orientation also provides a laboratory for the contemporary international debate on human rights as enabling life in dignity in political as well as in socio-economic terms. Even if Finland has provided relatively equal living on a very high level, its specific understanding of universalism has proofed to be somewhat limited in acknowledging social differences as well as group interests - such as those of women.

Two features of the Finnish context are particularly enhancing for the logic of international human rights norms and enforcement mechanisms: first, the cooperative political cul-
ture that enables an active process of interpretation and appropriation of international norms; second, the central role of the state in creating equal living conditions, as this setting makes the state a powerful actor to ensure implementation of international norms. In comparison, civil society actors such as the social partners or the media are less significant as promoters of human rights norms.

7.2.1.3 Mother, worker or woman citizen? The meaning of gender equality for Finnish women

The Finnish welfare state has provided an increasing living standard for all Fins, which remains high even after a severe economic crisis. The integration of women has been far reaching, even if at a lower level than men's. What kinds of gender ideologies and policies have shaped this context? The following section outlines the public debate on gender equality between then 1970s and 1990s, the relevant political actors in this field, and the crucial gender policy issues.

Over the last 40 years, gender equality has developed into the most pervasive norm on gender relations in Finland, yet the exact meaning of this norm has varied. The idea of "sex equality" came up in the 1960s (Holli 1992). In contrast to women's movements in many other countries, the Finnish sex equality movement did not focus on women as the oppressed group within a patriarchal society, but it aimed at lifting the status of women to that of men's so that sex would cease to have social significance. To achieve this change, equal participation of women in the public sphere – especially in politics and gainful employment – was necessary, which implied to liberate women from the burdens of reproductive work. In contrast to the earlier promotion of complementary gender roles as most functional for society, the antiauthoritarian movements of the 1960s saw sex equality as an improvement for both women and men (Holli 1992; Parvikko 1992). During the 1970s, this understanding of equality was integrated into the state and resulted in the creation of the first women's policy agency (WPA) in 1972, the Council for Equality between men and women (in Finnish Tasa-Arvoasiain Neuvottelukunta, acronym: TANE).

In the late 1970s and particularly in the 1980s, the "woman question" reshaped the gender equality discourse. Partly due to the discussions of feminist consciousness raising groups, partly due to new impulses in Scandinavian women's studies, and partly due to international influences, a women-centered perspective on society was developed. Both TANE and nongovernmental women's organizations argued that the achievement of substantial equality
required the focus on women's uniqueness and difference from men, with a special considera-
tion of the female body and sexuality that had not yet played a role in the Finnish equality
debate (Parvikko 1992). Accordingly, a discursive shift became visible in the argumentative
strategies of the WPA: In the early 1970s, it introduced proposals to realize gender equality at
the male standard. In the late 1970s, the Council started to question the meaning of gender
equality: Was it gender neutrality, the empowerment of women, equality of opportunities or
of results? In the 1980s, the Council argued that the "presence of women, as well as the inclu-
sion of women's standpoint in public policy (were) important parts of 'real equality’” (Holli
1996: 92). "Women's standpoints" were disengaged from the male reference and, contingent
on the strategy of the Council, also constructed in essentialist ways.

In the 1990s and after, gender equality has been less debated, however, it has become
part of a positive national identity in demarcation to other, less gender-sensitive nations (In-
terview 29). This self-perception is not entirely untenable, however, the high rhetoric value of
gender equality in the 1990s does not harmonize with real developments during that decade:
Especially the economic crisis has affected the living conditions in such a way that the recon-
ciliation of work and family has become more difficult – particularly for women. Due to the
difficult economic conditions, the acceptance of equal opportunity policies has diminished,
thus the question in today's Finland is how far substantial gender equality really ever went. In
the view of an NGO activist,

"we didn’t get economic independence because of an equality idea, but because Fin-
nish society needed women to work. And that’s why it has not changed the deep cul-
ture. When women are not needed, then the articles appear in the newspaper about
women’s responsibilities for children.” (Interview 30)

Internationalization is another factor that has influenced the Finnish debate on gender issues
since the 1990s: increased voluntary and forced migration and new ways of international co-
operation for Finnish women's organizations have brought new impulses, particularly regard-
ing differences between women. Before, women were predominantly conceptualized as dealing with similar problems (Interview 29).

The most relevant political actors to promote gender issues have been women organ-
ized within political parties, the WPA, and women's organizations and interest groups in se-
veral social fields. The Finnish case is exceptional in as far as women have unfolded most in-
fluence within political institutions: female representation in Parliament oscillated between 10
and 20% since the first elections in 1906 and rose over 20% in the 1970s which was a world
record at that time. In the 1990s, 33 to 38.5% of Finnish Parliamentarians were women. In
1926, the first female minister was appointed, and since the year 2000, Finland's head of state is a woman, the Social Democrat Tarja Halonen. Women represent 30-50% of party membership, but have had a lower share in leading positions. Several parties have internal quotas for executive organs, but none has quotas for electoral lists (Holli 2004). The integration of women has been pursued predominantly by means of women's sections. Since the mid-1970s, women's branches of political parties have been strengthened through an 8% allocation of public party funding (Bergqvist et al. 1999a). The strong descriptive representation of Finnish women has resulted in the substantial representation of women's interests, as the national Parliament has proven to be one of the crucial public spaces to discuss gender issues (Bergman 1998)\textsuperscript{263}. Women within parties have always engaged in linking the claims of women's activism and the legislative process. The relatively high success of this form of integrating women's interests is the reason for the state-orientation of Finnish women's organizations.

The establishment of the first WPA in 1972 is another expression of the state-orientation of Finnish gender activism. The Council for Equality was a result of the sex equality movement headed by the organization Association 9 (Holli 1992; Jallinoja 1986). Despite its short years of existence from 1966 to 1970, Association 9 was decisive in implementing the idea of sex equality into the public Finnish discourse and into state institutions. The organization's academic expertise made it an authority regarding gender issues that was received favorably in the media and consulted by state institutions. For example, a Committee on Women's Status set up in 1966 by the Cabinet included a considerable number of Association 9 members. Its proposal to establish a state institution to efficiently work for gender equality was realized in 1972 (Council for Equality 1997: 6). At about the same time, Association 9 dissolved and some of Association 9's former members were recruited as femocrats in the newly created WPA to work for their goals from within the state (Holli 1992).

Between 1972 and 1987, TANE was the only Finnish WPA. Its mandate contains several functions, among them research on gender equality, preparation of equality-promoting reforms for the public and the private sector as well as the monitoring of their implementation, and proposals for legislative and administrative measures to promote equality (Council for Equality 1997: 11). Initially, TANE belonged organizationally to the Prime Minister's office, later its secretariat has been attached to the Ministry of Social Affairs and Health. At the same time, the portfolio of gender equality has been assigned to different ministries, e.g. the Ministry of Defense from 1991 to 1995. TANE's gender-neutral name was chosen to signal its

\textsuperscript{263} However, women and women's interests have been underrepresented on the local level, which has started to change only recently with the introduction of gender quotas for municipal decision making bodies (see footnote 265).
responsibility for both women's and men's needs regarding gender equality. During its over 30 years of existence, TANE has been an opinion-leader in debates on public gender policies. Often, it has drawn public attention to neglected issues, e.g. gender inequalities in municipal decision-making bodies or violence against women (Council for Equality 1997). In comparison to other Nordic countries, the Council has been operating on a relatively low level in terms of human and financial resources. In 1987, two additional gender equality institutions were set up as enforcement mechanisms for the new Equality Act: the Ombudsman for Equality and the Board for Equality (Bergqvist et al. 1999a: 171). Subsequently, TANE and the Ombudsman's office were merged into one administrative unit, but separated again in 2001 because it proofed more efficient to keep independence between their policy-advisory and law-enforcing mandates. In the same year, a new Ministerial gender Equality Unit was set up for preparing the government’s equality policy.

While autonomous feminist movements did emerge in the 1970s, they remained low in numbers and did not become crucial in shaping the Finnish discourse on gender relations (Bergman 1998; Jallinoja 1986). Since the 1980s, academic women's studies have gained a foothold in Finland, and different women's organizations have formed networks with both internal and international orientation. For example, NYTKIS (The Coalition of Finnish Women's Associations) is an umbrella of Finnish women's organizations founded in 1988. It articulates common claims in national and international political affairs, especially on the EU and UN levels and in the cooperation with the Baltic states. In the 1990s, public authorities have started to value the increasingly international orientation of Finnish women's organizations and have increased public funding (Committee on Women's organizations 1996: 84ff).

The most relevant gender issues since the 1960s have been gender equality on the labor market, the organization of childcare, and since the 1980s the representation of women in municipal decision making. "Typical" movement issues such as the right to abortion264 and violence against women were non-issues in Finland, partly because they had already been solved, partly because they were hard to address in the national political culture. Due to inter-

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264 Access to abortion was legally granted in Finland in 1970. This right is based on the equal provision of reproductive health services to all women irrespective of social differences and regional infrastructure (Bergman 1999: 107). The interruption of a pregnancy was not seen as a "women's issue", but as an act of female and male responsibility to provide adequate living conditions for their children (Parvikko 1992: 99). Accordingly, the law does not reflect the right of the woman to decide over her body – instead, the final decision is left to the physician. TANE tried to initiate an amendment of the law in 1976 in assigning the free decision for an abortion to the woman, but this proposal was rejected (Council for Equality 1997). Nonetheless, abortion has never become a truly contentious issue, possibly because it has been an unproblematic procedure in practice. Likewise, shelters for battered women have not become a "feminist issue" in Finland: public authorities provided for shelters, but not to protect women from male violence in the first place, but to protect all victims of violence from the perpetrators, including women, children, and the elderly (Bergman 1999).
national influences, violence against women, prostitution and trafficking in women came up as gender issues only in the 1990s (Kantola 2004).

Labor-related gender inequalities continue to be a challenge in Finland until today. Women's wages remain considerably lower than men's partly because of the gender-segregation of the labor market. TANE made gender discrimination in employment one of its first fields of action and found discriminatory patterns in recruitment, salary brackets and regarding unemployment benefits. It called for anti-discriminatory legislation regarding the private sector as early as in 1977 and made a proposal for reducing pay inequalities in the public sector in 1980 (Council for Equality 1997). While the Finnish Equality act of 1987 is a latecomer compared to other Nordic states, it is a comprehensive law prohibiting direct and indirect discrimination on the basis of sex in all areas of public life, but particularly in the field of labor. The scope of discrimination is wide and includes sexual harassment and indirect discrimination related to pregnancy and child rearing. The Act obliges public authorities, educational institutions and employers to promote equality purposefully and systematically. It contains several promotional obligations, e.g. quotas for government commissions and municipal bodies\footnote{An explicit 60: 40 quota was added to the Act in 1995, because the previous provision to have a gender balance in municipal organs had not been clear enough and the number of women had not risen. Despite quotas being a rather uncommon practice in Finland, the amendment showed positive effects already by 1997 when the share of women's participation in local boards and committees had risen from 10 to around 40% (Council for Equality 1997; Holli 2004).} and other temporary special measures, e.g. in recruitment. Special treatment for reasons of pregnancy and motherhood are defined as non-discriminatory. Further, the Act contains a new type of sanction between civil damage and criminal punishment. As it provides for limited compensation only, the effectiveness of this tool has been questioned from a juridical perspective (Interview 28). The act does not authorize to interfere in families' internal affairs and in activities of religious communities\footnote{At first, the defence forces were also excluded from the scope of the Act, yet this was changed in 1995 when women were allowed to be part of the armed forces.}.

Since its adoption, the Act has been under review and was amended several times. To monitor the implementation of the Act, two new equality authorities were created: The Board of Equality was established to advice the judiciary in the interpretation of the Equality Act, but its opinion has not been requested many times. The Ombudsman has a twofold mandate: first, to advise employers how to best implement the provisions of the Equality act and thus, to prevent discriminatory practices beforehand. This includes assisting companies in drawing up equality plans and in concretely improving the equality situation in the workplace. The second part of the mandate is to investigate in complaint cases and advise the concerned individuals or groups how to proceed. Au-
authorities and employers are obliged to cooperate with the Ombudsman and provide all information (s)he requests. The Ombudsman often takes the role of a mediator, e.g. between employers and unions or individuals. Notably, 30% of the complainants are men who first predominantly turned to the Ombudsman in divorce and child custody cases, but in time are mostly concerned with similar problems as women, namely pay and hiring issues (Interview 25).

The second long-running gender issue has been the organization of childcare. With the continuing rise in female employment in the 1960s, the demand for public day care exceeded the supply by far. In the early 1970s, the two opposing ideas of how to solve this problem were to provide collective day care or to support individual day care through cash benefits for mothers. The 1973 Act on municipal day care represented the first option, but in 1985, home care allowance was additionally introduced, partly because it better served women living in rural areas, partly because municipal day care centers had not been able to meet with the demands. Since then, the municipalities have to either provide collective day care or financially support homecare for children under three years of age. An amendment of the Childcare Act in 1991 upgraded this service and guaranteed the right for any form of daycare for all preschool children from 1996 on. Thanks to a cross-party alliance of female Parliamentarians, this expansion of childcare services was not withdrawn despite the attempt to annul it in the years of the economic crisis (Aalto and Holli 2005; Bergqvist et al. 1999b: 145f). Arguably, the distribution of childcare responsibilities has worked better between women and the state than between women and men. Maternity leave was introduced as early as in 1964, special paternity leave is available since 1978, and since 1980, parents can share a comparatively long period of parental leave. However, while a growing number of fathers do take advantage of the now 18 days of leave upon the birth of the child, only a very small percentage has been sharing parental leave with the mother (Bergqvist 1999: 126).

Violence against women has been basically non-debated until the 1990s, and international influences were crucial in initiating the debate (see 7.2.3.1). Partly, this neglect can be explained with a comparatively high ability of women to control their bodies in a welfare state that provided for universally accessible sexual and health policies (Nousiainen and Niemi-Kiesiläinen 2001). Partly, however, the phenomenon has been veiled by myths, on the one hand by the image of the strong, rational woman who has a higher responsibility for a stable marriage or partnership than the man and who is unlikely to be constructed as a victim. Another myth is the assumption of the protective welfare state that would take care of a woman's needs if she has become a victim of domestic violence. Yet, the hidden nature and the psycho-
logical complexity of the phenomenon – the efforts of most women to deal with the problem on their own to maintain "normality", their fears and feelings of guilt – were long misunderstood (Ruuskanen 2001). The attitude towards the phenomenon changed slowly and it now receives more public attention. In 1998, the first official state-sponsored study on the dimensions of men's violence against women in Finland was published (Heiskanen and Piispa 1998). Among other things, the study found that 40% of adult women have been victims of male violence or threat thereof during their lifetime, a number that proofs that violence is a relevant feature in many women's lives. Most of the perpetrators of violence are former or current partners (50% and 22% respectively), followed by perpetrators acquainted to the victim (16%). Only a low percentage of the victims sought help (12%), and an even lower number of perpetrators did (6%). While the direct consequences of violence lie mostly in psychological damages of the victims such as depression and low self-esteem, the authors examined in a second study the public costs of violence against women (Heiskanen and Piispa 2001). The study finds that the biggest share of the costs cannot be measured and only indirectly appear as public expenditures, yet the directly measurable costs, particularly in the health care and social sector and the criminal justice system, confirm that male violence is a burden for society as a whole.

Another new gender issue is prostitution. Since the 1990s, it has been put in the context of trafficking in women and the sex industry, and both women's organizations and TANE have developed a prohibitionist attitude towards prostitution. For long, prostitution was debated as a social, health or law-and-order problem, but not as a business that should be prevented in the interest of women; since the 1980s, prostitution is understood as part of patriarchal culture, prostitutes themselves as victims of accumulated social problems (Holli 2001). Accordingly, public policies aim at abolishing prostitution without criminalizing the women, but have never intended to provide good working conditions for prostitutes, as the prevalent opinion among politicians is that no woman living in the Finnish welfare state is forced to sell her body for economic reasons. Instead, prostitution is constructed "as (a) kind of sexual violence. (...) The Finnish women’s movement is anti-prostitution, one part of it is anti-prostitute, one part sees the prostitutes as victims, and all of it is it anti-client." (Interview 29)

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267 In TANE's formulation, "(m)any aspects of commercial sex contradict international conventions binding on Finland, and commercial sex violates the spirit and objectives of the Equality Act." (Council for Equality 1997: 44)

268 For example, a 1987 law ordered sanctions on pimping, and in the 1990s, customers having sex with prostitutes under the age of 18 were penalized.
In sum, the proponents of gender equality in Finland have been either state-oriented or part of state institutions. Their strategies have been based on broad networking and coalition building. Within the context of a highly inclusive social structure and a consensus-oriented political system, gender-related activism has been comparatively successful. Gender equality issues have had more resonance than women-specific issues: equal employment and child care policies have long been crucial topics on the political agenda, while violence against women and prostitution came up as issues of public gender policies only in the 1990s. In Finland, state institutions and the national Parliament are main actors in promoting gender equality, yet diverse sectors of civil society, e.g. employers or mass media, only half-heartedly follow this goal. This has produced a situation of a non-discriminatory legal framework combined with insufficient de-facto change.

7.2.2 International interaction with CEDAW: governmental and non-governmental reporting and the Committee's responses

Finland signed CEDAW in 1980 and ratified it in 1986. In these six years, a thorough process of ascertaining the conditions for ratification and of adjusting legal provisions inconsistent with the Convention was undertaken (see 7.2.3). Finland has submitted 5 almost timely reports in 1988, 1993, 1997, 2000, and 2003 and entered into three constructive dialogues with the CEDAW Committee in 1989, 1995 and 2001269. In all three encounters, the Committee received the high-ranking delegation in a benevolent manner as Finland’s level of compliance with the Convention has been exceptionally high. At the same time, experts also expected a high level of engagement from Finland. For the preparation of all official reports, NGOs were consulted. For the last constructive dialogue in 2001 an extra NGO shadow-report was prepared and exerted some influence on the Committee's questions and Concluding Comments. The dialogue between Finland and the CEDAW Committee has been ideal in the sense that it has been taking place on a continuous basis and that it has offered Finnish authorities support in designing public gender policies.

In its initial report of 1988 (UN Doc. CEDAW/C/Add. 56), Finland presents itself as concerned with gender equality and as an active supporter of UN mechanisms in the field. To enable the ratification of the Convention without reservations, a number of laws were amended or created: the Child Custody and Right to Access Act (No. 361/83) and the

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269 As the 2003 report was not yet presented for a constructive dialogue with the Committee and does not contain significant new developments, it is not subject of consideration here.
amended Guardianship Act (No. 368/83) grant equal rights and responsibilities for parents regarding their children irrespective of their marital status; for example, divorced or unmarried parents have the possibility to opt for joint custody. The amended Nationality Act (No. 584/84) confers Finnish nationality to children with either a Finnish father or mother – before, the child received the nationality of the father by default. The Family Name Act (No. 694/85) gives both spouses equal options as to choosing the family name. The Marriage Act (No. 411/87) prescribes 18 years as the minimum marriage age for both men and women – previously, women could marry at the age of 17. The main legislative change to implement CEDAW has been the adoption of the Act on Equality between Women and Men (No. 609/86). It enshrines many CEDAW principles (see 7.2.1.3) and is the first legal prohibition of gender-based discrimination, as the Constitution only prohibits discrimination in general terms. The initial report dedicates considerable attention to the gender segregation in vocational training and employment and the resulting wage gap between men and women as well as the lower pension level of women – labor-related inequality has figured prominently in all Finnish reports to CEDAW. In contrast, Finnish health care and family planning services are presented as high-level achievements in accordance with the Convention. An expression of this is the easy access to abortion, a very low abortion rate, and an almost zero performance of illegal abortions. The reaction of the CEDAW Committee to Finland's first report and updated oral information was not laid down in Concluding Comments, as these were introduced only a few years later in the Committee's working practice. Experts mainly expressed approval of Finland's advances regarding gender equality and requested further information, e.g. regarding the relevance of temporary special measures in the Finnish context and the debate that was caused by the Equality Act if such measures were in conformity with the equality provision of the Constitution. Further, domestic violence was addressed (UN Doc. A/44/38: 24f). The dialogue revealed that the problem had only recently attracted attention and that hardly any exact information on it existed (see 7.2.3.1).

In the second report (UN Doc. CEDAW/C/FIN/2) of 1993, Finland paid particular attention to the questions of the Committee that had not been answered properly in the first dialogue, e.g. concerning violence against women. Five issues in the report are of particular relevance: first, the Finnish government explains that it does consider the exclusion of women from military service a discrimination under the Convention, as "military service is not one of the fundamental rights whose equal recognition and implementation for both sexes is guaran-
teed by the Convention.“ (UN Doc. CEDAW/ C/ FIN/ 2: 6) Second, it informs about the re-
evaluation of the Equality Act that resulted in strengthening its provisions in the field of indi-
rect discrimination and unequal treatment related to pregnancy and parenthood. Third, TANE
has started to investigate the causes of violence against women including possible preventive
measures. Legally, domestic violence had been defined a major crime, and the need to set up
public shelters for victims of violence was recognized. Fourth, in addition to the gender-
segregation in employment, the economic crisis of the early 1990s had hit women in particular
with high un- and underemployment rates and increased numbers of fixed-term contracts.
Faced with a wage gap of approximately 20%, a working team within the Ministry of Social
Affairs and Health was established to re-evaluate female professions and to investigate the
effects of parental leave provisions on male and female employees. Also, sexual harassment
had been defined as a form of discrimination in the workplace and was included in the Equal-
ity Act. Fifth, as requested by the Committee, the report provided information on the situation
of minority women: Romani and Sami women suffer from additional discrimination espe-
cially on the labor market because of their cultural traditions and clothing; disabled women
have usually lower paid jobs than women without disabilities; immigrants have uncompli-
cated access to work permits and naturalization, however, immigrant women pursue gainful
employment to a lesser extent than Finnish women or immigrant men.

At the second constructive dialogue with the CEDAW Committee in January 1995
(UN Doc. A/ 50/ 38, paras. 346-397), the Finnish delegation reported on most recent deve-
lopments and underlined its efforts regarding violence against women. Not only had rape
within marriage become a criminal offence. Also, public services for victims of violence as
well as for perpetrators had been established, and civil servants were trained to adequately
deal with victims. Further, efforts to curb trafficking in women and "moving prostitution"
from the East into Finland had been increased. The Committee commended the open and un-
baised report. Experts welcomed the ongoing reforms of the Equality Act and Finland's efforts
to reconcile work and family. The low – and declining - abortion rate was extolled as part of a
universally accessible family planning system. As main areas of concern, the Committee iden-
tified the high rate of violence against women, the growth of trafficking in women and sex
tourism, the discriminatory labor market situation with its seemingly unbridgeable wage gap,
and the rather low number of women in high decision making positions in the private sector.
For the next dialogue, a more detailed description of the results of the Equality Act and on the

270 This position is unique among States Parties— most other states with a similar provision entered a reservation
to the Convention, as the exclusion of women from the armed forces is inconsistent with CEDAW article 7 (see
6.1.3 and 7.2.3.1).
causes for the huge differences in male and female wages was requested. The Committee fur-
ther called the Finnish government to increase its attention regarding violence against women,
and to pay particular attention to the situation of minority women. Finally, it urged the gov-
ernment to encourage the judiciary to make use of the Convention, as it had been used pre-
dominantly in legislation, and not yet in the courts.

The third and fourth report of 1997 and 2000 respectively were considered together at
the Committee's 24th session in January 2001. The most relevant issues of both reports are
therefore summarized together (UN Docs. CEDAW/ C/ FIN/ 3, CEDAW/ C/ FIN/ 4).
Finland's new Constitution entered into force in 1995. It specifies the equality provision of the
former Constitution of 1919 in declaring discrimination based on sex illegal. With an ex-
PLICIT reference to CEDAW, the promotion of gender equality in social activities and working
life is defined as a public responsibility. The Equality Act was strengthened in two ways: first,
employers have to prepare an equality plan to show their efforts in supporting reconciliation
of work and family and in dealing with sexual harassment. Second, the level of compensa-
tions in cases of discrimination was increased twice. While the 40:60 quota provision en-
shrined in the Equality Act has been fulfilled and the number of women in local governments
has increased to almost 40%, the percentage of female chairpersons of municipal executive
boards remains around 15%. In this context, the fourth report of Finland gives a detailed an-
swer to the Committee's previous question on the glass ceiling phenomenon: While women in
the private sector amount to only 2% at top management level, the quota provision has helped
to rise women's share in public decision making. However, the quota does not affect recruit-
ment in central state administration and of university professors. In both areas, the share of
women is considerably lower than 40% (32% and 18.4% respectively).

The government's Plan of Action for the Promotion of Gender Equality (1997-2001) in
response to the Beijing Platform for Action consists of 96 projects in diverse fields. The most
ambitious project is a cross-sectoral project to prevent violence against women. In this con-
text, the Act on restraining order entered into force in 1999: it prohibits any person likely to
offend another person's life, health or freedom to come close to that person's home; the Act
has already been used in over 500 cases. Other aspects of the prevention project are the con-
duction of studies regarding violence against women, awareness raising, social work with
violent men, and the prevention of prostitution. In the view of the Finnish government, "the
commercialisation of sexuality, prostitution and trafficking in women were identified as one

Further, discrimination based on age, origin, language, religion, conviction, opinion, state of health and dis-
ability is explicitly mentioned as illegal.
of the main areas of concern in the prevention of violence against women.” (UN Doc. CEDAW/ FIN/ 4: 18) Thus, it has taken measures to prevent prostitution, even if this approach is only one way of interpreting CEDAW article 6. In particular, the Finnish government has promoted research on "moving prostitution" from the Baltic states and Russia, and on sex tourism from Finland to these states. Further, purchasing sexual services from minors has been made a punishable offence.

Regarding the situation of minority groups, the reports detect an improvement of the situation of disabled women both through the Disabled Act and increased awareness. With 1.7% in 1999, the share of immigrant women in Finland is still rather low. Immigration policies are not gender-specific but aim at social integration through employment and education regarding fundamental and human rights, which is of particular importance for women. The activities of Finnish women’s organizations are acknowledged by Finnish authorities, however, the funding they receive is considerably lower than for other organizations; two umbrella organizations - the National Council of Women and NYTKIS - receive subsidies as well as funding for separate projects. In the implementation process of the BPFA, women's NGOs and the government have been cooperating.

In the field of education, the reports underline the relevance of women's studies for increased gender-sensitivity. Among other issues, women's studies have created important knowledge about the different work-life balance of men and women: children significantly change the working life of women, but not of men, as men hardly take unpaid parental leave. As a consequence, female job sectors are more costly because mostly women take unpaid leave (UN Doc. CEDAW/ C/ FIN/ 4: 34). As this is a crucial factor contributing to the remaining wage gap of male and female employees, the leave system needs to be made more flexible and encouraged men to make use of it.

The third report contains annexed critical comments of TANE, the Finnish WPA. In particular, it proposes much more proactive public measures in the field of violence against women, e.g. the establishment of a national institute to conduct trainings and develop further measures to combat the problem, it draws attention to the social effects of the sex industry and prostitution, and it urges authorities to adopt more concrete measures to influence the situation of male and female wages, as the situation of women on the job-market was deteriorating.

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CEDAW does not prohibit prostitution, but the exploitation of prostitution. It remains a matter of interpretation if the existence of prostitution as such already constitutes discrimination against women, or if only exploitative forms of it do, e.g. forced prostitution, trafficking, and prostitution of minors. In international debates, the majority of states follow the second interpretation.
A shadow report composed of the comments of more than twenty women's NGOs adds further critical comments to the government's presentation (Finnish NGO Report 2000). It refers to six main areas of concern: First, the low representation of women in high-level decision making in the public sector and the declining number of women among newly hired university professors; the new practice of some universities to fill posts by invitation and not by open recruitment has been favored men. In the view of NGOs, it should be understood as the right of women to participate in society and decision making, thus public authorities should be more proactive in promoting women's participation. This promotion would also include adequate public funding for women's organizations. Second, "(d)iscrimination against women in working life is an attitudinal and structural problem that cuts through the entire society and involves the entire labour market machinery" (Finnish NGO Report 2000: 7), but Finnish government's and society's efforts towards its eradication have remained insufficient. In addition, the economic recession has forced women into unemployment and underpaid care work at home or in hospitals, and into fixed-term contracts, most of which are offered by the state. Thus, "(t)he feminization of fixed-term atypical work is a significant equality issue that the Government should address more efficiently." (Finnish NGO Report 2000: 10) Third, violence against women is still not understood as a human rights violation, and the responsibility of society as a whole needs to be acknowledged more generally. The funding for shelters and prevention projects has been insecure and insufficient. Likewise, the commitment to prevent women's rights violations through prostitution and the international sex commerce has to be increased. Fourth, the advertising of sex business penetrates everybody's daily life and creates values impairing gender equality and women's human dignity. More proactive measures should be taken to prevent it. Fifth, the concept of gender-based persecution has to be addressed in Finland to adequately deal with female refugees. Sixth, the lack of political will to promote the advancement of women is expressed in insufficient resources for gender equality policies, thus, "equality policy can easily remain as words without concrete substance." (Finnish NGO Report 2000: 25) Taken together, the critique voiced by NGOs targets insufficient de-facto change as result of public gender policies.

In the third constructive dialogue with the Committee in 2001, the Finnish delegation provided updated information. Among other news, the delegation reported that the wage gap had narrowed slightly in the last years "as a result of the development and implementation of

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273 In a manner similar to the official report, NGOs interpret prostitution as "a violation against human dignity and the prevention of prostitution (as) an issue of human rights protection." (Finnish NGO report 2000: 16) Thus, prostitution is not seen in the sense of "sex work" as a profession that women may choose voluntarily, and that should be free from exploitation; instead, prostitution itself exploits women.
job-evaluation systems that establish wages in an objective and gender-sensitive manner" (UN Doc. A/ 56/ 38: 30), yet this information was not detailed any further. The Committee's Concluding Comments do not contain new proposals or incentives. They express appreciation for the quality of the reports, the large and competent delegation, the high level of gender equality achievements in Finland and the country's international commitments. For the future, the Committee reiterates its request for more information on the implementation of the Equality Act. It notes with concern the continuing discrimination in employment "owing primarily to the 'horizontal' and 'vertical' gender segregation of the labour market" (UN Doc. A/ 56/ 38: 31), and therefore urges the government to increase its efforts to eliminate stereotypes in vocational training as a measure to bridge the gender-segregation of the labor market and to encourage men to use parental leave. Other matters of concern are the low percentage of women in high-ranking posts, particularly in academia, the extent of violence against women, sexual harassment, trafficking in women and exploitation of prostitution. In all these areas, the government is urged to increase cooperation between national and international authorities and to provide information on action taken in the next report.

How do the involved national actors assess the reporting procedure? For the government, it is an important occasion to demonstrate its respect for the international gender norms represented by CEDAW. This has been expressed, on the one hand, in the effort to send high profile delegations, usually including the Minister responsible for gender equality, to report before the Committee. On the other hand, the joint effort to prepare the report shows commitment to the CEDAW reporting procedure: the report is compiled by the Ministry of Foreign Affairs in coordination with all relevant ministries, and in addition, it is presented to civil society groups to give them an opportunity to add their comments. Finland's initial report under CEDAW was the first occasion to have a public hearing in Parliament related to a Human Rights Treaty procedure – the practice was then institutionalized. As a follow-up to the constructive dialogue, the Ministry of Foreign Affairs publishes the comments of the Committee in Finnish and English on its website and informs the public in a media conference on the reaction of the Committee. Also, the Ministry prepares an annual human rights report to be discussed in Parliament. One part of this report deals with the human rights of women and contains the CEDAW Committee's comments on the situation in Finland. In the view of the authorities, these activities satisfy the government's responsibility to bring the dialogue back home (Interview 25).

Women's NGOs have found the dialogue a fruitful process: They value the possibility to comment on the governmental report, which is the reason why only for the last dialogue in
2001, some NGOs have prepared a critical shadow report on their own. However, the practice of the public hearing was not always equally productive. Before the last dialogue with the Committee, the governmental report was sent out to NGOs far too late for them to make substantial comments (Interview 30). NGOs appreciate the comments of the Committee because "our main problem is that we … believe we already have equality. Which is not true, and now they have to face that the Committee asks really good questions that the government cannot answer." (Interview 30) Yet despite these impulses, NGOs believe that the government does not make enough effort to implement the Committee's comments. In their view, the process is not seen as a continuing evaluation followed by concrete public policies, but governmental action remains on a rhetorical level.

In sum, Finland's interaction with the CEDAW Committee can be called ideal in terms of continuity, governmental commitment, and providing support for Finnish authorities in designing public gender policies. The reporting procedure is a participatory process including several state institutions and non-governmental organizations. Both governmental and non-governmental actors express their respect for the CEDAW Committee and its work and value the interaction. Some of the advices of the Committee, especially in the field of violence against women, led to far reaching governmental action. In recent years, the ability of the Committee to give Finnish authorities new impulses seems to have diminished, however, the constructive dialogue is still useful to monitor domestic gender equality measures. Particularly in the view of NGOs, the de-facto orientation of governmental programs as well as of the periodic reports should be strengthened.

7.2.3 Domestic application of the Convention by state institutions

7.2.3.1 The ratification process and its repercussion in legislation and public policies

The centerpiece of implementing CEDAW in Finland was the ratification process of the Convention. While it is a usual Finnish procedure to make a compatibility study between an international treaty and domestic law before ratifying the treaty, the change achieved in the context of the CEDAW ratification was unusual as an entire new law was created\textsuperscript{274}. The moving force behind these dynamics was the Council for Equality; thanks to its engagement, the Equality Act was passed despite considerable opposition. In addition to the legal consequences of the ratification process, CEDAW was used in several Parliamentary debates to

\textsuperscript{274} In previous ratification processes, either were existing laws amended, or no direct change took place (see Scheinin 1991 and 7.2.3.2).
strengthen specific views on gender equality. The dialogue with the Committee further drew the government's attention to new gender issues, most notably violence against women. In the view of Finnish equality authorities, the Convention has lost relevance both because of its vagueness in many fields and because of more direct obligations Finland has assumed within the European Union.

_Ratification and adoption of the Equality Act:_ The adoption of CEDAW in 1979 came, from the perspective of the Finnish WPA, "at the right time" (Interview 26). As one staff member of TANE explains, many of the international norms enshrined in CEDAW had been for years on the WPA's agenda:

"(A)t the time when the CEDAW was drafted and prepared, we had a process in Finland where we tried nationally to obtain many of the things that were then included in CEDAW. (…) When we first saw the Convention, we of course read it very carefully, and we found that article 2 is very clear in prohibiting discrimination because of sex and in demanding effective protection against discrimination. Then it was easy to say that here is an international instrument which would demand a legal reform." (Interview 26)

Women's rights were at the time not yet considered an integral part of human rights (see 4.1.2; 4.1.3). For Finland, this disjunction had a positive side: women's issues were not contentious in principle between the East and the West, thus Finnish international engagement in this field did not challenge its neutrality policy. Thus, CEDAW could serve both as a tool in national politics and as international arena for the Finnish self-representation as a gender-equal nation. A Finnish academic summarizes these two dimensions in the following way:

"After the signature of CEDAW in Copenhagen, the Council for Equality wrote a paper telling what are the laws that we have to change in Finland to be able to ratify the agreement. … when I saw it I was thinking – maybe they did not take the agreement and then started searching for deficits, but they … asked: how can we use this agreement to get what we want? They put all kinds of things there. The equality law, because the CEDAW demands it, … a new surname act, … because CEDAW demands it – a lot of demands that had been up for debate in the 70s. (…) The other thing is that gender equality in Finland has become a nationalist issue. It is very important for us that we are in the forefront of equality, that we give a good impression. (…) I think that equality has become a question of national identity in Finland." (Interview 29)

The Finnish WPA was determined to exhaust the full potential of CEDAW, contrary to many women activists from other countries, who maybe "did not believe that CEDAW can be used in such a powerful way." (Interview 26) TANE developed a strategy with several important elements: first, it decided to use CEDAW as a corrective for national gender policies, yet was aware that the ratification of other Human Rights Treaties had not had any significant
effects. Thus, TANE concluded that the process would require guidance and that legal reforms had to take place before ratification by the Parliament. Second, the Council sought to place the ratification process on a very high political level and at the same time maximize its own influence on it. The routine procedure after signing the Convention would have been the preparation of a compatibility study by the Ministry of Foreign Affairs. Yet, the Council convinced the Cabinet Office to request the responsibility for this task, which meant in effect that the Council itself would coordinate this task, as it was attached to the Cabinet Office. An expert group was convened to prepare the study. It consisted of representatives of all relevant ministries, but at the same time, the Council had pushed to select those staff members supportive to a thorough implementation process.

Third, the working group identified necessary changes for full compliance with CEDAW. These changes were divided into two parts: crucial deficits in legislation had to be changed before ratification – because, according to the argumentation of the working group "a Parliament which has not made these kind of reforms by the time being is not consequent in promising that it will do these reforms afterwards" (Interview 26). General demands of social change were seen as long term matters to be dealt with after ratification. This strategy paved the way to claiming an Equality Act:

"The 2nd article (of CEDAW, S.Z.) says that States Parties have to decide an effective defense against any kind of discrimination. It is … a legal requirement, and we have to have a law. We … pointed out what is an “effective” defense. So we could say that the discrimination law we had was not effective, because nobody had used it, and of course we knew that legal processes are very expensive, so there was a need for a low threshold body where no money was needed, where the advice was easy to get …. This was the argumentation behind the institution of the gender equality ombudsperson." (Interview 26)

In addition to this distinction of immediate and long-term requirements, the working group also used the method of comparison to define the degree to which CEDAW had to be applied in Finland. It stated that the level of implementation should be comparable to the level achieved in states comparable to Finland in economic, political and gender-related issues. Comparable in this sense were only the other Nordic states, and this point of reference made the claim for equality legislation even more indispensable: "Since every other Nordic state had already established special legislation against gender discrimination, nothing less than specific gender equality legislation could go for Finland." (Interview 26)

A fourth strategic aspect was to strengthen the ratification process of CEDAW through other governmental measures. In the context of the UN decade for women (1976-1985), gov-
ernments were asked to prepare national plans for the advancement of gender equality. This was done in Finland for the second half of the decade from 1980 to 1985 by the Cabinet Office. The preparation of this plan was coordinated by TANE and reflected the spirit of the working group for the CEDAW ratification:

"Into this action plan, everything what was recommended or suggested by this expert group was included. That plan was pre-negotiated with each ministry, one by one, … and the chief of Cabinet Office chaired all of these negotiations. So everything that was integrated in the plan … had to do with CEDAW." (Interview 26)

The proposal of the working group for an entire Equality Act was controversial, as influential voices in public opinion considered Finnish society as fair enough and not in need of such an act. Employers' organizations specifically posited that there was no discrimination on the labor market because no cases had been brought to the court, even though existing laws offered this opportunity. The Institution of Working Conditions - the authority to look after equal pay at that time – opposed the law precisely because it assumed that it was impossible to implement equal pay (Interview 26). Due to this resistance, a number of bills presented during the first half of the 1980s were rejected as not fully developed. Finally, Parliamentary support was strong enough to get the Equality Act passed in 1986. Soon after, CEDAW was ratified without reservations. The Equality Acts of other Nordic states, in particular the one of Norway, served as models for the Finnish Act, yet the broad range of CEDAW covering all areas of life was also a crucial framework. According to the Finnish Ombudsperson for Equality, the wide scope of the law is an advantage. She assumes that under EU influence, the law would have been considerably narrower in scope (Interview 25).

*Use of CEDAW in legislative debates:* During the 1980s, CEDAW was cited in several Parliamentary debates and by the *Council for Equality* to strengthen specific understandings of gender equality. The following two examples on women in armed forces and on prostitution indicate that those who used CEDAW often did so more to defend feminist or conservative interpretations of gender equality than to thoroughly interpret the Convention's meaning.

The first debate was about gender equality within the armed forces (Holli 1999). In 1984, an amendment of the Act on Finnish UN Peace Corps was discussed to allow the recruitment of women in the Peace Corps. The proponents of this amendment argued both for gender equality and for gender difference: on the one hand, they wanted to offer women access to new jobs and professional equality with men based on a voluntary basis. On the other hand, they argued that women would be integrated into the military in support and service assignments only, not in combatant duties, because women were more suited than men for
these tasks, while men could then be released into "real" military duties. The Council for Equality opposed the amendment with the following argument: becoming a soldier was not a question of equality, but a matter of militarizing women's lives. This line of thought was embedded in a strong, women-dominated Finnish peace movement. To strengthen its point of view, the Council constructed the following interpretation of CEDAW:

"In this agreement (CEDAW, S.Z.), discrimination was defined as activity that impaired or nullified a person's or a group's enjoyment of human rights and fundamental freedoms on the grounds of sex. According to the Council, the exclusion of women from service in the military community within war zones was neither an injury to women's human rights nor to their fundamental freedoms." (quoted in Holli 1999: 240)

Thus, the opponents of the amendment took a position of female difference and accused the other side to exploit the notion of equality for militaristic goals. Instead, equality according to the female desire for peace would actually require to abolish the army altogether (Holli 1999: 242). In cross-national comparison, it has been exceptional to use CEDAW to underline a position of gender difference – on the contrary, governments have even entered reservations to CEDAW to preserve legal or de-facto gender differences, e.g. in family matters. An expert observer describes a certain degree of instrumentalism regarding international norms as a typical strategy for Finnish women's activists:

"The Council used the Convention to argue that women should not join the army – in the name of equality. (…) it just shows that for the Finnish feminists of the 1980s, equality became sort of a rhetorical device that they could use to argue for anything they saw as a desirable thing. The pattern was: 'we want this, this is gender equality', and then they … used the Convention." (Interview 29)

Despite the opposition, the law was amended. About ten years later in 1995, the Finnish Army went a step further and opened all ranks to women. As the position of Finland in a post cold war international order had completely changed, this military reform did not face significant opposition by feminists or other civil society groups.

The second Parliamentary debate in which CEDAW was used was the debate about the amendment of the Vagrant Act in the 1980s (Holli 2001). The Act of 1936 provided for the protection of society from prostitutes and other "deviant" individuals through warning, registration and institutionalization. By the 1980s, the Act was deemed anachronistic and worth to be amended or even abolished. Some parties opposed its abolition with the argument that the Act had fulfilled a function of deterrence. In the context of this argument, a male representative of the Center Party used CEDAW to strengthen the position to keep the Vagrant Act: It was "argued that a repeal of the Vagrant Act would be a breach of the spirit of the
Convention as well as of the actual paragraphs prohibiting trafficking in women. According to (this) interpretation, neither should prostitutes be allowed to profit from prostitution – or thus be allowed to discriminate themselves by themselves." (Holli 2001: 5) In other words, CEDAW was used here to limit prostitution as a general social evil and to hinder prostitutes to exploit themselves. The Social Democrats, in contrast, understood the phenomenon of prostitution and the situation of prostitutes as a result of lacking socio-economic human rights. Until today, it is politically consensual in Finland to equate prostitution with the exploitation of prostitution (see 7.2.1.3) – whereas the CEDAW Convention does make a clear difference in this regard.

New gender issues: Last but not least, the constructive dialogue with the CEDAW Committee has had an important consequence for women's rights in Finland: the first dialogue in 1987 provided the incentive to put violence against women on the national agenda (Interviews 25, 30). One member of the 1987 delegation to CEDAW recalls:

"The Finnish minister was asked about violence against women, she couldn’t answer, even though we had this one day time to prepare our answers. We contacted authorities here in Finland and asked the ministry of justice and other persons … if they had concrete data or information on this issue, but we couldn’t get anything out. Then the minister responded that she was very sorry but she couldn’t provide any information and she promised to do it in the next report. And then the Council for Equality … organized a special working party to investigate this issue. They invited different authorities, from the ministry of interior, the police, the ministry of justice, social workers, doctors, and started to … investigate what should be done." (Interview 25)

The results of these studies were presented in the second periodic report to CEDAW, but more significantly, violence against women ceased to be a taboo issue in Finland. Especially since the mid 1990s, with the additional dynamics of the World Women's Conference in Beijing and the integration of Finland in the European Union, the issue has received a lot more public attention and increased public resources.

The CEDAW Convention has been a significant instrument in Finland to back up public gender policies with an international normative framework, especially where it prescribes concrete legislative change. With the Finnish accession to the European Union in 1995, the Convention's influence decreased. The new supranational level provides more concrete directives for public policies as well as jurisdiction that are more binding than the CEDAW Committee's comments (Interview 25). In the view of one staff member of the Council for Equality, the Convention is in many fields too vague to be used in the executive or legislative – for example, it contains a provision on temporary special measures, but it is neither specific on the desirable proportion of men and women nor does it define in which institutions quotas
should be used (Interview 26). NGO representatives take another stance in assessing the usefulness of CEDAW: they proposed to use temporary special measures (CEDAW article 4) more proactively, as the reference to CEDAW in this matter could be an effective defense of quotas: "One could say that we can't remove quotas because we have the international obligation through CEDAW to have them, however, that argument is not publicly present." (Interview 30) In general, they value particularly the breadth of the Convention as potential for change, e.g. the provisions of CEDAW article 5 on the modification of social and cultural gender stereotypes, precisely because it goes beyond legislation.

7.2.3.2 Reasons for judicial negligence of CEDAW

In Finland, domestic law and international law interrelate according to a "mitigated dualism", that is a mixture of elements of juridical monism and dualism (Scheinin 1991: 349). For the implementation and use of international treaties, this means that certain categories of treaties are directly adopted; others need to be incorporated with or without Parliamentary consent. In the second case, incorporation requires some form of transformation, e.g. into domestic laws. Then, the treaties are not themselves valid in Finnish jurisdiction, but a normative harmony between the treaty and domestic legislation is established. The application of international treaties is a matter of interpretation and can range from a "principle effect" – that is, the treaty has overarching meaning and serves as a general guideline – to a "rule effect" that makes the treaty more concretely and directly influential (Scheinin 1991: 353f).

Since the end of World War II, an evolution in the Finnish practice of incorporating international treaties can be observed: until about 1970, the Parliament was not heard when treaties were concluded, from the mid-1970s on, consent for ratification of the Parliament became regular, but the legal applicability of the treaties remained unclear, e.g. the CESCR (ratified in 1976) was understood as of programmatic character only. In the case of CEDAW,

"the legal character of the obligations was clearly understood as several parts of Finnish legislation were amended prior to ratification, but the direct applicability of the treaty provisions themselves was not … underlined by the Government or Parliament." (Scheinin 1991: 356f)

Such an understanding developed only in the 1990s, when a "marked change in the Finnish human rights culture" took place (Scheinin 1991: 359). In general, the interpretation of international human rights standards has changed in as far as the treaties have been gradually taken more seriously within the domestic context.
What does this mean for the use of Human Rights Treaties in Finnish courts, and for the use of CEDAW more specifically? While there is juridical consent that Human Rights Treaties are directly applicable in domestic courts, Finnish judiciary has no tradition of invoking them. One reason for this is the country's legal tradition: in Finland, Constitutional Rights and ordinary Acts of Parliament are of the same status, and there is no Constitutional Court to interpret fundamental rights, but this is the task of the Constitutional Law Committee of the Parliament. In other words, the interpretation of rights is a task of the Parliament, and not, as in many other countries, of the Judiciary. Accordingly, international treaties have played a more important role in Finland as standards for new legislation than for court rulings (Scheinin 1991).

This tradition notwithstanding, Finnish courts have gradually started to refer to Human Rights Treaties. Initially, this was done indirectly, e.g. the recommendations of the Human Rights Committee regarding the complaints of Finnish citizens have been received with increasing attention by the Finnish judiciary. During the 1990s, especially the two highest courts – the Supreme Court and the Supreme Administrative Court – have relatively often applied the European Convention and the CCPR, but quite rarely referred to other treaties. The CEDAW Convention has, to the knowledge of several experts, not been used in courts. One expert finds the reason for this in the vagueness of the text of the Convention, and expresses the view that CEDAW is better suited to be used in legislation than in jurisdiction:

"I know that many women’s rights proponents are of the opinion that CEDAW was a revolution in international human rights thinking ... I think ... CEDAW ... didn’t bring so much new into human rights thinking. The ... treaty technically is a rather modest one. It is very wide ranging but rather soft and vague. There are a lot of steps necessary ... in order to operationalize the obligation under the CEDAW. (...) What makes sense is to use the CEDAW as a starting point for electing domestic laws on gender equality. That was the Nordic approach, especially in Finland: We got an equality act and we got new authorities dealing with equality and this is a direct consequence of the Convention." (Interview 32)

In sum, the judiciary has not used CEDAW, partly because its "vagueness" makes juridical application cumbersome, partly because of the Finnish national tradition regarding international Human Rights Treaties. Another reason hidden behind the "national tradition" may be the general scant regard of international law prevalent in most national jurisdiction; the consequence is insufficient training in international law for lawyers and judges. Nonetheless, the norms enshrined in CEDAW are acknowledged in Finland, which is expressed in the Convention's influence on legislation.
7.2.4 Use of CEDAW by NGOs and its repercussion within civil society

The major part of activities to implement CEDAW has been undertaken by state institutions, not by civil society actors. For this study, one independent expert and representatives of three NGOs were contacted: first, Sinikka Mustakallio, an equality consultant who had previously contributed to the government's report to CEDAW before she compiled the NGO shadow report for the 2001 dialogue; second, *Suomi UNIFEM* (Finland's UNIFEM), which promotes women's rights and has established a wide network of fund raising for women's projects in developing countries. In most fields of *Suomi UNIFEM*'s work, CEDAW plays a background role in providing a women's rights framework. The third NGO is the *National Council of Women*, an umbrella organization of Finnish women's organizations since 1911. The fourth NGO is NYTKIS (The Coalition of Finnish Women's Associations), another umbrella organization that was founded in the 1980s. The last two organizations have a strong standing within Finland, and NYTKIS has an explicit orientation towards international networking, however, they have not used CEDAW as integral part in their work.

NGOs are aware of CEDAW, but criticize that the general public remains rather uninformed and that the government should do much more to disseminate and to implement the CEDAW recommendations. A better knowledge of CEDAW could, in the NGOs' view, help to overcome those gender stereotypes that are the main obstacles for substantial gender equality in Finland. Women's organizations understand the relevance of CEDAW as a corrective measure for governmental policies from the international level and have increasingly referred to it in their own critique of insufficient public gender policies. The shadow report of 2001 is an expression of this critique, and before this extra report was done, NGOs were regularly engaged in a critical national dialogue on the governmental CEDAW reports organized by the Ministry of Foreign Affairs. Thus, in their own manner, NGOs have added critical information to the CEDAW reporting procedure. Also, Finnish NGOs lobbied their government to argue for the inclusion of group complaints in the drafting process of the Optional protocol to CEDAW, however, this claim was rejected by the CSW working group (see 9.1.2).

In some occasions, NGOs used CEDAW to strengthen their claims: In the year 2000 and 2001, the lottery law was amended and women's NGOs aimed at getting the statutory right to financial support through the lottery. They referred to CEDAW article 7 and 13 to underline their claim that the government has to support women's NGOs, but did not succeed. As a staff member of TANE explains,
"in Finland, there is a lot of money behind the lottery system, so the money goes through the state. The money is then redispersed by the ministry of education to sport, to arts, to social and health organizations and to youth organizations. This law was amended, and the women’s organizations argued on behalf of CEDAW that the law must be amended in a way that women’s NGOs would get a statutory right to financial support. There are so big forces behind, you know, the sport’s lobby, youth organizations, traditional recipients of the money, so it had been hard for the NGOs to come through." (Interview 26)

In sum, Finnish NGOs use CEDAW as a general framework, as a yardstick to criticize public gender policies, and occasionally, as an additional argument to strengthen their own strategies and claims. Contrary to the Chilean case, women's organizations do not engage in promoting CEDAW among women to make them aware of their rights - instead, it is assumed that it is the state's responsibility to do this. Also, there are no civil society groups openly opposing the Convention.

7.2.5 Strategic use of international gender norms and its limitations - lessons from the Finnish case

For Finland, the three explanatory factors for compliance with international gender norms discussed in chapter 6.2 – degree of prosperity, openness of the political system including representation of interests of women, and cultural affinity between domestic and international norms - can be described as follows:

Prosperity: The country is not only among the wealthiest in the world with an HDI rank of 13 (UNDP 2003), it also shows a relatively even distribution of prosperity among all sectors of society. Social equality is also expressed in a high level of gender equality - an indication for this is Finland's rank 13 in the gender-related development index and rank 8 in the gender empowerment measure that gauges political and economic participation of women (UNDP 2003). However, while Finnish women were able to gain economic independence, they never achieved the same level of wealth as men. In addition, the economic crisis of the early 1990s has transformed the welfare state: the public employment sector has been shrinking, public goods have become scarcer and their distribution is now more contested than previously. These transformations have lead to a higher – but still relatively low - level of social inequality that has affected the status of women adversely.

Political system and freedom of expression: Finnish democracy was established to overcome Russian occupation and is the seed of the country's national unity. Today, Finland looks back at almost one century of inclusive, pluralistic and consensus-oriented democratic
practice. Also, the country's neutral foreign policy predestined it for a mediating role in the international arena. Based on a comprehensive understanding of equality, the Finnish welfare state has not only guaranteed political, but also socio-economic rights for all citizens. In the political system, the interests of women are well represented on a descriptive level – e.g. in the high percentage of women in political decision-making and in the early establishment of a WPA. The substantive representation of women's interests is far advanced, however, not in all aspects: where "women's interests" mean that women are to achieve the standard-level of men, the Finnish equality ideology has been quite successful, whereas those issues that require special measures or special treatment of women (or men) have met with political ignorance or even resistance.

Cultural match: Finnish gender norms start from the idea of a balanced, harmonious relationship between men and women. To a high degree, they are compatible with international gender norms, and due to the construction of women as strong and responsible, the self-determination of women is not questioned in any field of life, e.g. reproduction and family relations. However, structural discrimination and women as victims of these structures are hard to perceive and to struggle against within the Finnish normative framework, as the structural disadvantages of women on the labor market or the long negligence of women as victims of male violence show. As soon as structural discrimination can be framed as a threat to social equality, the Finnish state is likely to develop measures to deal with it – thus, in no gender-related topic has Finland openly refused the international normative framework. This commitment notwithstanding, Finnish gender policies have sometimes suffered from underfunding and as a result, of only insignificant impact.

Several concrete strategies helped to implement international gender norms in Finland: first, in a field of long national debate – gender-based anti-discrimination legislation – the demands of CEDAW regarding explicit legislation were used to add legitimacy to the claim. Both the international norm and the reference to comparable states strengthened the claim; the WPA as the main actor based its strategy both on transnational contacts and knowledge and on a domestic coalition with powerful political actors. Second, the Committee's impulses in dialogues were taken back to the national level in cases that had not yet been on the governmental agenda. In some cases, these impulses have not caused much concrete policy output but were only acknowledged on a rhetorical level (e.g. pay differentials), yet in others, the Finnish government became highly proactive (e.g. violence against women or trafficking in women). This form of implementation shows the generally receptive and cooperative attitude of Finland regarding international standards. Third, different political actors have made use of
CEDAW to justify their specific understanding of gender equality or women's rights in political negotiations. While this strategy did not always result in a political outcome, the truly "flexible" appropriation of the norms enshrined in CEDAW is remarkable: it was used from a pacifist feminist standpoint to bar women's access to the army, but it was also used to construct prostitution as a social danger regardless of the rights of prostitutes. This broad discursive use gives the impression that occasionally, CEDAW was instrumentalized - e.g. in the debate on women joining the military – or interpreted in such a way that some of the obligations enshrined in the Convention could be bypassed without openly confronting them, as in the debate on prostitution.

For several reasons, it is not very likely that CEDAW will provoke further significant change in Finland. While it is fair to say that CEDAW has not been *entirely* implemented in Finland, it is also true that it has functioned as an important base for Finnish public gender policies and is still an important framework of reference. Nonetheless, new social developments require new instruments facing formerly unknown challenges. International references remain crucial for national gender policies, yet as a member of the European Union, Finland now belongs to a far more obliging context. In the view of a long-term staff member of Finnish equality authorities,

"CEDAW was important in former times, and now the EU and also the Beijing Process is more important. Because we have already built a structure on the CEDAW. It cannot be drawn away, … but we need new instruments, new initiatives to go ahead. (…) CEDAW … does not say anything about mainstreaming, it is very vague on violence against women, very vague in trafficking. So we need … instruments that are tailored for these needs. But of course CEDAW is important, … for instance, it is still very valid as a basement to everything in positive action." (Interview 26)

Thus, there is no normative disagreement between CEDAW and Finnish gender policies – yet to come closer to de-facto gender equality, new instruments are more likely to unfold effective impulses.

### 7.3 Contextualized compliance – a comparative summary

The examination of two domestic dynamics of compliance confirms the generalized findings of chapter 6, but also surpasses them in providing a more comprehensive picture of domestic policy processes responding to CEDAW. Chile and Finland are domestic contexts that show different conditions for compliance in terms of the political system, socio-economic
prosperity and affinity with international gender norms. In the following, these differing contexts are summarized to present the compliance strategies that were developed in both states.

The political conditions for compliance are unfavorable in Chile and ideal in Finland: The Chilean democracy is characterized by a range of exclusionary factors that lead to an under-representation of women's interests. Even if the government sometimes shows rhetorical support for gender equality, it is much more regularly put under pressure by opponents of international gender norms than by supporters. In contrast, the Finnish political system is inclusive and pluralistic and has integrated the interests of women as long as they are constructed as general equality issues, not as separate women's issues. The government's rhetorical support for gender equality is strong and figures as important positive element of national self-construction.

In both states, proponents of women's rights have established transnational connections: in Chile, this is true both for the WPA and women's NGOs, however, proponents of gender difference and family values as opposed to women's rights are also part of strong transnational networks, often in connection with the Catholic Church. In Finland, the transnational links of the WPA and other state institutions are more predominant than those of NGOs, a fact that underlines the idiosyncrasy of the Finnish state as a uniting social project.

Socio-economic prosperity is high and relatively evenly distributed in Finland, a situation that can be called a favorable ideological and material base to design and implement public gender policies of which all women can benefit. While Chile in theory disposes of considerable resources due to economic growth, its socio-economic prosperity has only partly translated into redistribution of wealth and has thus produced a two-tier society. Accordingly, Chilean women benefit to differing degrees from public gender policies, as most of these policies do not have the potential to correct social inequalities.

The prevalent gender norms in Chile are only partly compatible with international gender norms because the valorization of women remains tightly connected to their role as mothers. Thus, international impulses interfering with motherhood are rejected, while impulses enhancing motherhood may be integrated into the national normative fabric. In contrast, Finnish gender norms are largely compatible with international gender norms as they strongly represent the right of women to self-determination. While the national normative framework is less perceptive to structural gender discrimination and women as victims, it has often been possible to reframe this dimension of international gender norms and to integrate it into a general equality discourse.
Table 2: Factors enhancing compliance with CEDAW in Chile and Finland

<table>
<thead>
<tr>
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<th>Chile</th>
<th>Finland</th>
</tr>
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<tr>
<td><strong>Political System</strong></td>
<td>Not Favorable (-)</td>
<td>Favorable (+)</td>
</tr>
<tr>
<td><strong>Rhetoric of State Leaders</strong></td>
<td>Partly Supportive (+/-)</td>
<td>Supportive (+)</td>
</tr>
<tr>
<td><strong>Transnational links</strong></td>
<td>Established by both Women's Rights Proponents and Opponents (+/-)</td>
<td>Established by Women's Policy Agency (+)</td>
</tr>
<tr>
<td><strong>Prosperity</strong></td>
<td>High and Unevenly Distributed (+/-)</td>
<td>High and Evenly Distributed (+)</td>
</tr>
<tr>
<td><strong>Cultural Match</strong></td>
<td>Considerable Mismatch (-)</td>
<td>Largely Compatible (+)</td>
</tr>
</tbody>
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Which types of compliance strategies have domestic actors developed in these widely differing contexts? The following processes – visualized in graph 13 - could be identified:

- In both states, especially the WPAs have used CEDAW to *shape public policies and to influence legislation*. In Chile, this was possible in those fields where CEDAW is compatible with domestic gender norms, that is particularly in policies that support responsible motherhood or that do not contradict the image of women being weaker than men, as in domestic violence. In Finland, the ratification process of the Convention was used for a comprehensive review of legislation. Most significantly, this process could be framed in such a way that a long formulated claim of the WPA – to introduce gender-based anti-discrimination legislation – could be realized.
In both states, the dialogue with the CEDAW Committee has led to an increased awareness of international obligations or to remind the government of these obligations. Finnish authorities have shown a rather receptive attitude: especially in the issue of violence against women, they have taken up the impulse of the Committee to investigate the problem and develop measures to prevent it. The NGO involvement in the constructive dialogue in both states, but to a greater extent in Chile, has made critique against governmental policies explicit, and the comments of the CEDAW Committee have added weight to their criticism. For Chile, the procedure has particularly intensified the debate around reproductive rights; in the case of Finland, NGOs made use the concluding comments to draw attention on insufficient funding for women's organizations.

Especially in Chile, both the WPA and women's organizations have used CEDAW to stimulate domestic normative change and to widen the discursive space. This strategy has been used in normative fields that collide with Chilean traditions, especially in the field of reproductive rights that has been constructed in Chile as the contradiction of responsible motherhood. The WPA has used the recommendations of the CEDAW Committee to explain and defend "moderate" reproductive health measures like public distribution of contraceptives or sexual education of teenagers, but dissociates itself from radical positions, such as the legalization of abortion. The NGOs working in the field try to strengthen the norm of women's reproductive self-determination, including abortion if adequate. While particularly the NGOs use their transnational connections to underline the legitimacy of their position, transnationally connected civil society groups opposing the notion of reproductive rights have a more influential stance in the national debate.

In Finland, CEDAW has been used as a discursive framework to strengthen differing understandings of gender equality, especially in legislative debates. Remarkably, CEDAW served both for a pacifist feminist argumentation to bar women's access to the army and for a conservative construction of prostitution as a social danger regardless of the rights of prostitutes. This broad discursive use points to a broad social acceptance of the Convention in Finland, yet also indicates that domestic appropriation of international norms can unfold in a variety of ways not intended by the international framework.

In Chile, especially women's organizations have engaged in promoting CEDAW among 'ordinary women' to make them aware of their rights. This awareness-raising has to be seen in the context of socio-economic and political exclusion in Chile: as the state is not capable to ensure a certain living standard to a large part of the population, it is deemed important by women's NGOs that women start claiming their rights.
In both states, the use of CEDAW as part of international human rights law in domestic jurisdiction is underdeveloped. While this omission is partly due to the vagueness of the Convention's provisions, it also shows that legal discourses depend as much as socio-political discourses on transnational contextualization, which in the case of human rights law is still in its beginnings.

The findings relate in several ways to the theoretical framework spelled out in chapter 2. First, the Finnish state is to a far greater extent than the Chilean state based on "cooperative sovereignty": it has both established internal structures that successfully reconcile plural interests and is engaged in promoting international dialogues. It is perceived by its citizens as legitimate actor in linking international and domestic discourses. The Chilean state institutions also have a strong international orientation, but in normative issues often take an attitude of "autonomous sovereignty"; as the state is also not considered a legitimate guarantor of adequate living conditions for all Chileans, civil society organizations turn to transnational strategies to put pressure on the state in the logic of the "boomerang pattern" (Keck and Sikkink 1998). However, it seems that a state's attitude of cooperative sovereignty is not only supportive for a joint problem solving approach on the international level, but also enhances sustainable domestic implementation of international norms.

Second, the argument that acceptance of international norms can be measured in repercussion on national discourses, state institutions and public policies (Cortell and Davis 2000) may have to be modified as it does not reflect enough on domestic processes of norm appropriation: International norms have impact in domestic contexts if they are integrated in domestic discourses that may lead to institutional or policy change. In this process of integration, the norms may be modified and adjusted to the domestic context; the eclectic attitude of the Chilean WPA regarding reproductive rights is an example for such domestic modification. These appropriation processes have the potential of transforming norms. Such transformation would be compatible with the international norm if it contextualizes the norm without relativizing it, yet even if the appropriation process goes beyond such an acceptable level, it has to be considered as integral part of the process of global norm creation and diffusion.

Third, best guarantors for an adequate contextualization of norms are transnational actors, particularly in cases where international and domestic discourses are not well connected and differing. As the case of Chile shows, bridge-building activism alone does not necessarily lead to norm harmonization, but may find its limits. However, a certain degree of mutual influence between international and domestic norms can be fostered, even in contested fields.
8. Transnational interventions in the CEDAW process: NGO networks linking international, national and local interpretations of women's rights

In the last decades, women's organizations have increasingly used transnational network structures to advocate for their goals (Ackerly 2001; Chen 1996; Friedman 2003; Grewal and Kaplan 1994a; Grewal 1999; Lenz et al. 2000; Mackie 2001; Mintrom and True 2001; Moghadam 2000; Naples and Desai 2002; Stivens 2000; Thayer 2001). Non-governmental participation in United Nations fora was rejected for a long time because of the organization's intergovernmental rationale, but gradually a number of UN bodies have accepted input from NGOs as valuable support for their work. The relationship between the CEDAW Committee and women's NGOs was ambiguous in principle: The CEDAW monitoring procedure takes place between the Committee of experts and delegations of States Parties; NGOs are not ascribed any formal role in the process. Thus, when NGOs first tried to influence the constructive dialogue by providing independent information to the Committee in the late 1980s, they encountered reluctance of Committee members and of the UN Secretariat. At the same time, the interest of women's organizations in CEDAW has also not been overwhelming: most NGOs prefer to invest their limited resources in other fields, e.g. in community activism or public awareness raising (Connors 1997; Smith, Pagnucco and Lopez 1998). Taking this ambiguity as a starting point, the Committee has become increasingly receptive to NGO input in the reporting procedure and encourages the support of NGOs in implementing the Convention on the national level. Likewise, a number of NGOs have discovered CEDAW as an instrument to connect international, local and national understandings of women's rights. Two transnational networks, **International Women's Rights Action Watch (IWRAW)** and **International Women's Rights Action Watch Asia Pacific (IWRAW Asia Pacific)**, are particularly active in linking the Convention with local and national women's activism.

To elucidate the relationship between women's NGOs and CEDAW, the chapter is guided by the following theoretical questions: In how far have NGOs contributed to the constitutive dimension of CEDAW as an international women's rights regime, and in how far have they transformed this regime in adding a new transnational dimension? Has their activism strengthened the regulative dimension of CEDAW in increasing domestic compliance and

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275 A survey on NGOs in the field of human rights found that a large number of NGOs name the protection of women's rights as a primary goal, yet while only a handful of organizations established a contact with CEDAW, most of them attended the World Conference on Women in Beijing (Smith, Pagnucco and Lopez 1998: 412).
if so, how did this happen? Has the "translating activism" of transnational networks of non-
governmental activists added new elements to the process of international norm creation and
diffusion? If transnational NGO activism around CEDAW is situated within international and
national hegemonic structures, has it unfolded the potential to significantly transform these
structures, e.g. regarding the dominance of state sovereignty? To answer these questions, the
chapter first outlines the changed relationship of NGOs with the UN in general (8.1) and with
the CEDAW Committee in particular (8.2). Then, the activities of IWRAW and IWRAW
Asia Pacific are presented (8.3), in particular regarding the improvement of the CEDAW pro-
cedure in bringing national NGOs in, in developing strategies to strengthen a gender perspec-
tive in international law, and in linking international women's rights norms with local activism
to improve governmental gender policies (8.3.1, 8.3.2).

8.1 NGOs within the UN and the Human Rights Treaty Bodies

Many authors have critically reflected upon the vagueness of the term "non-
governmental organization" and its implications: it does not specify any feature except the
negative identity of not being part of a government, and thus, can include organizations as
different from each other as a local women's collective and the international association of
employers (Martens 1998; Ziegler 1998: 24). Other authors have drawn attention to the fun-
damentally different functions of NGOs in developed and developing countries (Dias 1994;
Herzka 1995). Accordingly, their goals and interests vary considerably, and it cannot be as-
sume that NGOs speak with a united voice legitimately representing civil society and holding
governments accountable (Brunnengräber 1997; Martens 1993: 170). The understanding of
NGOs in this context follows the definition of NGOs as "social movement organizations"
(Rucht 1996). It understands NGOs are part of movements that aim at social change, but
movements and organizations are not identical, as NGOs dispose of concrete organizational
structures and movements do not (Rucht 1996; Schulze 1997)

The UN has had an ambivalent relationship towards NGOs. After a long time of con-
ceding rather limited access to NGOs, the UN is now

"one of the privileged venues for this escalating dialectical relationship between states
and non-states. New issues and actors are knocking at the UN's door. It is no longer
possible to keep them out; if the door is locked they will come in through the window
or the cracks in the floor." (Donini 1996: 83)
The access of NGOs to the UN was first regulated in 1968. In ECOSOC resolution 1296, NGOs were defined as "(a)ny international organization which is not established by intergovernmental agreement ..., including organizations which accept members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organization" (UN Doc. ECOSOC Res. 1296 (XLIV)). Three different categories of NGOs were established – consultative status 1, consultative status 2, and roster - with decreasing levels of participatory rights within the UN. However, the official access remained limited for NGOs of all three categories, e.g. they were granted access to meetings of the ECOSOC, but not the General Assembly or the Security Council, arguably the most important organs of the UN\(^2\). Over time, the accessibility of the UN for NGO activism has increased, both formally\(^3\) and informally\(^4\). There is hardly any field of work in the UN where NGOs would not have interfered, and in most cases, this interaction goes through informal ways, since the "official rule book" takes longer to change than the real world (Donini 1996: 83; Ritchie 1996).

The working context of the Human Rights Treaty Bodies reflects this general relationship between UN and NGOs. NGOs engaging for the protection of Human Rights have similar goals as the United Nations human rights framework, yet only one of the treaties mentions NGOs and attributes them any function in the monitoring process, that is the Convention on the Rights of the Child\(^5\). This omission indicates how strongly the treaties were tailored along the principle of national sovereignty (see 4.1.1). However, the monitoring bodies belonging to the Human Rights treaties soon realized the crucial role NGOs could play in the constructive dialogue, especially in contributing critical information independent from the government's presentation. The 6\(^{th}\) and 7\(^{th}\) Meeting of persons chairing the Human Rights Treaty Bodies encouraged NGOs to critically examine the work of the Treaty Bodies to make their performance more effective (UN Docs. A/ 50/ 505, paras. 16, 23; A/ 51/ 482, paras. 32, 35). All Committees have gradually opened up to NGO involvement. Today, different forms of cooperation exist, such as informal consultations, regular briefings, official meetings between the Committee and NGOs, as well as cooperation between Committee experts and

\(^2\) For more details and a critical assessment of NGO access to the UN, see Martens 1998.
\(^3\) After the Rio conference, the status of NGOs within the UN was reconsidered. Among other things, the access for national NGOs was made easier, however, many critics were disappointed with the rather meagre results of the revision (Martens 1998; Paul 1998; Ziegler 1998).
\(^4\) The most remarkable informal opening for NGOs took place in the context of the 1992 Rio Conference on Environment and Development (UNCED): hundreds of NGOs were accredited by the UNCED Secretariat, therewith bypassing the more complicated regular procedure through the ECOSOC (Martens 1998: 125f).
\(^5\) In the case of CEDAW, NGO involvement was a point of debate in the drafting process, yet the idea did not find approval among delegations (see 4.2.2.4).
NGOs beyond the reporting procedure. Most Committees have also codified the integration of NGOs in their rules of procedure (Connors 1997; Bayefsky 2001). One factor that makes NGO access to the Treaty Bodies relatively easy is that it does not require official accreditation at the UN.

The Committee on the Rights of the Child has established most solid cooperating ties with NGOs among all Treaty Bodies. The role of NGOs is not only made explicit in the Convention where reports submitted by NGOs are mentioned as integral part of the monitoring process. Also, a Liaison office of the NGO-Group for the Convention on the Rights of the Child has been set up on a permanent basis and is financed by UNICEF to facilitate NGO participation in the Committee's work (Bayefsky 2001: 44). This Liaison office establishes contacts with national NGOs and supports them to participate most effectively in the reporting procedure. As the Committee members seem to view the NGOs as partners in their monitoring task, the Liaison officer of the NGO group once described the relationship as "a strong, mutually dependent one which functions with a high degree of trust." (Theytaz-Bergman 1997: 4) Both for the CERD and the CEDAW, NGO-networks with similar goals have been established, but without the support of official UN funding: The Anti-Racism Information Service (ARIS) for CERD and IWRAW and IWRAW Asia Pacific for CEDAW (Connors 1997; Bayefsky 2001). In this process of cooperation with the Treaty Bodies, NGOs are required to participate in a highly specific way: Committee experts welcome independent information and need to be ensured that the information is not biased, but objective, reliable and comprehensive. In addition, NGO reports have to be submitted in time and in an accessible format, e.g. they have to be well structured, summarize the most important trends, and be written in English to be most accessible to Committee experts. Thus, NGO participation needs to be thoroughly prepared and coordinated to "fit" into the monitoring procedure.

**8.2 From reluctance to integration – the CEDAW Committee's attitude towards NGO participation**

In the early years of CEDAW's existence NGO input was minimal, despite its potential to improve the quality of the constructive dialogue. As one Committee member at that time put it, NGO information would provide the experts "with the kind of 'ammunition' needed to delve beneath the surface of reports and get a more accurate overall pictures of the situation of women" (Jacobson 1991: 467; Byrnes 1989; Cook 1994b). Two factors contributed to this lack of NGO participation: first, NGOs got less involved with CEDAW than with other Treaty
Bodies because of its remote location in Vienna. A number of prominent Human Rights NGOs\textsuperscript{280} established offices in Geneva to constantly influence the UN Human Rights system – however, with no effect on CEDAW (Byrnes 1989). As Rachel Brett from the Quaker United Nations Office in Geneva remarks, the geographical isolation of the women's rights instruments at the UN

"leads NGOs, including my own to treat women's rights as a separate issue and not as part of our main international human rights work. I consider this to be conceptually wrong as well as leading to the dangers of marginalisation, lack of cross-fertilisation or even awareness of what is happening in other human rights bodies." (Brett 1997: 2)

While most Human Rights NGOs focusing on human rights took a while to integrate a gender-sensitive perspective in their work (see 4.1.3), the organizational separation of CEDAW added to the widespread ignorance regarding women's rights. The move of CEDAW from Vienna to New York in 1993 has certainly eased NGO access to the Committee, but has probably not brought any significant change for those Human Rights NGOs with headquarters in Geneva.

The second factor impeding NGO participation in CEDAW's work was resistance of some Committee members: since NGOs were not mentioned in the treaty, they felt that it was "inappropriate to expand the provisions of the Convention." (Jacobson 1991: 467) As many of the former and present CEDAW experts have been working for their governments, they were often fast in taking a perspective reflecting governmental interests. For example, it was seen as problematic if NGOs provided information differing from the state, because the dialogue between the Committee and the State Party would then be "on the basis of conflicting information" (Jacobson 1991: 468). Such confrontation could possibly fuel "antagonism between States Parties' representatives and CEDAW members" and ultimately, cause resistance of States Parties to the monitoring process (ibid.). However, a significant number of CEDAW experts encouraged NGO participation from the beginning of the Committee's existence.

In the late 1980s, NGOs started approaching CEDAW. Most significant was the influence of a small organization that had just been set up after the 1985 Nairobi World Women's conference: The International Women's Rights Action Watch (IWRAW). It was formed by the Women, Public Policy and Development Project at the University of Minnesota and the Development, Law and Policy Program at Columbia University in 1986 and aimed at maintain-

\textsuperscript{280} Among others Amnesty International, the International Commission of Jurists, the International Service for Human Rights, the Quaker United Nations Office, the World Organization against Torture, and World Vision International (Mandat international 2005).
ing the Nairobi momentum in "hooking onto the CEDAW treaty as an instrument that belongs to women" (Interview 14). IWRAW disseminated information about CEDAW among women’s NGOs, and it started to bring critical views of women’s organizations to the CEDAW procedure. In the late 1980s and early 1990s, the founders of IWRAW felt that their initiative was welcomed by the Committee members, particularly because of the situation of scarce resources of the UN secretariat that did not allow spreading information about CEDAW. As one representative of IWRAW recalls,

“(t)he Committee at first was very poorly serviced, and in that sense we became a kind of informal secretariat in terms of communication with Committee members. (...) And then when we evolved into this reporting activity. About a third to a half of the Committee members really wanted to work with us, others were reluctant. But gradually what happened was that the information channel was so valuable that people really couldn’t do without it. … What used to be … an informal relationship where we were almost begging for attention, has become suddenly taken for granted.” (Interview 14)

Thus, the recognition of NGO contribution to the monitoring process slowly but constantly grew, both within the Committee itself and within the Secretariat (Byrnes 2002). Based on an evaluation on NGO participation in other Treaty Bodies, the Committee discussed how to include NGOs and their input more formally. Under a chairperson who was extremely favorable to NGO involvement, the Committee decided to invite the Secretariat in 1997 to facilitate NGO access and to arrange informal meetings with them during the Committee’s sessions. By that time, the Committee’s assessment of NGO input had become mainly positive, stating that reports of non-governmental organizations "did not compromise the independence of the members", yet "were able to shed light on the de facto implementation of the Convention in States Parties " (UN Doc. A/52/38/Rev. 1: 48; see 5.1.2.3). In the following years, the Committee went further in formalizing NGO access to the CEDAW procedure: in 1998, NGOs were encouraged to participate in the pre-session working group. Since 1999, NGOs have been invited to present their information in one of the official meetings of CEDAW. This has meant better access for NGOs to all Committee members, because their statements can be submitted in other languages than English and are translated into all six UN languages. Further, the Division for the Advancement of Women administratively supports the participation of NGOs in the CEDAW sessions, e.g. in organizing the access of NGO representatives to the UN conference building.

The former reluctance of Committee experts towards NGOs has gradually disappeared and the fundamental relevance of NGOs in the process is out of question today. The experts are aware that information provided by NGOs is not automatically useful, for example if the
organization focuses exclusively on one issue and thus gives a distorted impression on the
domestic situation, or if NGOs are not providing grounded information, but only intend to
confront the government. Thus, experts see NGO input as support for their function as
critical and knowledgeable examiners, but they are conscious that it is in their own responsi-
bility to make a judgment on the reliability of the information and to use it in the dialogue.
Aside from this caution, most CEDAW experts consider NGO activists as partners in the
struggle for gender equality, however, as partners struggling with different methods. They
mentioned the following important functions of NGOs for the CEDAW monitoring proce-
dure:

First, in presenting alternative reports, NGOs add critical information to the dialogue
that otherwise would not be available:

"They are giving us a holistic picture of what is happening in the various countries. (…) For us as CEDAW members to work efficiently, we should go to the countries if possible. Since we are not able to do that, the NGOs complement our work." (Interview 2)

Second, since NGO activists are considered experts in women's rights, they add expertise to
the CEDAW process. Thus the Committee commends NGOs either if they participate in writ-
ing the official report of their country, or if they submit a shadow report on their own. More
recently, NGOs have also been consulted for the drafting of General Recommendations, a task
that is traditionally performed by the Committee alone, yet the Committee has become aware
that consultations with NGOs may improve the drafting process:

"When we are drafting a General Recommendation, we now have established a proce-
dure where we have an open session where NGOs can give their contributions. (…) We will listen to their views, and we will discuss, the experts themselves will put their contributions, draft the first draft … . One of our problems is being the sheer lack of time, … but we are trying more and more to have this consultation process." (Interview 5)

Third, NGOs are crucial actors in triggering domestic policy change, either in pressuring their
governments, or in cooperating with the Women's Policy Agency and other state institutions
in implementing the CEDAW provisions. CEDAW Experts often underline that the imple-

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281 See for example the view expressed in interview 7: "In some cases, the NGOs that come to the Committee's sessions belong to the ideas of the opposition. Their statements are exclusively oppositional, but do not get to the bottom." ("En algunos casos, las ONGs que vienen a las sesiones del Comité son ONGs que pertenecen a las ideas de oposición. Sus planteamientos son únicamente opositores, pero no van al fondo.")
mentation of the Convention depends on domestic cooperation between state and non-state actors. For example, in the view of one expert, policy change

"depends mostly of the power of the (women's) machineries in community with NGOs. (...) the NGOs are of great importance, ... how the NGOs get to know about CEDAW and how they disseminate and use CEDAW, and how they succeed to install not only an oppositional but a collaborative attitude towards the government. (...) We try to make understand to the governments the importance of the NGOs for better implementation of the Convention." (Interview 4)

Fourth, NGOs contribute considerably to promote the Convention within civil society and among women who may benefit from it. In the judgment of some experts, NGOs are also going to play an important role in spreading the knowledge on the Convention's Optional Protocol and its individual complaint procedure, so that women will be able to make use of it.

In sum, from the point of view of the experts, NGOs are crucial actors in making the Convention effective, both in their contribution to the international monitoring procedure and in supporting domestic implementation of CEDAW in cooperation with their governments. As a consequence, the status of NGOs before the Committee has become more formalized: In the recently adopted Rules of Procedure of the CEDAW Committee, NGOs are, on the same basis as Specialized Agencies, formally invited to submit information to the constructive dialogue of the Committee (UN Doc. CEDAW/C/ROP, rule 47). However, it is noteworthy that the annual reports of CEDAW do not list those NGOs that submit alternative reports, nor do they make a reference to the reports or contain the content of the official NGO hearing before the Committee. Thus, NGOs still leave no clue in the official documentation of the work of CEDAW. Including NGO information in the official report would increase transparency of the Committee's work and it would certainly be a valuable step in formalizing and also encouraging the partnership between CEDAW and NGOs. Other Treaty Bodies already follow this practice (Bayefsky 2001: 116).

8.3 Goals and activities of CEDAW related NGO-networks: IWRAW and IWRAW Asia Pacific

Two non-governmental organizations have been most active in shaping the CEDAW process: the International Women's Rights Action Watch based in Minneapolis, USA, and the

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282 The information submitted by Specialized Agencies is treated slightly different: while their oral presentations in the Committee's meetings are not included in the official report, their statements are listed as UN documents in the annex of the report and thus can be traced back.
International Women's Rights Action Watch Asia Pacific, based in Malaysia. Both organizations have been working for the improvement of the CEDAW procedure in supporting national NGOs to contribute their critical views to the monitoring process, and in developing strategies to strengthen a gender perspective in international law. IWRAW Asia Pacific has further engaged in linking international women's rights norms with local activism to improve national enforcement mechanisms for gender equality in several Asian states. As the similar names of the two organizations indicate, they have common roots, but they work independently from each other and are thus presented here separately.

8.3.1 IWRAW: enhancing the CEDAW process by bringing independent voices in

IWRAW started in 1986, in an attempt to maintain the positive dynamics of the Nairobi conference, described by a representative of IWRAW as a crucial event for the coalescing of a real international women's movement and as "the beginning of the discussion about rights as opposed to welfare for women" (Interview 14). Starting from the general idea to promote the CEDAW Convention and make it "an instrument that belongs to women", the founders of IWRAW developed a project that, in the words of one of its representatives, was going to differ from already established non-governmental strategies particularly in a non-confrontational attitude:

"(T)he role of NGOs with respect to UN treaties and UN processes historically had been investigating in pinpointing violations of human rights, … publicizing that in the international press and the international community, to put pressure on governments. The role for American-based NGOs had been very strongly to try to influence American foreign policy. We knew that we didn’t want that kind of role because it wouldn’t work for women. (…). But being able to identify what would work for women and what was the approach that would enlist enough people in the activity to make a difference without it being totally confrontational with governments and totally focused on violations instead of positive change, we … literally had to invent it." (Interview 14)

IWRAW calls itself an international resource and communication center to make international instruments, and CEDAW specifically, useful for women. Its mission is threefold: first, it provides independent information for the CEDAW monitoring procedure to increase accountability of governments, and it informs women's organizations about CEDAW. More recently, IWRAW has engaged in the same way in the monitoring procedure of the Committee on Economic, Social and Cultural Rights (CESCR). Second, IWRAW develops ideas to improve women's lives by means of CEDAW and other international instruments, and it pro-
vides space to discuss and spread those ideas. Third, IWRAW has established a network structure for and with other NGOs that enables the first two first functions.

8.3.1.1 Information and facilitation: the production of shadow reports

Initially, most of the organization's time was devoted to compiling information to improve the CEDAW reporting procedure. For example, IWRAW published in 1988 together with the Commonwealth Secretariat the first manual on reporting under the CEDAW Convention for States Parties. Later, the preparation of shadow reports for the Committee's constructive dialogue, the briefing of Committee members, and the dissemination of the Committee's comments became the centerpiece of the organization's identity.

The IWRAW reports aim at supporting and improving the work of the Committee by providing additional information, as experts often do not have the time to do research on each State Party scheduled for dialogue. After years of exclusively contributing to the CEDAW procedure, IWRAW has started to submit alternative reports to the Committee on Economic, Social and Cultural Rights as well. In the organization's view, it is the Treaty Body that deals with the set of rights that is most relevant to women in terms of their socio-economic independence and empowerment. Over the years, IWRAW has gained expertise in writing reports that combine grounded information and the necessary brevity to be digestible for the experts. With rare exceptions, IWRAW has focused its shadow reports on developing countries, as it is more difficult to write such reports for NGOs from the Global South than for those of industrialized countries because of limited resources. In some cases, IWRAW prepared the report together with a national NGO, but presented it as IWRAW report, because the concerned NGO wished to remain anonymous. Also, IWRAW chose to write reports

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283 This document has been updated several times; the latest version was published in 2000.
284 IWRAW has never worked with the Human Rights Committee because the NGO Equality now has been doing similar work related to that Treaty Body: Since 1994, it has prepared reports with a particular gender perspective on countries under review before the HRC, usually based on information obtained by national and local NGOs. It did not support NGOs to present their own reports before the Committee, but informed them about the outcomes of the constructive dialogue. Equality now also considered preparing gender-specific reports for the Committee against Torture, but the constrained budgetary situation did not allow such intervention. Since 2001, Equality now has shifted its activities before the HRC: upon request of the Committee, it now submits alternative reports for those states that fail to submit official reports and to appear before the Committee. Equality now and IWRAW keep each other updated about their activities and exchange reports. In the view of Equality now, it supports the work of national NGOs if different Treaty Bodies criticise governments for the same failures, as this reinforces the relevance of the issue (Interview 16 and Equality now 2005a).
286 In 1999, an alternative report was written on Austria, in 2000 on Luxembourg, and in 2001 on Portugal. The decision on which country to write a report depends on a variety of factors; most important in these exceptional cases was that IWRAW was not aware of any activities from NGOs of these countries (Interview 15).
especially on those countries where there were no national NGOs disposed to do it. The reports have been based on research recurring to different sources, such as relevant literature, databases, and newsletters of a variety of organizations. Further, experts and organizations from within the country have been consulted regularly, and in some cases, reports were based on field trips.

Even if writing reports still figures as one of its important tasks, IWRAW has shifted its emphasis towards supporting national NGOs and NGO-coalitions both in writing reports and in being present at the Committee's sessions. This is mainly due to the growing interest among NGOs in CEDAW: "In the beginning, IWRAW was the only one writing reports. Now, ... there is more competition in a way, but we consider that a success, because that means that more people have come to know about CEDAW" (Interview 15). IWRAW's long-standing experience with the Committee and the contacts it has established with NGOs all over the world are crucial resources in this effort of facilitation. Aware of the schedules of upcoming CEDAW sessions, IWRAW gets in contact with national NGOs when their state is due to report and encourages them to write a shadow report. If there are no contacts existing yet, IWRAW tries to establish them either via other NGOs or sometimes in direct contacts through field trips. If there are national NGOs ready to write alternative reports, IWRAW assists and advises them in every stage of the process. It published a guideline for the preparation of NGO shadow reports both for CEDAW and CESCR which are available online in English and Spanish. These guidelines inform about the optimal timing of NGO action and about the format of a useful shadow report. For example, it recommends NGOs to obtain the official governmental reports before starting to write their own report to be aware of the government's position on crucial issues, and it reminds NGOs that their input is more likely to be considered if it is submitted as early as possible, ideally for the consideration of the pre-session working group. As for the format of the report, the guideline draws on IWRAW's more than ten years of experience in writing reports. Among other advices, it recommends that a report should start with an executive summary and be organized along the CEDAW articles, that it should not exceed 30 pages, and that it should identify a small number of problems that are most urgently to be addressed by the experts. Also, NGOs are encouraged to not only name problems, but also to make proposals for problem solving (IWRAW 2005).

Bearing in mind that for most NGOs, the timely procedures and the rationale of the international arena are unknown, the support of more knowledgeable actors such as IWRAW is crucial for a successful intervention. A simple example is that NGOs, possibly due to their own time constraints, are often not aware of the importance of meeting deadlines, so IWRAW
keeps reminding them that the experts, already overburdened with country-specific information, need time to study the NGO's additional information. IWRAW also helps NGOs to obtain funding to get to New York and assists them during their stay at the CEDAW session. Further, it is partly involved in the preparatory workshop for NGOs held by IWRAW Asia Pacific and UNIFEM (see 8.3.2.2).

Due to recent cutbacks in funding – a tendency that has affected many US-based NGOs in the field of Human Rights – IWRAW has reduced its activities around CEDAW and has concentrated its work on the CESCR. In 2003, four reports were written on states reporting before the CESCR, and none on any state reporting before CEDAW. Also, IWRAW organized a workshop in November 2003 for women's NGOs to submit alternative reports to the CESCR. The workshop design basically follows the workshop conducted for NGOs submitting alternative reports under CEDAW, with the difference that participants are prepared for a Committee that is not automatically paying attention to women's rights. Apart from the difficult financial situation, IWRAW also took a political decision to move its activities from CEDAW to CESCR, since

"we felt that … we have accomplished what IWRAW was established to accomplish, i.e. make CEDAW known to NGOs globally. Our success made us dispensable. Getting involved in CESCR was meant to replicate what happened with CEDAW because of IWRAW work." (email-correspondence with IWRAW research director, January 2004)

8.3.1.2 Generating ideas around the Convention

Based on the concrete work of writing reports, which "has been a very useful thing for us to grow in substance", IWRAW has also been engaged in "develop(ing) and generat(ing) ideas about how to use the Convention and what the Convention means more in depth." (Interview 14) To create the space to develop those ideas, IWRAW organized for a number of years workshops focusing on a specific topic in the field of women's rights. Those workshops took place in New York during the January sessions of CEDAW. Thus, CEDAW Committee members as well as other experts gathered to discuss those topics and to develop joint understandings and strategies. Due to cutbacks in funding, IWRAW is not able to organize these
workshops anymore, but it keeps cooperating with Committee experts in a range of projects, e.g. in CEDAW-related conferences\textsuperscript{287}.

To give one example of the content of discussion at those workshops: the meeting in the year 2000 focused on strengthening the link between CEDAW, the Beijing Platform for Action, and the Beijing+5 process. In a paper written for the workshop, Kristen Timothy and IWRAW director Marsha Freeman explain why they think this link is important for the implementation of women's rights:

"World conferences such as Beijing ... are political events that mark global recognition of major issues and an attempt to find consensus among governments about approaches to those issues. (...) Human rights enforcement is a more legally oriented process, based on documents and obligations that have the force of law. The Beijing Conference brought the two processes together, engaging citizens and governments in a dialogue that was political in nature but informed by the legal precepts of the human rights enterprise. Platform implementation, therefore, should be informed by human rights principles, and assessment of human rights implementation should be made with reference to the commitments made in the Platform." (Timothy and Freeman, 2000: 1)

Both the paper and the workshop aimed at exploring how the two different dynamics – the Beijing follow-up process and the monitoring framework of CEDAW – could reinforce each other. To do so, Timothy and Freeman detected substantial commonalities and differences between the BPFA and CEDAW, e.g. they identified where the BPFA uses rights-based language\textsuperscript{288}, and where the critical areas of concern have taken up issues that had not been mentioned in CEDAW\textsuperscript{289}. The paper then suggests that the commitments of the BPFA could be made concrete if the concluding comments of the CEDAW Committee were used to define core obligations and standards for the progressive realization of the Beijing goals. Linking the two mechanisms would also provide national NGOs with a very good argument: they can remind their governments that they have made multiple commitments, both in the BPFA and the Human Rights Treaties\textsuperscript{290}.

\textsuperscript{287} For example, the director of IWRAW and the CEDAW expert from Germany participated in a conference held in Berlin in 2003, organized by the Deutsches Institut für Menschenrechte titled "The Optional Protocol to CEDAW. Mitigating Violations of Women's Human Rights".
\textsuperscript{288} Especially in the critical areas of concern: Education and training, women and health, women and the economy, women in power and decision-making, institutional mechanisms, and human rights of women.
\textsuperscript{289} Especially in the critical areas of concern: Women and poverty, violence against women, women and armed conflict, women and the media, women and the environment, and the girl child.
\textsuperscript{290} In another publication, IWRAW has also linked the other Human Rights Treaties with the BPFA, since they also contain articles that sustain the Platforms' principles (IWRAW 2003).
8.3.1.3 The IWRAW network

Initially, the founders of IWRAW thought of an organization with regional offices and a systematic organizational network, yet this idea did not materialize. IWRAW has instead created an information and facilitation network around CEDAW. Any women's organization, scholar or individual interested to engage in the CEDAW process and in the rights of women more generally can become part of it. IWRAW could be called the central knot, but the network is a loose one — there is no "chain of command" from IWRAW to other organizations and neither do the members of the network cooperate joint projects. Instead, contacts are established to pool and distribute information, to identify national NGOs for the reporting procedure, or, from the part of other NGOs, to seek for information, training and assistance. The network basically serves for information, facilitation, and discussion.

One element that has been holding this network together is *The Women's Watch* a newsletter produced by IWRAW. Until the year 2001, three issues were published each year. Network members from developing countries received it for free, while members from developed countries paid for it. It contained a compilation of news on women's rights from around the world that were organized according to the CEDAW articles. For example, in the newsletter of June 1994 several news are listed under the heading "Human Rights – Convention Articles 2 and 3": *Women Living under Muslim Law* and others are urging support from the world community for women in Algeria; the UN Commission on Human Rights has formally recognized women's human rights as an integral part of the human rights enterprise (*The Women's Watch* 1994: 1). *The Women's Watch* usually opened with a longer item of current interest, e.g. about the strategies before and after the Beijing conference around CEDAW or the possibilities of the Optional Protocol for NGOs. It also listed upcoming events and resources of use for women's rights work. Since 2001, the newsletter has ceased to exist, and due to the limited funding of IWRAW, it was not possible to replace it by an electronic version. This is certainly a loss in terms of network-creation, however, much of the information that IWRAW had been distributed in *The Women's Watch* has become accessible via the internet.

IWRAW has established contacts with other network organizations, such as the Network of East-West women, to mutually benefit from the knowledge produced by different sources about as many countries as possible and about national NGOs interested in the CEDAW process. It is also connected to UNIFEM and a range of US-based Women's Rights NGOs, however it is noteworthy that IWRAW never strongly engaged in the activities of US-

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291 The foundation of the IWRAW Asia Pacific was encouraged and inspired by IWRAW, yet an independent process from the beginning.
American NGOs to bring the United States to ratify CEDAW. This seems to be due to the international alignment of IWRAW and its remote location from Washington DC, where lobbying in this regard takes place\(^{292}\).

### 8.3.2 IWRAW Asia Pacific: linking international women's rights standards with local activism and national gender policies

IWRAW Asia Pacific was founded in 1993 and has its organizational base in Kuala Lumpur, Malaysia. While the name of the organization was derived from the US-based IWRAW, the two organizations are independent from each other. IWRAW Asia Pacific's mission is to contribute "to the progressive interpretation, universalisation, implementation and realisation of women's human rights through the lens of CEDAW and other international human rights treaties." (IWRAW Asia Pacific 2005a) In the view of the organization, this is to be achieved only if the international human rights framework is understood and used by local and national activists to claim their rights. Thus, IWRAW Asia Pacific's work is guided by three main interrelated objectives: first, to build capacity among activists to use the human rights framework in their activities, second, to enhance human rights development at the national level in using CEDAW as a framework, and third, to contribute to the development of international standard setting. Since its foundation, IWRAW Asia Pacific has consistently developed this multi-level framework with a strong emphasis on local activism in South and South East Asia, and thus has been contributing to the contextualization of international women's rights norms. Its work can be described as moving "from a theoretical set of treaty standards to a methodology for implementation (...) (that) "seeks to maximize national input at the international level, and the use of international standards at the national level." (Bayefsky 2001: 47f) The activities of the organization have gone through a conceptual shift: initially, emphasis was laid on capacity building within national contexts, yet as national partner NGOs of IWRAW have acquired the knowledge to interpret and use international human rights norms themselves, IWRAW concentrates more on influencing the regional and the international level. In doing so, the organization keeps the connection with women's NGOs working on the national levels.

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\(^{292}\) For example, the Working Group on Ratification of the UN Convention on the Elimination of all Forms of Discrimination against Women, a coalition of over 190 non-governmental organizations based in Washington DC is "engaged in outreach and education to achieve U.S. ratification of the treaty for the rights of women." (Working Group on Ratification of the U.N. Convention on the Elimination of All Forms of Discrimination Against Women 2005b)
IWRAW Asia Pacific's work focuses on eliminating discrimination against women, yet based on an understanding of intersecting discriminatory structures:

"IWRAW Asia Pacific's programme is premised on the belief that discrimination is at the root of all forms of deprivation, and that all rights are interrelated. As such, we seek to enhance people's control over the processes through which they can articulate and claim opportunities; and build their capacity for economic self-reliance, good health, well-being, and freedom from abuse." (IWRAW Asia Pacific 2003a)

Thus, IWRAW Asia Pacific aims at enabling women suffering from all kinds of discrimination to live in conditions of substantial equality. This project of radical social transformation is pursued on the organizational level in "putting together an evolving process for achieving equality" by means of "sustained activism" (IWRAW Asia Pacific 2003b). In other words, to work for the elimination of discrimination in practice IWRAW Asia Pacific employs a long-term evolutionary perspective. The organization has been active in the following areas: training and capacity building in international women's rights standards; connecting local NGOs with the CEDAW monitoring procedure; monitoring national policy processes to implement CEDAW; and regional and international interventions to strengthen women's rights and to influence the interpretation of women's rights norms. To effectively carry out these activities, IWRAW Asia Pacific has developed an organizational network structure.

8.3.2.1 Training and information dissemination in international women's rights standards

IWRAW Asia Pacific has developed and organized trainings to strengthen the domestic application of human rights of women by focusing on the CEDAW Convention. These trainings were mostly conducted with NGOs, but also with governments and lawyers in the region. They aim at making international standards useful tools for the work of local and national organizations and contain several elements: first, core concepts are clarified, such as discrimination and substantive equality, as well as the international human rights framework as a whole, including recent mechanisms such as the Optional Protocol to CEDAW. Explaining the international framework incorporates a reflection on its deficiencies, especially the lack of gender-sensitivity in many areas. This reflection draws the activists' attention to the importance of local advocacy in global processes to work for a holistic human rights framework. Second, the trainings enhance women's capacity to use international standards in their own work: by presenting concrete examples of how CEDAW was used in the Asian region,
the trainings illustrate the potential of a rights-based approach for local activism. Third, the trainings encourage activists in developing concrete strategies to use international standards, e.g. to monitor state institutions in the light of their obligations under CEDAW (IWRAW Asia Pacific 2002a; Interview 33).

After having developed the training materials and having trained a wide range of women in the region, IWRAW Asia Pacific itself now conducts less training seminars than in previous years. Instead, it started to create pools of resource persons on the national level who are capable to continue the trainings, since the demand has remained high. With this shift, the expertise is passed on to the resource persons who function as multipliers on the national level on an on-going basis. IWRAW Asia Pacific itself has been updating the training materials in the light of new developments and plans to extend its own training activities more specifically towards lawyers, because of their crucial role in the implementation of CEDAW (IWRAW Asia Pacific 2002a).

Apart from concrete training seminars, IWRAW Asia Pacific engages more generally in disseminating knowledge on how women's rights norms can be used to the benefit of women. It has set up a regional center to collect strategically relevant information, such as good practices on CEDAW implementation or debates in other international fora concerning women's rights, and it enhances such information centers on the national level. The goal is to distribute information to women's NGOs to support them in developing effective strategies. Further, IWRAW Asia Pacific has launched a moderated mailing list as open space for exchange and discussion. As of September 2005, it assembles almost 800 subscribers. IWRAW Asia Pacific organizes the discussions around specific topics, such as "political participation of women" or "violence against women" which are chosen according to the input of the subscribers. The moderator opens each topic with some guiding questions (e.g. on the actual situation of political participation of women and an analysis of this situation; on experiences in implementing CEDAW in the matter), and members of the list are then invited to post information about their countries and their work within a time limit of a few weeks.

8.3.2.2 From global to local: Connecting the CEDAW procedure with NGO activism

The need to link international standards with local activism is one of the imperatives of IWRAW Asia Pacific's work. In the organization's experience, the participation in United Nations fora has enabled women's groups to "transform their own understanding of the relationship between the local and the global experiences of discrimination against women."
(IWRAW Asia Pacific 2003c); further, national NGOs have the potential to make important contributions to international discourses. Based on this understanding of mutual benefit, IWRAW Asia Pacific has initiated a project called "From Global to Local" in 1997. Developed in cooperation with experts from other non-governmental organizations based in the North and in the South and with the support of UNIFEM, this project has been the only one that facilitates the participation of women's groups in the CEDAW reporting procedure "in a structured and purposeful manner" (ibid.).

Before this project was started, the CEDAW procedure had predominantly received input from transnational NGOs with an organizational base in the US. Through the project, more than 100 national non-governmental organizations have actively participated in the review process. "From Global to Local" is a comprehensive project including a preparation and follow-up phase: First, IWRAW Asia Pacific encourages either a single NGO or a group of NGOs to write a shadow report. Writing such a report both draws together expertise and is a way of becoming aware what the application of CEDAW in one's own country really means. IWRAW Asia Pacific supports the groups in the preparation process and distributes the report to the CEDAW experts in a timely manner. Second, representatives of NGOs are funded to be present at the CEDAW session. Because of budgetary reasons, usually no more than two NGO representatives per country are funded. IWRAW Asia Pacific chooses suitable organizations based on different criteria, e.g. the organization must have prepared a shadow report and be willing to carry out follow-up activities. Organizations that participated in the governmental report or are part of the governmental delegations are not eligible for the project (Interview 33). The one-week presence in New York starts with a three-day training to prepare the NGOs for their interaction with the Committee. Two ways of influence are crucial: first, NGOs can draw the attention of experts to the most pressing issues in their countries, both in an official presentation before the CEDAW Committee, and in informally contacting individual experts to reiterate urgent issues. Both interventions are discussed and prepared in the training. Second, NGOs have the opportunity to take note of the critical questions and recommendations expressed by the Committee and use them for developing follow-up strategies to monitor governmental policies. Each evening, the NGOs activists gather with IWRAW Asia Pacific to discuss experiences made during the day, e.g. if their concerns were taken up by the Committee and how the reaction of the delegations is to be interpreted. Finally, the stay in New York ends with a one-day workshop to evaluate the procedure and to plan further steps. Since NGOs have to return home before the CEDAW session has ended, UNIFEM takes care of
providing them with information relevant for their follow-up activities, most importantly, the Concluding Comments on their country.

This project has the double effect of "strengthening women's capacity to claim their rights while enhancing the Committee's ability to monitor State compliance and interpretation of the convention. (...) The women in particular will be able to be more strategic in their own activism when they return home as they would have had first-hand knowledge of the Committee's recommendations to their government." (IWRAW Asia Pacific 2003d) As the comments of participants in the project indicate, national NGOs gain a whole new dimension of knowledge through their international intervention, and they experience that their action helps the Committee to pose the right questions. This experience of being part of an international process and being taken more seriously by government officials often gives NGOs strength for further national action293. For example, one participant of the year 2002 states:

"This programme is very critical to forming an 'arm' of activists all over different countries, continents in order to bring de facto equality in the world. It is necessary … that we be watch dogs of the actions of governments in terms of fulfilling their international obligations but we can only do so if we are knowledgeable of the processes of these international instruments." (IWRAW Asia Pacific 2003d)

The "Global to Local" project is crucial in bringing non-governmental activists to the international process that do not have own resources to do so. The organizers of the project are aware that UNIFEM and transnational NGOs facilitating this process are in a position of power, e.g. in controlling the access of NGOs to the training and transmitting skills they consider necessary, even if emphasis is laid on a reciprocal process and the exchange of skills (Miller 1997). Based on this awareness, IWRAW Asia Pacific aims at establishing a non-patronizing relationship with the cooperating NGOs:

"IWRAW Asia Pacific believes in building partnerships with its national partners, based on mutual respect and trust. … we play a supporting role in their CEDAW-related work … and aim to "add value" to local activism by providing the much needed link to the 'disconnect' that traditionally exists between those groups shaping the development of human rights monitoring at the international level and those grassroots organizations demanding accountability from their governments" (Interview 33).

293 Sometimes, international presence of NGOs has very concrete results: in the case of Zimbabwe, the governmental report to CEDAW drew attention to a specific law that granted far reaching rights to women, and the delegation was commended for this law by the Committee. Shortly after Zimbabwe's presentation before CEDAW in 1998, the law was going to be withdrawn. National NGOs who had been present at the CEDAW session protested and drew international attention on the inconsistent behavior of their government, which finally led to the preservation of the law (UNIFEM 1998: 35f).
According to information from IWRAW Asia Pacific, its national partner organizations share the understanding that the human rights framework "adds value" to their work (Interview 33).

8.3.2.3 Monitoring national policy processes to implement CEDAW

As a logical consequence of the "Global to Local" project, IWRAW Asia Pacific supports NGOs in monitoring the fulfillment of states' obligations under CEDAW on the national level. In particular, it initiated a program named "Facilitating the Fulfillment of State Obligation to Women's Equality" in 12 countries in South and South East Asia. The program has established national networks of NGOs that function as long-term monitoring bodies for the implementation of the CEDAW principles. The project is carried out by NGOs, but targets the state as the most important actor for implementation: the NGOs observe governmental action or lack of action to identify good practices or additional strategies for social change.

There is one non-governmental core-group in each country to coordinate this process. As a starting point of assessment, this group produces a baseline report about the status of women and measures taken by the state to achieve gender equality. Then, the core group identifies specific areas of intervention and builds networks with other organizations for joint advocacy. Further, it tries to establish positive relationships with government agencies, especially the Women's Policy Agency, to elaborate strategies for the implementation of CEDAW.

This transnational monitoring initiative has impacted national policy processes in several ways. In the case of Nepal, NGO mobilization was crucial for the Parliament to pass the Country Code (Eleventh Amendment) Bill in 2002. This bill contains provisions that reverse several existing laws that discriminate against women, including inheritance laws. According to the new legislation, daughters are accepted as ancestral heirs, while previously only unmarried daughters above 35 could inherit. Also, divorced and re-married women now have the right to inherit. Beyond inheritance rights, the bill extends the right to divorce on grounds of sexual infidelity to wives, and it provides that a woman may procure an abortion up to 12 weeks of pregnancy upon her voluntary consent. Also, it prohibits the conduct of amniocentesis test to perform abortion on the basis of sex (IWRAW Asia Pacific 2002b). The activism of the core NGO in Nepal, the Forum on Women, Law and Development (FWLD) focused on inheritance rights. FWLD launched an advocacy campaign for a review of the discriminatory laws that culminated in a national conference and rally in February 2002. Evidence of di-

294 Bangladesh, India, Nepal, Pakistan, and Sri Lanka.
295 Indonesia, Lao PDR, Malaysia, Mongolia, Philippines, Thailand, and Vietnam.
crimination in the laws, particularly inheritance laws, was presented before 120 Members of Parliament. About 2,000 people from the rural areas joined the event in Katmandu. “Victim hearings” were held based on the case studies done. This conference was crucial in the passage of the bill by Parliament in March 12, 2002: Parliamentarians stated that it "had been an eye-opener and the reason why many of them had voted in favour of the Bill" (IWRAW Asia Pacific 2003e).

In the case of Pakistan, the Aurat Foundation as the core group of the CEDAW monitoring network prepared a baseline report on women's political participation as a starting point for its monitoring activities. This report was published in 2000 and campaigned for a 33% allocation of seats for women. In the same year this quota for women was granted in the Local Government Plan. The introduction of temporary special measures was a significant step by the government to conform to the CEDAW Convention. However, the CEDAW monitoring network analyzed the situation and concluded that the measure as such would not encourage women to run for elections. Especially because of the stereotype that women are not capable to be political leaders, potential candidates would face resistance within their families and communities. Another impediment identified was most women's lack of knowledge of political procedures. To face these obstacles, a broad coalition of women's organizations headed by the Aurat Foundation campaigned in support of women running for elections and did capacity building programs for potential candidates. The outcome of this campaign was not only the impressive number of over 36,000 women being elected in local government institutions. Also, the mobilization contributed to a long-term change in stereotypical understanding of gender roles, because it initiated a public debate on women's capabilities as political leaders and their role in society:

"It was … the first time that the issue of women's political participation was taken up vigorously at the grassroots level. The campaign created greater public acceptability about the role of women as public representatives and a more enabling environment at the local level for prospective candidates." (IWRAW Asia Pacific 2003f)

In 2002, the CEDAW monitoring network held a national consultation with women councilors to identify problems in their work, such as lack of knowledge of laws and lack of cooperation by male colleagues, and to develop strategies to face these problems. In this consultation, future strategies were formulated, e.g. to provide trainings for the women councilors at the local level, and to work together in issues such as violence against women (IWRAW Asia Pacific 2002b). Thus, the Pakistani CEDAW monitoring network not only convinced the government to take temporary special measures to increase women's political participation, it also
complemented the government's policy in preparing women to run for elections and in supporting them to carry out their office skillfully.

To build up on these national processes, IWRAW Asia Pacific started a project called "Regional Policy Dialogue" which first took place in 2002. The idea is to bring together government officials from the Asian region, NGOs of the facilitating projects, CEDAW experts and UN agencies such as UNIFEM to stimulate a dialogue based on the dynamics taking place in each country. The regional policy dialogues aim to encourage future governmental initiatives and provide the opportunity to elaborate on the CEDAW framework in specific questions (IWRAW Asia Pacific 2003g).

8.3.2.4 International interventions: contributing to the interpretation of women's rights norms

IWRAW Asia Pacific's international interventions started with the "From Global to Local" project and have been developed far beyond it. The organization has extended its activities within the CEDAW process, e.g. it has provided input for the Committee's drafting of General Recommendations, and it has encouraged national NGOs to do so as well (see 5.1.2.4 and 8.2). This is a highly significant contribution to international human rights standard-setting that illustrates the increasing international acceptance of expertise of women's rights NGOs. Further, IWRAW Asia Pacific has launched a campaign in 2002 called "Our rights are not optional!" to convince States Parties to ratify the Optional Protocol and to develop strategies for women's NGOs to make use of this new instrument. Apart from its activism around CEDAW, IWRAW Asia Pacific has begun to provide input to other international human rights instruments to strengthen a gender-sensitive perspective. It has submitted statements to the meetings of the Chairpersons of the Human Rights Treaty Bodies, to the Inter-Committee meetings, and it supports the process to create an Optional Protocol to the CESCR.

The international interventions of IWRAW Asia Pacific are based on thorough interpretations of the norms enshrined in CEDAW and in the human rights framework in general. The organization's statements lay particular emphasis on the meaning of global norms in contextualized realities of discrimination against women. Thus, they contribute to the conceptual development of global women's rights norms that have to be enforced in differing and complex local contexts. To illustrate the nature of these contributions, the position of IWRAW Asia Pacific on two relevant concepts in the human rights discourse are shortly presented: equality and non-discrimination, and intersectional discrimination.
According to the executive director of IWRAW Asia Pacific in a speech at the University of Hong Kong, "the principles of equality and non-discrimination are essential principles for the promotion of women's rights" (Dairiam 2002: 1). While equality is often interpreted as an insufficient legalistic concept that applies a formal rule to individuals without changing underlying discriminatory structures, IWRAW Asia Pacific perceives equality as the opposite of several intersecting discriminatory dimensions. In the organization's view, it is necessary to understand "the pernicious structural and dynamic process of discrimination that underpins the various manifestation of inequality. There is a tendency to put labels on people when we start to help them, such as ... "landless" or "the illiterate". (...) There is a tendency to look at these manifestations and deal with them separately. Yet the problem has to be dealt with holistically. We must address several institutions at the same time – family, market, community and the state. These institutions interact and reinforce this web of discrimination, facilitating a denial of responsibility and a state of helplessness." (Dairiam 2002: 2, emphasis added)

Therefore, the striving for substantive equality has to address social structures to promote a state of freedom from discrimination for each individual. This state "includes equality of opportunity, equality of access to opportunity, and equality of result and outcome". In IWRAW Asia Pacific's view, equality of access is crucial, because "this is where discrimination normally occurs. Opportunity is, by and large, created but there is an impediment to availing it." (Dairam 2002: 2) As a consequence, promoting equality cannot be understood as withdrawing discriminatory legal provisions, but as a process of transforming historically grown structures of inequality.

The commitment towards substantive equality of women made IWRAW Asia Pacific also elaborate on the intersection of discrimination based on gender and based on race, class and ethnicity. In the view of the organization, substantive equality is the main goal of CEDAW. As a consequence, intersectional discrimination has to be addressed within the monitoring procedure, because it places the victims in a specifically harmful situation of inequality. Regarding the text of the Convention, however, only article 14 on the special situation of rural women and article 1 in reference to married women address the problem of intersectional discrimination directly. In IWRAW Asia Pacific's interpretation, there are other less

296 The difference between equality of opportunity and equality of access to opportunity is illustrated with the following example: Bangladesh created the conditions for rural boys and girls to formal education in as far as it has provided for sufficient schools, teachers, and study materials. Hence, equality of opportunity for boys and girls was granted from the state perspective. However, access to education was still denied to the girls by their parents: as most teachers were male, parents did not allow girls to go to school to be educated by men. The government later corrected the situation and employed 60% female teachers; in this context, this measure was indispensable to create equality of access to education for boys and girls (Dairiam 2002).
explicit points of entry in the Convention, e.g., the comprehensive definition of discrimination against women in article 1 that grants the enjoyment of rights to all women, irrespective of their status; article 4 on temporary special measures aims at granting equality with men to all women, especially to those suffering from multiple forms of discrimination; and article 5 on the elimination of gender stereotypes is interpreted in the sense that all dimensions that reinforce notions of inferiority and superiority between the sexes should be eliminated (Graterol 2003). This intersectional approach acknowledges the complexity of discrimination experienced by marginalized groups of women. It recognizes the social and historical context of victims of discrimination instead of squeezing them into fixed categories, and it places the responsibility to change discriminatory structures on society. Accordingly, IWRAW Asia Pacific urges the CEDAW experts in a comment on the Committee's General Recommendation on temporary special measures to take into account the needs of women victims of multiple forms of oppression, since it is vital that the most marginalized benefit from temporary special measures. The design of the measures should be evaluated as for their outcomes and should be redesigned if the effect is not as it was intended to be – e.g. if the community reacts in a hostile way to those individuals benefiting from temporary special measures (IWRAW Asia Pacific et al. 2001; IWRAW Asia Pacific, Human Rights Clinic - Columbia Law School 2002).

8.3.2.5 The organizational structure of IWRAW Asia Pacific

IWRAW Asia Pacific can be described as a network that consists of a functional division of labor between the cooperating parties. The institutional base of IWRAW Asia Pacific is equipped with a team of eight full time and two part time staff members297. This team manages and coordinates the implementation of all projects and is supported by the five-member Board of Directors composed of experts in women's rights issues from the region. The development and direction of the programs is a joint enterprise between IWRAW Asia Pacific and its national project partners. A seven-member Advisory board composed of regional academic experts in the field of women's rights accompanies the projects set up by IWRAW Asia Pacific with suggestions and advice on an ongoing basis. Further, there are four resource teams that contribute to the realization of the programs through development of new knowledge and skills: the working group on training that develops the training materials; the pool of experts

297 Besides the executive director, there are four program officers, one for the South Asian and one for the South East Asia Region, one for International Advocacy, and one for Information and Communication, further a team of three people for administration and finances, and two consultants for the library and the listserv.
carrying out the trainings; the resource team conducting the "From Global to Local" project; and the steering committee for the global campaign on the Optional Protocol.

In addition to these network relationships, IWRAW Asia Pacific also connects to many more organizations in a rather informal way, e.g. in its outreach and information dissemination activities or via its listserv. Further, IWRAW Asia Pacific has developed a close working relationship with UNIFEM, which is co-hosting the "From Global to Local" project. In terms of funding, IWRAW Asia Pacific has been supported by private donor organizations such as the Ford Foundation or the Global Fund for Women, by Dutch and Danish governmental institutions, and by United Nations agencies, especially UNDP and UNIFEM (IWRAW Asia Pacific 2003h).

8.4 Expanding the scope of CEDAW through transnational non-governmental interventions – a summary

Transnational activism around CEDAW has improved and extended the procedure in several ways. Graph 14 illustrates the links that transnational NGO networks have established and how they have translated CEDAW as a set of international norms into domestic contexts:

Graph 14: Transnational non-governmental activism around CEDAW

- Both organizations have contributed to the regime's constitutive dimension in two ways: First, they added new expertise to the CEDAW monitoring procedure. IWRAW has paved
the way for NGOs to contribute their critical view in initiating the practice of shadow reports. IWRAW Asia Pacific has, with its "From Global to Local" project, developed a structural way of bringing domestic non-governmental voices to the Committee's work. It took some time until the new kind of expertise that NGOs were able to contribute was deemed legitimate. However, once accepted, the critical knowledge of NGOs has made the monitoring procedure more transparent and better informed and has thus increased the potential learning process among States Parties. Second, both organizations have engaged in influencing the international human rights discourse within the CEDAW Committee and beyond it. They have presented their points of view in international debates on women's rights and have brought contextualized gendered perspectives to general human rights debates, e.g. in the context of economic, social and cultural rights.

- The transnational networks that both IWRAW and IWRAW Asia Pacific created have contributed to the diffusion of international norms in making the CEDAW Convention better known among women's organizations with a predominantly domestic scope. Especially IWRAW Asia Pacific has enabled these organizations to connect their work to the international women's rights framework through trainings and capacity building.

- IWRAW Asia Pacific has further added to the regulative dimension of CEDAW. It has increased domestic compliance and has intensified the diffusion and contextualized interpretation of international norms. The NGO developed a multilevel approach to connect local, international, and national efforts for women's rights: it strengthens local activism through capacity building on the international human rights framework; it enhances national women's organizations to add their views to international debates on human rights; and it uses this transnational link to support domestic implementation of the CEDAW Convention, e.g. through the establishment of CEDAW monitoring networks in several South and South East Asian countries. Apart from NGOs and governments, also international agencies such as UNIFEM participate in this cooperation.

IWRAW and IWRAW Asia Pacific's transnational activism is an example of promoting a reciprocal way of connecting domestic with international women's rights norms. One the one hand, the dynamics disprove the notion of international norm creation as "trickling down" to the national level implicit in IR theorizing (see 2.2.1); on the other hand, transnational activism transforms the dominant notion of national sovereignty into a form of sovereignty that implies cooperation across boundaries. Both organizations coincide in the basic principle that the goal to achieve substantive equality for women can best be achieved within an international normative framework and, if appropriate, in establishing an ongoing dialogue or even
cooperation with governments. According to the limited information available, the national NGOs engaging in the CEDAW process share this position, even if they may have a critical position towards their government's gender policies. The idea of cooperation, linkage and mutual influence between international, local and governmental actors sheds new light on the interrelation of these different spheres: domestic appropriation of international norms may reshape and reinterpret them, yet at the same time, strengthen the international framework because it is integrated in domestic power structures. Thus, appropriation of international norms by domestic actors is the crucial mechanism of norm implementation; if internal actors integrate international norms into their strategies, this is more likely to produce social change than external pressure.

There is no doubt that the NGO activism presented here has been confronted with exclusionary international structures: the CEDAW Committee, itself an initially marginalized body within international hegemonic structures (see 5.2.5), used to be hesitant in recognizing the valuable contribution of NGOs for its work because NGOs were not harmonizing with the intergovernmental rationale of the CEDAW regime. During the 1990s, NGO input has become increasingly appreciated, yet the contributions of NGOs do still not appear in the annual reports of CEDAW, a fact that may be interpreted as the lack of officially acknowledgement of NGO engagement. Also, NGO input to the CEDAW procedure needs to fulfill specific standards to be of use for the experts. Because of these complex requirements, the first NGOs approaching the Committee were highly specialized transnational organizations. It is only due to their initiative and practical support that less specialized national NGOs were enabled to engage in the Convention's monitoring procedure.

Has the activism of transnational networks had the potential to transform these exclusionary structures? Certainly, transnational networks have added a crucial element to the Convention's impact in establishing the link to domestic civil society groups interested in a transnational dialogue. The intervention of NGOs has been highly relevant in another way: particularly IWRAW Asia Pacific has enhanced marginalized voices to contribute to the CEDAW monitoring procedure – both in enabling discursive representation and real presence before the Committee. This contributed significantly to add a perspective of intersectional discrimination to the dialogue, and to show that most women of the world are not exclusively discriminated because of their gender. Thus, the voices of NGOs have made the discourse

298 It is likely that this principle of cooperation has deterred a range of NGOs to engage in the CEDAW process, yet it was not possible in the context of this study to detect if there are women’s organizations explicitly rejecting CEDAW as a useful instrument in their activism and why they do so.
within the Committee more comprehensive and going beyond an exclusive focus on gender hierarchies.

Concerning their own practice, both IWRAW and IWRAW Asia Pacific have strived for inclusive and non-hierarchical relationships with their partner organizations. According to information from IWRAW and IWRAW Asia Pacific themselves, both organizations seem to be very concerned to establish relationships of support and cooperation on equal footing with national NGOs. Especially IWRAW Asia Pacific consistently underlines its commitment to bring the voices of national NGOs into the international arena and to empower them in their own activities.
9. Expanding CEDAW: The Optional Protocol to the Convention as result of intergovernmental, international, national, and transnational dynamics

On December 10, 1999, the Optional Protocol to the CEDAW Convention was opened for signature to CEDAW States Parties, after a surprisingly short drafting process of three years. It entered into force only 12 months later in December 2000, after the required ten ratifications had been submitted. As of June 2005, the number of ratifications had climbed to 71. This "success story" of the Optional Protocol (OP) is embedded in the increased recognition of the human rights of women created by the world conferences on human rights and on women in Vienna and Beijing; thus, it is part of the broad dynamic of developing international gender norms, and it can be interpreted as an extension of CEDAW's original scope as a women's rights regime. Referring to the entry into force of the OP, the CEDAW chairperson of 2001 "complimented the entire Committee … (as well as) the … United Nations system and civil society, including non-governmental organizations, for that achievement." (UN Doc. A/ 56/ 38: 5) In accordance with this statement, the findings of this chapter indicate that the OP is not only a product of governmental negotiations, but that it has also been influenced by international and transnational activism.

How exactly has this new element of CEDAW been put into place? What interests and power constellations are inherent in it, and in how far have transnational non-governmental actors gained weight in creating the OP? Has the OP enhanced the regulative dimension of CEDAW or even transformed the logic of the regime, in other words, is it going to be an effective tool against concrete violations of women's rights? How can domestic reactions to the OP be interpreted in the process of norm creation and implementation? To address these questions, the chapter traces two dynamics around the OP, the first one being its drafting process (9.1). In contrast to the almost exclusively inter-governmental negotiations resulting in the CEDAW Convention 20 years earlier, a number of NGOs played an active role in the OP drafting process and strengthened the interests of potential complainants against the principle of state sovereignty. Second, the chapter looks at the activities that have been undertaken to put the OP into practice (9.2). In terms of its international operationalization, the Committee has gotten prepared to deal with communications and complaints from non-state actors (9.2.1). States Parties' reactions to the OP vary widely, ranging from support to fierce domestic opposition (9.2.2). While a number of NGOs consider the OP a harmful instrument and protest against ratification, several women's rights organizations and networks have engaged in making the OP known and understood and in developing best strategies to use it (9.2.3). The analysis concludes that the benefit of OP depends, on the one hand, on the legitimacy
ascribed to it by the States Parties, and on the creative practices developed in the interest of individual victims on the other.

9.1 Drafting the Optional Protocol: NGO activism, independent expertise, and intergovernmental negotiations re-mixed

9.1.1 Preliminary dynamics

The idea of an individual complaint procedure was already discussed in the drafting process of the Convention299, but most delegations found that the monitoring function of the Committee would suffice as enforcement mechanism. In the early 1990s, the issue came up again on different levels: During the examination of the communications procedure of the Commission on the Status of Women (CSW), the Secretary General proposed among possible options to strengthen it an optional protocol to the CEDAW Convention (UN Doc. E/ CN.6/1991/10, paras. 155-156), yet the CSW did not react upon this proposal. Also, NGOs started discussing about effective international instruments to protect women's rights. In the course of preparing the Declaration on Elimination of Violence against Women in 1992, non-governmental experts suggested a complaint procedure for CEDAW, yet the Committee itself did not support this idea at that time (UN Doc. A/47/38: 99f). In 1993, the final document of the Vienna Conference on Human Rights urged CEDAW and the CSW to examine the possibility of an OP (UN Doc. A/CONF.157/24 (Part II), chap. III, sect. II, para. 40), which made the Committee react in its 1994 session. In suggestion no. 5, it requested the CSW to convene an expert group meeting to prepare a draft OP the same year (UN Doc. A/49/38: 5). The CSW did not endorse this suggestion in 1994, but agreed to examine the feasibility of a complaint procedure to the Convention in the following year, "taking into account the results of any governmental expert meeting on the question that might be convened prior to that session" (UN Doc. ECOSOC Res. 1994/7, emphasis added).

Still in 1994, a non-governmental expert group sponsored by the governments of the Netherlands and Australia met in Maastricht to prepare a draft OP, both in response to the CSW statement and ignoring its clear hint for governmental responsibility. Experts from all world regions as well as several members of CEDAW participated. The outcome document of that meeting was presented to the CEDAW Committee in 1995. Based on this proposal, the

299 At different stages of the negotiations, the Netherlands, Belgium, Canada, Sweden had made such proposals (United Nations/DAW 2000b: 164f).
Committee adopted suggestion No. 7 on elements that should be included in the OP (UN Doc. A/ 50/ 38: 4f; United Nations/ DAW 2000b: 33f). The main elements of this suggestion were the following:

- **The Optional Protocol contains a communication and inquiry procedure.**
- **Standing:** individuals, groups or organizations suffering from violation of rights that are guaranteed in the Convention, or a person or group who has "a sufficient interest in the matter" can submit a communication. Communications are in writing and confidential.
- **Admissibility of communications:** they address a State Party that has ratified the OP; they are not anonymous; they address violations that took place after the State Party had ratified Convention; they address cases in which domestic remedies have been exhausted, "unless the Committee considered that requirement unreasonable"; they are not submitted to other international procedures; and they entail adequate substantiating information on the incident.
- **Procedure for communications:** The Committee informs the concerned State Party confidentially on the nature of the communication, without revealing the identity of the author. The State Party replies in a certain period of time, while the Committee works for settlement. In the light of all information received, the Committee transmits its view to both involved parties for comment. If the Committee considers communication justified, it may recommend "measures designed to give effect to obligations under the Convention." The State Party takes appropriate remedy that might include reparation, and informs Committee on its actions.
- **To follow up** on such measures, the Committee should have the power to invite the State Party to include information in its next periodic report.
- **Publicity:** The Committee publishes its activities around communications in its annual report.
- **Inquiry procedure:** If the Committee receives reliable information indicating "a serious or systematic violation by a State Party of rights under the Convention or of a failure to give effect to its Convention obligations", it has the right to conduct a confidential inquiry in cooperation with the State Party on the matter. This inquiry may include a visit to the territory. The findings of this inquiry are transmitted to the State Party who comments on it in a certain period of time. It is encouraged "to discuss the steps taken by it as a consequence of the inquiry" until a satisfactory outcome is achieved, and to include this information in its next periodic report.
• **Cooperation and protection**: In ratifying the OP, a State Party agrees to cooperate with the Committee in its inquiries and "to prevent any obstacles to … any person who provides the Committee with information."

• **Resources**: The Committee develops its own rules of procedures and is assigned adequate resources and additional meeting time of at least 3 weeks per year to carry out its duties under the OP.

• **Reservations** to the OP are not permitted.

While the overwhelming majority of the Committee experts supported the suggestion, some disagreed with the unorthodox proceeding that did not start with a consultation of the States Parties. However, the supportive Committee members precisely aimed at maintaining the "independent" character of the Maastricht draft, as one of the CEDAW experts explains:

"The politics of the UN is such that an NGO initiative like (the Maastricht meeting, S.Z.), even with three experts from the Committee on the expert group, and some of the worlds best experts in this field of human rights and enforcement mechanisms, it would never be adopted as the draft. Never. So the Committee said, … how do we assist in this process, and they asked me to set out what we wanted in an Optional Protocol. (…) So what I did was to protect the Maastricht draft. I summarized it and … that became suggestion No. 7." (Interview 5)

While the Committee as a whole did not play a role in the official drafting process, its suggestion no. 7 became the point of departure for the official negotiations. In addition, the CSW invited one of the CEDAW experts as resource person for the negotiations.

### 9.1.2 The drafting process in the Commission on the Status of Women

In its 1995 session, the CSW started to consider the issue of an Optional Protocol to CEDAW. It took notice of the Committee's suggestion no. 7 and asked the Secretary-General to seek the views of governments, inter- and non-governmental organizations on the matter. It further recommended the establishment of an open-ended working group parallel to its 1996 meeting "with the view to elaborating a draft optional protocol to the Convention" (UN Doc. ECOSOC Res. 1995/ 29). With the additional support of the Beijing Platform of Action of 1995 that reiterated the need for an OP, the working group held its first meeting in 1996. Based
on CEDAW suggestion no.7 and on the statements of 18 states\textsuperscript{300} and 19 NGOs\textsuperscript{301} that had been sent to the Secretary-General, the working group had an "in-depth exchange of views on the aspects to be addressed in an optional protocol." (United Nations/ DAW 2000b: 4) All NGOs supported the initiative, because in their view, an OP would contribute to the practical effectiveness of the Convention, and "potentially, it could correct women's under-usage of international human rights mechanisms." (UN Doc. E/ CN.6/ 1996/ 10, para. 57) Also, most governments\textsuperscript{302} expressed support and emphasized "that the new instrument should be consistent with existing comparable international procedures" (United Nations/ DAW 2000b: 4). Further, they pointed to the need of clarification of a number of issues, many of which were debated until the end of the drafting process: if communications submitted by groups – and by which kind of groups – should be allowed; which should be the criteria for an admissible communication; if or not reservations to the OP should be allowed; to what extend a communication should be dealt with confidentially; and if the OP should apply to all of the CEDAW articles (UN Doc. E/ CN.6/ 1996/ 10, paras. 27-53).

This last question was of particular importance: a number of delegations expressed the view that many of the Convention's articles were not legally enforceable, but of procedural character, and thus, should not be subject of individual complaints\textsuperscript{303}. However, many other delegations and NGOs\textsuperscript{304} stressed the importance to understand all articles of CEDAW as justiciable. This position was endorsed by two experts of the HRC who were asked to contribute to the debate on the basis of their experience with already existing complaint procedures. In their view, all provisions of the Convention were justiciable, because they elaborated on the idea of non-discrimination, which was recognized by international law. Both experts

\textsuperscript{300} Australia, Austria, China, Colombia, Cuba, Ecuador, Finland, Germany, Japan, Liechtenstein, Mexico, Netherlands, New Zealand, Norway, Peru, Turkey, Ukraine, the UK.


\textsuperscript{302} Germany was somewhat reluctant to support an OP, because most of the CEDAW experts were not lawyers and thus, might lack the legal expertise to exercise the procedure (UN Doc. E/ CN.6/ 1996/ 10, para. 36); the UK even opposed the initiative, because it feared that the OP would only be ratified by those states "most advanced on equality issues." (UN Doc. E/ CN.6/ 1996/ 10, Add. 2, para. 8)

\textsuperscript{303} For example, Germany expressed the view that the Convention does "not specify concrete rights but incorporated a wide array of programmatic obligations" (UN Doc. E/ CN.6/ 1996/ 10, para. 51), and therefore it did not see how a complaint procedure could be established based on these obligations.

\textsuperscript{304} According to Shelagh Day, the NGOs most active during the drafting process were: the Caucus for Gender Justice, Amnesty International, IWRAW Asia Pacific, the National Association of Women and the Law, Canada, European Women's Lobby, a range of Australian NGOs, Public Service International, and WILDAF (Day 1999).
"strongly cautioned against any a priori classification of rights into justiciable and non-justiciable", since in their experience,

"justiciability of a treaty provision was … a question of degree. A number of the Covenant's (on Civil and Political Rights, S.Z.) provisions required a State Party not only to respect a right, but to take measures to ensure its enjoyment. The sufficiency of such measures was assessed by the Treaty Body against the standards set out in the treaty". (UN Doc. E/1996/26, Annex III, Appendix, para. 3-4)

Based on this argument, delegations principally agreed that the treaty was legally binding in its entirety, and that the determination of concrete obligations of a state should be in the responsibility of the Committee305. Thus, the OP does not exclude any article of the Convention from being subject of the complaint procedure306.

The 1996 session of the working group did not end with any concrete result. Instead, it recommended the Secretary-General to seek further views of governments and other actors307, and to prepare a comparative summary of existing communications and inquiry procedures already in place. In 1997, the newly elected chairperson presented a draft OP to the working group without waiting for a specific request to do so. It basically kept the substance of the CEDAW suggestion no. 7 and at the same time incorporated the concerns raised in the 1996 meeting of the working group. It was organized in articles, and some of them contained several alternative proposals according to the different opinions expressed in the 1996 meeting. Both the chairperson's vigorous attitude and the fact that in the 1997 session, negotiations took place to a large extend in informal meetings facilitated agreements (United Nations/

305 The 1996 meeting discussed in this context the question in how far reservations that States Parties had entered to the Convention were relevant under the OP, in other words, if a complaint concerning a “reserved” article would be admissible. The working group agreed that such a complaint would be admissible if the Committee decided that the reservation entered by the state was incompatible with the Convention (UN Doc. E/1996/26, Annex III, para. 22). The attitude of granting the Committee such wide-ranging competence is somewhat surprising, especially if compared to the denial of such competence in the 1980s and 1990s.

306 Some delegations underlined this holistic understanding in interpretive statements upon adoption of the OP: e.g. Austria expressed the view "that the Committee will accept communications concerning each and every substantive provision set forth in the Convention", which was reiterated by Denmark (on behalf of Finland, Iceland and Norway). See also the statement of Costa Rica on behalf of 10 other Latin American States (UN Doc. E/1999/27, Annex II).

307 As a consequence, additional statements were submitted by 21 governments (Austria, Chile, China, Colombia, Cook Islands, Costa Rica, Cuba, Denmark, Italy, Liechtenstein, Luxembourg, Mali, Mexico, Morocco, Netherlands, Panama, Philippines, South Africa, Spain, Turkey, and Venezuela); 8 new NGOs (Latin American and Caribbean Women's Health Network, "the group from Costa Rica" representing 49 NGOs, Vienna NGO Committee on the Status of Women, Comité d'Action pour les droits de l'Enfant et de la femme, Coordinadora nacional de Radio, Peru, Promocion Cultural "Creatividad y cambio", Coordinadora nacional de Derechos Humanos, Peru) and one intergovernmental organization (the Council of Europe).
DAW 2000b: 4. As the 1997 session produced a first revised draft of the OP, expectations were high to produce a final text in 1998. Yet this did not happen, because of different expectations of delegations: while some saw the most important issues resolved and wanted to conclude the work, others did not want to be pushed to a precipitated conclusion. Therefore, it took the working group another year to finalize the text and the Optional Protocol to CEDAW was adopted in 1999 by the CSW, the ECOSOC and the General Assembly, exactly 20 years after the adoption of the Convention.

In the following, the major points of debate and their outcomes are illustrated along the 21 articles of the adopted text. Most controversial were articles 2 (standing), 4 (admissibility), 6 (confidentiality), 8 (inquiry procedure) and 17 (reservations).

Art. 1: A State Party to the OP recognizes the competence of the Committee to receive and consider communications.

Art. 2: Communications may be submitted "by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party", claiming to be victims of a violation of rights set forth in the Convention; if the communication is submitted on behalf of the victim(s), it should be done with her/their consent, unless "the author can justify acting on their behalf without such consent".

Debate: The question of standing was one of the most contested issues of the whole drafting process. The final wording does admit groups to submit complaints as victims, which was an important claim of NGOs. However, these groups have to be composed of identifiable individuals, which means that NGOs acting as a group and not on behalf of identifiable individuals are excluded. Also, organizations that have "sufficient interest" in the complaint, such as women's rights organizations, are not explicitly mentioned, because the notion of "sufficient interest" was deemed too vague (UN Doc. E/ 1996/ 26, Annex III, para. 33). Some governments wanted to restrict the standing to individual victims exclusively, while others – with the support of NGOs – defended a broader concept of groups that would include NGOs. While it was a success from the NGO point of view to include the "on behalf of"
provision in the article, the requirement of consent of the victim was seen as problematic because it could "act as a barrier to NGOs acting on behalf of the most disadvantaged women, those who are isolated, sometimes illiterate, and afraid of acting in their own names." (Day 1999) This argumentation is implicitly recognized in the final version of article 2 that allows the possibility to file a complaint without the consent of the victim if this can be justified. Apparently, a number of states were not entirely satisfied with the result of the debate. They made interpretive statements on article 2 expressing their understanding that the access of potential complainants to the procedure should be widened\textsuperscript{312}.

Art. 3: Communications are written and not anonymous.

Art. 4: A communication is inadmissible if: the domestic legal remedies have not been exhausted, "unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief"; if it is considered by another international procedure; if it is incompatible with the Convention, "manifestly ill-founded", or abusing the right to submit a communication; and if the facts occurred prior to the entry into force of the OP for the State Party concerned.

Debate: Delegations agreed to concede a leeway to the Committee in assessing the effectiveness of domestic remedies\textsuperscript{313}. The inadmissibility of communications that were already considered by other international procedures aimed to avoid overlap between the OP and other instruments, a concern that was often voiced during the negotiations, especially with regard to the CSW complaint procedure and the OPs to other Treaty Bodies. Further, delegations concurred that the OP is to be used only for violations that have taken place after the concerned state's ratification of the OP. Suggestion no. 7 had proposed to include violations that had taken place after ratification of the Convention, which would have covered a longer time period.

\textsuperscript{312} Costa Rica (on behalf of 10 other Latin American States) pronounced to take a broad-based approach in interpreting who could complain on behalf of the victim, "in order to ensure effective access to justice"; Denmark (on behalf of Finland, Iceland, Norway) stated that it would understand the wording "group of individuals" in the sense that "NGOs alleging to be victims of a violation can bring a communication to the attention of the Committee." Italy uttered the same understanding. Ghana (on behalf of 11 other African states) expressed serious concerns with the wording of article 2, because it would make it difficult for women to access the OP. The question of consent must not "preclude the victims of violations who may not be capable of giving legal consent from being represented." On the other hand, China, Egypt and Japan underlined their literal understanding of a group as consisting of identifiable individuals (UN Doc. E/ 1999/ 27, Annex II).

\textsuperscript{313} In this regard, the view of NGOs was followed. They argued that an exception from the exhaustion of domestic legal remedies was important in cases where "the remedy sought was unavailable or ineffective, unduly prolonged or did not include due process protections, or where access to legal remedies had been denied." (UN Doc. E/ CN.6/ 1996/ 10, para. 85)
Art. 5: After receiving a communication, the Committee may suggest interim measures to the State Party concerned, even before the merit of the communication has been determined.

Debate: This is an unprecedented provision that was explicitly welcomed by a number of delegations. Earlier drafts provided the Committee with the even stronger mandate to facilitate a settlement, however, this was not consensual. In particular, delegations disagreed on the mediation capacities of the Committee, and if and how a settlement could be achieved without pressure (UN Doc. E/ 1997/ 27, Appendix II, paras. 32-36).

Art. 6: The Committee brings the communication confidentially to the State Party and unless the complainant(s) does/ do not consent, discloses her/ their identity. The State Party sends written explanations within 6 months "clarifying the matter and the remedy" provided.

Debate: While the State is guaranteed confidential treatment of the communication, the identity of the complainant is only protected in exceptional cases. Delegations found that a state could not react adequately without knowing the identity of the complainant, and they pointed to the practice under the OP to CERD, where the identity of complainants had usually been revealed (UN Doc. E/ 1996/ 26, Annex III, paras. 41; 58-59).

Art. 7: The Committee considers a communication in the light of all information made available by complainants and the State Party in closed meetings and transmits its view and recommendations to the parties involved. The concerned State Party has to respond within 6 months, exposing "information on any action taken in the light of the views and recommendations of the Committee". The Committee may invite the State Party to submit further information, e.g. in its periodic reports.

Debate: This article omits one important element: according to suggestion no. 7, the Committee was entitled to make recommendations for appropriate remedy including reparation. While this notion was welcomed by NGOs for its concreteness and potential use for the victim, states were less enthusiastic: some commended the idea in principle, but found that the possibility of reparations would require further interpretation of the obligations of States Parties under the Convention (UN Doc. E/ CN.6/ 1996/ 10, para. 96). Other delegations expressed the view that the State Party itself should determine the appropriateness of remedial measures (UN Doc. E/ 1996/ 26, Annex III, para. 72). In general, the follow-up measures set forth in article 7 are of a comparatively low level.

Art. 8: Upon receiving information indicating "grave or systematic violations" of rights guaranteed under the Convention, the Committee invites "the State Party to cooperate in the examination of the information and to this end to submit observations with regard to the
information concerned. The Committee can designate members to conduct an inquiry and report to the Committee. The inquiry is conducted confidentially, in cooperation with the State Party, and might include a visit to the territory. The Committee transmits findings and recommendations to the concerned State Party, who shall submit its observations on the Committee’s findings within 6 months.

Debate: Some delegations did not find an extra inquiry procedure necessary, because they suspected an overlap with other international instruments. The proponents, who ultimately succeeded, underlined the need for action in cases of systematic violations, also because of the distinct rationale of the inquiry procedure compared with the communication procedure: those (individuals or groups) who suggest the Committee to inquire in a certain case of systematic violations do not have to comply with the admissibility criteria spelled out in art. 4. Instead, the Committee determines if it engages in an inquiry based on the information received. As of the scope of "serious and systematic violations", delegations agreed that it had to go beyond single cases of violations.

Art. 9: The State Party "may be invited" to include "any measures taken in response to an inquiry" in its periodic reports. The Committee reiterates the invitation to comment on the inquiry if the State Party has not done so after 6 months.

Art. 10: States Parties might declare that they do not recognize the competence of the Committee provided for in articles 8 and 9.

Debate: This opt-out provision regarding the inquiry procedure came up in 1998, at a rather late stage of the debate. It seems to be a concession to those delegations that were reluctant to accept the provision of inadmissibility of reservations to the OP (see article 17).

Art. 11: States Parties undertake all steps to prevent ill-treatment or intimidation of individuals submitting communications under the OP to the Committee.

Debate: This provision was part of the draft from the very beginning, and both governmental delegates and NGOs underlined its importance and uniqueness. However, some delegations made an interpreted this provision in such a way that it should not prevent States Parties to undertake legal action against the complainant(s) if she/they had committed a crime.

Art. 12: The Committee summarizes and publishes its activities regarding communications in its annual report.

314 The delegations of China, Israel and Japan reiterated this view in their interpretive statements. A group of African states, however, proposed to interpret the provision as broad as possible "as not to impede the effective functioning of the Committee", and a group of Latin American States stressed the importance of inquiry procedure, referring to such a procedure in the Inter-American system (UN Doc. E/ 1999/27, Annex II).

315 These were the delegations of China, Egypt, Indonesia, and Israel (UN Doc. E/ 1999/27, Annex II).
Art. 13: States Parties make the Convention and OP widely known, and facilitate the access to views and recommendations of the CEDAW Committee.

Art. 14: The Committee develops its own rules of procedures to exercise its functions under the OP.

Debate: This formulation is the final outcome of a broader debate on both the Committee's autonomy in dealing with communications – e.g. if it should be allowed to set up a working group – and the resources it would need to exercise its duties under the OP properly. Suggestion no. 7 was very concrete regarding the latter aspect: 3 additional weeks of annual meeting time as well as additional resources, including legal advice, should be devoted to the Committee. The crucial question of resources, however, is entirely omitted in the final document.

Art. 15, 16: The OP is open to any State Party to CEDAW and enters into force three months after the 10th instrument of ratification or accession has been deposited.

Debate: During negotiations, both a higher (20) and a lower (5) number were proposed, which would have either prolonged or accelerated the OP's entry into force.

Art. 17: Reservations are not permitted.

Debate: This provision was highly contested. A number of states remarked in their interpretive statements that they had only agreed to it for the sake of the consensus and under the condition that this provision would not become a precedent for future treaties to prohibit reservations. Some were of the opinion that art. 17 would deter states to ratify the OP and hinder its effectiveness. However, the opt-out provision regarding the inquiry procedure (article 10) undermines the prohibition of reservations significantly.

Art. 18 – 21: Any State Party can request an amendment to the OP; the denouncement of the OP is possible for each State Party and enters into force after six months; the Secretary-General informs States Parties of signatures, ratifications and accessions, entry into force, and denouncements; the OP is deposited in the UN archives in all six UN languages.

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316 Those states were Algeria, China, Egypt, India, Israel, Jordan, Russia, and the USA. Morocco did not explicitly refer to article 17, but made it clear that the provisions of the OP "will be subordinated to absolute respect for the sovereignty of Morocco and its moral and spiritual values" – an expression that actually equals a reservation (UN Doc. E/ 1999/ 27, Annex II).
9.1.3 In the interest of states or victims? An assessment of the text and its potential for use

While the outcome of the document clearly bears the imprint of state delegations, the influence of independent experts and NGOs during the whole drafting process is noticeable. To begin with, the whole initiative to concretely work on an Optional Protocol for CEDAW was based on non-governmental activism. As one UN staff member explains, neither was the OP supported from within the UN, nor was it a favorite project of governments:

"The idea had been accepted in a desultory fashion. You see these wide equipments in Vienna and Beijing (supporting the OP for CEDAW, S.Z.), but there was no active encouragement of the notion within the UN, within the Secretariat, because of the nature of this task. And within the CSW there wasn’t much feeling that it was going to work." (Interview 9)

At various stages of the process, the rationale of the CSW as an intergovernmental organ and of non-governmental advocates for the OP collided: the independent Maastricht draft had to be "protected" by the CEDAW Committee to be accepted by the CSW (9.1.1); in the Committee, a number of experts were opposed to this procedure, precisely because it did not pay enough attention to states' interests; finally, in the drafting process itself, a number of provisions that were meant to tailor the procedure according to the interests of the victims were not agreeable among governmental delegations. According to the CEDAW resource person participating in the drafting process, the resistance of many states against an OP was palpable, either because of the lower importance given to women's rights, or because of doubts regarding the Committee's capacities:

"During the time of the drafting of the Optional Protocol itself, delegations said we wouldn’t need this. It was enough to follow the Convention. … (O)ne delegation is on record to say such processes should be reserved for really serious violations of human rights such as racism. (…) I sat here … listening to a delegation saying that the Committee did not have the expertise to administer a process such as this. (Interview 5)

In this context, it was surprising that the OP came to life at all. Without the commitment of a number of individuals, most notably, the Austrian chairperson of the working group, this would not have been possible. In the first year, negotiations were not very output-oriented, yet as a UN staff member observes, the chairperson elected in the second year made huge efforts to get the process going, even against resistance:

"Maybe governments thought that the whole project would just die in a sessional working group, and it could have (… ). The first chairperson was not very committed.
Finally Aloisia (Wörgetter, S.Z.) was elected, and ... she said at the opening ceremony for signature that the notion was to put a young person there which is supposed to have less control, but she wasn’t prepared to let that happen. (...) And then the second year, because she put together a draft, they (...) just had to work on it, and by then, there was a lot of interest. (...) She was very important, because she drafted." (Interview 9)

The support for the OP of a number of influential governments was another crucial factor. According to a CSW member at that time, an interregional coalition of some European, Asian and Latin American states formed early in the negotiation process, determined to reach an agreement. After negotiations came to a standstill in 1998, the coalition used the time until the 1999 session to convince delegations of other states that consensus had almost been reached. With this strategy, they aimed at avoiding repeated debates on fundamental issues and at concluding the draft (Interview 8). The atmosphere during the negotiation process also showed that many delegations were willing to cooperate with non-governmental organizations and to recognize their expertise. The Chairperson often explicitly invited non-state actors to express their views (United Nations/ DAW 2000b: 5). Also, some delegations pointed to the crucial role NGOs had played in the process and expressed their gratefulness for this engagement.

What potential does the OP have for the enforcement of women's rights? According to Byrnes and Connors, two of the independent experts involved in the process,

"(t)he decision whether or not to adopt an optional protocol to the Women's Convention, the content of any such instrument, and the scale of resources committed to implementing it, constitutes a litmus test for the depth of the international community's commitment to the effective realization of the human rights of women." (Byrnes and Connors 1996: 782)

The first part of this "litmus test" is concluded with the adoption of the Optional Protocol. In the framework of international law, this means that the protection of women's rights now disposes of comparable enforcement mechanisms as other sets of rights do. As a matter of

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317 The existence of this coalition does not mean that African states were not in favour of the OP; on the contrary, a number of African states had negotiated for more far reaching provisions, especially regarding the standing, and expressed their disappointment on the consensus that was finally reached, because it did not reflect enough on the perspective of the victims (UN Doc. E/ 1999/ 27, Annex II).

318 In their interpretive statements, Italy stressed the role of NGOs in the process, and the Philippines thanked NGOs that had taken part in the drafting to have given "us both valuable information and inspiration to carry on." A range of other delegations expressed understandings of the text that grant NGOs an important role in both procedures (UN-Doc. E/ 1999/ 27, Annex II).

319 As of 2005, the CESCR and the CRC are the only two of the seven Human Rights Treaty Bodies that do not dispose of an individual complaint procedure; however, intense NGO initiatives work for the drafting of an OP to the CESCR (see 8.3.2.4). The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) entered into force in 2003 together with an Optional Protocol.
fact, the OP to CEDAW even enshrines some innovative provisions that go beyond those of other Optional Protocols. However, the usefulness of international complaint procedures is contentious per se – while some authors point to their importance for building a body of concrete interpretations of international law, others criticize their limited use for the victims, because they are slow and do not result in an enforceable judgment (Tang and Cheung 2003).

The content of the Optional Protocol embodies a compromise between different interests of states in which the perspective of the victims is underrepresented (Byrnes 2002: 139). While some provisions are favorable for potential victims – in particular, the understanding that all articles of the Convention are justiciable under the OP, the possibility to submit a communication on behalf of a victim, the inclusion of both a communication and an inquiry procedure, and the prohibition of reservations –, others make the procedure unattractive for them. These are the exclusion of organizations as potential victims of violations, the relatively weak interim and follow-up measures that the Committee is allowed to take, and the lack of a clear statement on adequate resources for the procedure.

Depending on how one measures the different characteristics of the OP, expectations of its potential use vary from excitement to caution and even disappointment. One of the CEDAW members points to the difficulty to present a case and anticipates that the victim herself might not necessarily benefit from a complaint:

"It is going to take a lot of creative work on the part of the NGOs to bring complaints on behalf of those who wish the Committee to hear their concerns. (...) The family and friends of the woman will often be her worst enemies under this Convention, whereas if you take the Torture Convention, if someone is being held in torture, the family and friends will be the first ones to pursue. ... I don't believe that individual women who bring the complaints will personally benefit, in many cases. (...) I think the benefit will be to raise awareness and to put pressure on the state to change its policy. (...) Which is very demoralizing, but just think it through. The woman whose village has insisted that she should be killed, what can we do, except insist on the state that it punishes the perpetrators?" (Interview 5)

Other assessments echo this view of the OP as being of limited direct use for the victim, but of having potential for influencing public policies. In the view of a staff member of the Chilean WPA, the OP can be used to make women's rights more valid in a political, not in a legal sense. Its strategic use is primarily one of awareness raising, yet for a juridical procedure,

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320 Gilchrist (2001) points to some key innovations: the provision that the complainant can, in justifiable cases, act on behalf of a victim without her consent; the right of the Committee to request the State Party to take interim measures; and the provision that the Committee, to assess the complaint, may consider information submitted by others than the complainant(s), which potentially allows for broad documentation of the case. Also, the follow-up provisions of the OP to CEDAW are more explicit than those of the OP to CCPR.
there are more liable instruments available – in the case of Chile, a number of Inter-American
Conventions (Interview 17 and 18).

Potentially, the OP can be used whenever a State Party to it violates the provisions of
the Convention, or when it does not prevent those violations committed by private actors.
Arguably, this opens a "broad latitude for developing progressive interpretations of CEDAW
and outlining remedies for violations." (Sullivan 2004: 1) Yet a number of conditions have to
be fulfilled for meaningful application of the OP: sufficient resources for the Committee to
perform its duties adequately and without delay; a legally informed and at the same time,
creative attitude of the Committee in interpreting the Convention and formulating prudent
recommendations; the good will of States Parties to follow the Committee's recommendations;
and the creative use of the OP by NGOs, e.g. the incorporation of a complaint into a
broader strategy of awareness raising.

9.2 Bringing the document to life: Activism around the OP

The OP entered into force 22nd December 2000 for the first 10 ratifying states, and
as of June 2005, was legally binding for 71 states. This section analyses the use that has been
made of the OP in the short time span of its existence: on the international level, this com-
prises the efforts made by the Committee to get prepared for its duties under the OP as well as
measures from the UN to enhance this new procedure; on the national level, the degree of
governmental commitments, especially concerning ratification and assessment of the OP, and
non-governmental initiatives to use the OP are discussed.

9.2.1 Setting up an adequate procedure - international efforts

Since the entry into force of the OP in January 2000, the Committee has developed
rules of procedure for the OP (UN-Docs. A/ 56/ 38; CEDAW/ C/ ROP) and it established a
working group to deal with incoming complaints. In its 28th and 29th session in 2003, the
Committee accepted the first cases, one under article 8, another one under article 2 of the OP,
and has received more communications in the meantime. In one case, the Committee con-
ducted an inquiry and transmitted its confidential view to the government concerned.

321 Austria, Bangladesh, Denmark, France, Ireland, Italy, Namibia, New Zealand, Senegal, and Thailand.
The rules of procedure basically carve out how the Committee plans to enact the principles of the OP and are, to a certain extend, repeating the OPs provisions; however, some of the rules go beyond the text of the OP, either because of their procedural concreteness, or because of their independent interpretation of the instrument. Rules 56-59 specify the tasks of the Secretariat in receiving, registering and transmitting communications to the Committee; rule 59 stipulates that the Secretariat prepares a summary of communications and transmits it to Committee members at the next regular meeting – a provision that seems timesaving for the Secretariat, yet an immediate transmission might have given Committee members more time and flexibility to examine each individual complaint. To grant impartial treatment for each complaint, Committee members with personal interests in a case or with citizenship of the State Party concerned do not participate in the review of the case (rule 60).

According to rule 62, the Committee establishes a working group for dealing with complaints and may design rapporteurs for special tasks. Both the Committee and the working group are entitled to request a State Party to take interim measures according to art. 5 of the OP, and either the Committee (by simple majority) or the working group (unanimously) decide on the admissibility of a communication (rule 63 and 64). These two rules grant high authority to the working group and add flexibility to the process. Rule 73 contains a strengthening of the follow-up mandate of the Committee in as far as it provides for the designation of a rapporteur or working group to ascertain measures taken by states and to report on them to the Committee.\(^{322}\)

Rule 74 interprets the notion of confidentiality slightly more in the interest of the complainants than the OP does: it allows the complainant to request that the names of victims are not publicized, and the Committee may decide not to reveal them. However, in general, both the author and the State Party have the right to make the communication public, notwithstanding the confidential treatment of the Committee, which primarily enhances public NGO campaigns around complaints. Also, any follow-up information provided by the state shall not be confidential.

As for the inquiry procedure, the rules elaborate on the consultation of a variety of sources of information and their reliability (rules 82, 83). They specify the conditions under which visits to the territory should take place: they may include hearings, stipulate that persons testifying should not be intimidated by the government and should solemnly declare that they speak the truth (rule 87); further, the delegation of the Committee should be provided with adequate assistance during the visit, such as reliable interpreters (rule 88).

\(^{322}\) This provision follows the practice of the HRC.
In sum, the rules reiterate the need for a cooperative attitude of both the Committee and a concerned State Party at all levels of the procedures and at the same time, show empathy with the needs of complainants. To make the procedure smooth, the supportive tasks of the Secretariat as well as the authority of the Committee and the working group are specified. The rules strengthen follow-up mechanisms after the completion of a case; however, follow-up monitoring in the framework of the OP remains low-key.

As a next step, the Committee set up a working group that first met in CEDAW's 24th session in January 2001. It came together a few times on an informal basis and was formally established in session 28 as the "Working group on Communications under the Optional Protocol". It consists of five members who are elected for two years. The mandate of the working group is to deal with communications under article 2 of the OP, while the inquiry procedure under article 8 remains in the authority of the Committee as a whole. The most important field of activity of the working group has been to discuss administrative procedures that allow adequate and speedy consideration of complaints. For that purpose, it suggested the installation of a confidential interactive database between the Division for the Advancement of Women and the Office of the United Nations High Commissioner for Human Rights (UNHCHR) on communications to make sure that those communications submitted to CEDAW and/ or dealing with gender-specific violations were transmitted to the DAW (UN Doc. A/ 56/ 38: 45). However, the improvement of the collaboration between the two administrative bodies as well as the tasks of the DAW in support of the Committee are repeatedly addressed in the Committee's annual reports, which indicates that the procedural handling of complaints is not yet optimal323. Further, the working group studied communications regarding women's rights dealt with under other complaint procedures and developed guidelines for model communications and inquiries (UN Doc. A/ 57/ 38: 61f).

In its 28th session in January 2003, the Committee reported that it had taken action under article 8 of the OP, that is, it had received information concerning "grave or systematic violations" of rights set forth in the Convention. According to the OP, those activities are undertaken confidentially, however, due to the right of NGOs to make the procedure public unless otherwise decided by the Committee (rule of procedure no. 74), it soon became public that the case the Committee is dealing with is the abduction, rape and killing of a huge num-

323 E.g. in its 27th session the Committee recommended the systematic cooperation between the DAW and the petition team in Geneva and the installation of a focal point for the CEDAW Committee in Geneva to identify gender-related communications. Further, the DAW is recommended to intensify its outreach activities regarding the OP (UN Doc. A/ 57/ 38: 128f). The request for cooperation between the Secretariat in Geneva and the DAW is reiterated in the 29th CEDAW session (UN Doc. A/ 58/ 38: 147).
ber of young women in Ciudad Juarez and Chihuahua, Mexico (Sullivan 2004; see 9.2.3). In its thirty-first session in 2004, the Committee published a summary on its activities regarding the Mexican case (UN Doc. A/ 59/ 38: 161f): after having received information of two NGOs, it invited the Mexican government to submit information on the incidents and decided in its 29th session to conduct an inquiry. Based on the consent and support of the Mexican government, two Committee experts visited the country in October 2003 and conducted a number of interviews. In its subsequent session, the Committee adopted a report and sent it to the government, inviting it to submit its observations and a detailed report on steps taken in response to the incidents. Again, according to the provisions in the OP, these reports have been kept confidential. According to NGO information, another case submitted under article 8 of the OP concerns discriminatory working conditions of domestic workers in households of foreign diplomats in Germany (Ban Ying 2004; see 9.2.3).

Until the Committee's thirty-first session in June 2004, the working group on communications under the optional protocol had received and considered four communications under article 2 of the OP (UN Doc. A/ 59/ 38: 241). One of them was submitted by a citizen of Germany: The complainant saw herself being victim of gender-based discrimination of the legal consequences of divorce, stating that "the regulations systematically discriminate against older women with children who are divorced after long marriages." (UN Doc. A/ 59/ 38: 244). For several reasons, the Committee declared the communication inadmissible (UN Doc. A/ 59/ 38: 254), yet two Committee members submitted a dissenting individual opinion on the case (UN Doc. A/ 59/ 38: 255f).

Parallel to the Committee's activities, actions were taken on higher UN levels to assure the administrative support for the OP. The General Assembly adopted resolution 55/70 of December 5, 2000, which requested the Secretariat to provide full resources, including staff for the OP to CEDAW (UN Doc. A/ 56/ 38: 4). Two and a half years later in the Committee's 29th session in 2003, the DAW informed the Committee of two additional staff positions for the OP, which had been filled until the beginning of 2004. This swift disposition of resources gives rise to hope for an efficient and effective mechanism on the international level. However, it remains unclear if the resources for additional meeting time, in case the Committee will need it for its duties under the OP, are also available.
9.2.2 The Commitment of States Parties – how far does it go?

Ratifying the Optional Protocol is a sign of a State Party 's high liability to the Convention, since the state therewith accepts its accountability to eliminate discrimination against women in concrete cases. Thus, this section presents ratification patterns and, for selected cases, arguments of states for and against ratification.

As of June 2005, 71 out of 180 or slightly more than one third of the States Parties to CEDAW have ratified the OP, with a steady increase over the years: from 2000 to June 2005, ratifications rose from 15 to 28 to 49 to 59 to 70 to 71 (Graph 15). While this is a comparatively swift rise, it remains unclear if and when the remaining two thirds will follow. In the view of Tang and Cheung, "one must not be over-optimistic about the final number of states that would be ready to ratify the Optional Protocol. Not surprisingly, some states have serious concerns about international supervision of human rights issues within their areas of jurisdiction." (Tang and Cheung 2003: 22) However, it is noteworthy that out of the 71 States Parties to the OP, only Bangladesh has not accepted the inquiry procedure according to article 10.

Patterns of ratification vary considerably in different world regions: roughly 80% of the States Parties from Developed Regions have ratified the OP (36 out of 46 as of June 2005). The remaining 20% are equally divided between Eastern European states (Bulgaria, 324 The same holds true for Cuba, which has not yet ratified, but only signed the OP.
Estonia, Latvia, Moldova) and states from Western Europe and other developed regions (Malta, Switzerland, Australia, Japan).

All other regions show a much lower level of ratification, with *Latin American and the Caribbean* being the region with the second highest ratio: 13 out of 33 or 40% of states are States Parties to the OP. The number of ratifications has remained unchanged since 2002, which may be an indicator for the unwillingness of the remaining states to ratify. The fact that the OP has received considerable domestic resistance in several states of the region underlines this tendency. Within the region, there are considerable differences of acceptance of the OP: both in South America and Central America, states that have ratified the OP outnumber those that have not ratified it (7 versus 5 in South America, and 5 versus 3 in Central America), while in the Caribbean, of 13 states only the Dominican Republic is State Party to the OP.\(^{325}\)

In *Asia and the Pacific*, less than 30% of States Parties to CEDAW have ratified the OP (13 out of 50). Across all the diverse sub-regions of Asia – Eastern, South Eastern, Southern, Central and Western Asia and Oceania – this pattern is constant, that is, more than two thirds of states did not ratify and less than one third did.\(^{326}\) This is an interesting figure in so far as reluctance to the OP is a general feature, and not concentrated in one specific sub-region. Also, the low number of four signatures in the whole region\(^{327}\) does not point to a fast change of this attitude.

*Africa* shows the lowest number of ratifications – 9 out of 51 or 18% of States Parties to CEDAW. While the initial number of 3 ratifications remained stable for a long time, the early ratifying nations Mali, Namibia, and Senegal were joined by six additional states in 2004 and 2005.\(^{328}\) Also, twelve African states have signed the OP, which indicates that they are willing to ratify and are currently going through the necessary domestic procedure.

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\(^{325}\) The non-States Parties to the OP of the region are, from South America: Argentina, Chile, Colombia, Guyana, Suriname; from Central America: El Salvador, Honduras, Nicaragua; from the Caribbean: Antigua, Bahamas, Barbados, Cuba, Dominica, Grenada, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent, Trinidad and Tobago. The states in Italics signed the OP.

\(^{326}\) Ratifying states are in East Asia: Mongolia; in South East Asia: East Timor, Philippines, Thailand; in South Asia: Bangladesh, Sri Lanka; in Central Asia: Kazakhstan, Kyrgyzstan; in West Asia: Azerbaijan, Cyprus, Georgia, Turkey; and in Oceania: Solomon Islands.

\(^{327}\) Signatory states in Asia are: Cambodia, Indonesia, Nepal and Tajikistan.

Another way to look at ratifications is their correlation with substantial reservations entered to CEDAW. Of the 34 States Parties that have to date entered incompatible reservations to the Convention (see 6.1.3), only six – Bangladesh\(^{329}\), Lesotho, Libyan Arab Jamahiriya, New Zealand, Niger and Thailand – have ratified the OP. It is to assume that the remaining 28 states are, in comparison with other States Parties, less willing to accept the OP. At the same time, violations of rights set forth in the CEDAW Convention are comparatively more likely to take place within their territory, particularly regarding those articles they did not accept.

This overview gives a first impression of the attitude of states towards the OP, yet does not reveal the reasons for ratification or non-ratification. For example, non-ratification might not necessarily originate in less commitment to the Convention, but also in disappointed expectations regarding the text of the OP, as might be the case for a range of African states (see footnote 312). Likewise, signature of the OP might not result in speedy ratification, e.g. in cases where considerable domestic opposition blocks ratification. To further illustrate domestic dynamics around the OP, governmental statements and political debates in selected cases are presented. The majority of statements on the OP are voiced by governments publi-

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\(^{329}\) Bangladesh was among the first ten states to ratify the OP and in its statements before the UN, it underlines this fact as one further proof for its commitment to women's empowerment (Chowdhury 2002; Jahan 2003). However, the fact that it is the only country that has opted out of the inquiry procedure is never mentioned, and neither are its substantial reservations to the Convention. Harrison (2002) believes that the OP might open an opportunity especially for rural women in Bangladesh to seek redress against discriminatory property and inheritance rights.
cizing their ratification, or by governments giving reasons for non-ratification if such a statement is requested, e.g. in Parliament, or, in the context of a public debate on the OP, by supporters and opponents of ratification, often from civil society organizations.

Both Canada and Germany ratified the OP, publicized its text and endorsed the instrument in official statements. Germany even signaled its support for the instrument in hosting and financing a meeting for the CEDAW Committee in the year 2000, where the rules of procedure for the OP were developed. A statement of the German government indicates that it does not expect the OP to be used in Germany, instead, it stresses the symbolic meaning that its ratification might have for other states: "The Optional protocol might be of particular importance for women in countries that do not have a tight-woven legal net to eliminate discrimination. With its ratification, the federal government hopes to set a symbol for those states that are still hesitant to join the Optional Protocol." (Bundesrepublik Deutschland 2002) In 2003, Germany became the first State Party under CEDAW to be subject of an individual complaint according to article 2 of the OP, yet the admissibility of this complaint was rejected by the Committee (see 9. 2.1). The Canadian government commented on the OP as a procedure that is rather remote from enforceable domestic mechanisms: "Although a decision by the CEDAW Committee … is not legally binding in the way that a decision from the domestic courts … would be, these UN Committee decisions are often morally pervasive" (Status of Women Canada 2002: 15). Both states seem to trust first and foremost in their domestic mechanisms to prevent discrimination against women. The ratification of the OP is considered a necessary element in their international gender policies, but it is not seen as a potentially corrective instrument of public policies.

Two other states of the Developed Regions, the United Kingdom and Australia, display a slightly dissimilar attitude: both governments highly estimate their domestic efforts to achieve gender equality, yet their trust in the effectiveness and need for international instruments is less pronounced than in the cases of Canada and Germany. As a consequence, the UK took until 2004 to ratify the OP, and Australia has refused ratification. In 2002, the British Parliamentary Secretary was asked in a debate in the House of Lords if the government considered ratification, at that time being the only EU member state that had not ratified the OP. While she stressed the need to carefully review the implications of ratification, her main ar-

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330 The search focussed on Internet sites in English, German, Spanish, Portuguese and French and thus excludes any statement on the OP made in another language or not published in the Internet.

331 "Das Fakultativprotokoll dürfte besonders bedeutsam für Frauen in den Ländern werden, die kein dichtgeknüpftes rechtliches Netz zum Schutz vor Diskriminierung haben. Die Bundesregierung setzt mit der Ratifizierung auch auf eine deutliche Signalwirkung gegenüber den Staaten, die noch zögern, diesem Fakultativprotokoll beizutreten."
argument for the government's restraint ultimately was that domestic remedies were as good as CEDAW: "(T)he truth ... is that we already have extensive legislation that deals with virtually all of the issues that are covered by CEDAW" (United Kingdom Parliament 2002).

In Australia, the Human Rights and Equal Opportunity Commission assessed the OP positively: it stated that Australia, as many other States Parties to CEDAW, had established effective domestic mechanisms to enforce the rights enshrined in CEDAW and found the OP particularly crucial for "those nations that still have some way to go with respect to implementing the rights of CEDAW domestically". However, it is also important "for nations with good domestic protection for women to become a party to the Optional Protocol to demonstrate leadership for other women from nations with less effective mechanisms." (Human Rights and Equal Opportunity Commission 2001) Notwithstanding this assessment, the Minister for Foreign Affairs, the Attorney-General and the Minister for Immigration and Multicultural Affairs issued a press release in August 29, 2000 on Australia's strategic engagement with the United Nations Treaty Body system which "should be dependent on the extent to which effective reform occurs." One measure of the Australian government to "improve our continued interaction with UN human rights treaty committees" was that "Australia will not sign or ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which establishes a new complaints procedure." (Minister for Foreign Affairs, Attorney-General and Minister for Immigration and Multicultural Affairs 2000) The argument for not signing the OP, thus, is not against the principles enshrined in it, but against the "ineffectiveness" of the UN treaty system that is increased by the establishment of an additional complaint procedure. The press release gave rise to immediate NGO activism: 169 organizations and 466 individuals expressed their concern about the government's refusal to ratify the OP because this means "to trade women's access to UN Human Rights protection, and aligns the Government with countries who regularly violate women's human rights". They urge the government to review its decision, however, to date without success (Women's Rights Action Network Australia 2000).

In Latin America, the OP has caused highly controversial debates. The feminist network of Latin America and the Caribbean against domestic and sexual violence observes that in Brazil, El Salvador, Argentina, and Chile the Catholic church together with right wing parties have formed a strong opposition against ratification of the OP (Red feminista de America Latina y del Caribe contra la violencia doméstica y sexual 2002). The positions are similar in most cases: the proponents of the OP refer to international standards and the importance to

332 The NGO Rights of Women based in the UK has criticised the government's view (Rights of Women 2003).
give women a concrete instrument to claim their rights; the opponents see national sovereignty jeopardized by a Committee of "radical feminists" that estimates abortion part of the "reproductive rights" of women and also deems prostitution and lesbianism acceptable. Those ideas are, in the view of the opponents, irreconcilable with Latin American society and culture that appreciates motherhood and a family consisting of mother, father and children.

The outcomes of the controversies vary: Brazil ratified the OP in June 2002, even if after some complications: originally, the Senate was to vote on it in April, but postponed the session because of a declaration of the National Conference of Bishops of Brazil (CNBB). The declaration urged for the rejection of the OP because it constituted a menace to Brazilian sovereignty and supported abortion and prostitution. Those senators supportive to the OP took advantage of the postponement to initiate a broader debate in the Senate on the elements of the OP and invited a range of governmental and non-governmental experts for discussion.

In addition, the Brazilian NGO-network AGENDE (Action in Gender, Citizenship and Development) lobbied for ratification of the OP as a part of the campaign "Our rights are not optional!" headed by IWRAW Asia Pacific. Their strategy was to instigate national discussions about the OP and to try to find allies among politicians, Parliamentarians and civil society organizations. In June 2002, the Senate ratified the OP, despite the protest of the CNBB and several religiously oriented NGOs (REPEM 2002).

In Argentina, El Salvador and Chile the opposition has been, so far, more successful and has prevented ratification. The case of Chile is of particular interest because the Chilean delegation was very active in the drafting process, and the Chilean government was the first one to sign the OP in 1999. However, this international engagement does not reflect domestic power relations: Josefina Bilbao, the then director of the women's policy agency SERNAM, was harshly criticized for her precipitated signature, and representatives of the right wing parties announced that they would not allow the OP to enter into force (Molina 2000). In August 2001, the Parliament approved the ratification with 42 votes in favor and 20 against (SERNAM 2001). The issue was then passed on to the Commission of Foreign Relations of the Senate, where it has been pending ever since.

333 For example, the international NGO Human Life international, or Vida Humana in Spanish, has an expert from Panama, Enrique Rodriguez, criticise the Convention as an instrument of radical feminists who believe that there is no difference between men and women. To underline this, he claims that "the CV of the majority of the members of the Committee is clearly marked by the influence of feminist sectors of diverse levels of radicalism." ("La hoja de vida de la mayoría de los miembros del Comité, evidencia la marcada influencia de sectores feministas de muy diversos matices de radicalización.") (Rodríguez 2002)

334 One representative of the CNBB, the Director of Human Rights and Social Affairs in the Foreign Ministry, one representative of the National Secretary for Women's Rights; the national representative of the Latin American women's rights organization CLADEM, and the Prosecutor of the State of São Paulo and professor for Human Rights at the Catholic University of São Paulo (REPEM 2002).
In January 2002, shortly before the Commission had scheduled its final vote on the OP, the President of the Episcopal conference and Archbishop of Santiago Errazuriz was allowed to present a statement in the Commission. His major points against the OP were, first, that with the concept of gender, the biological sex was separated from one's own sexual identity which would lead to the denaturalization of the concept of marriage, and second, that the concept of reproductive rights would inadequately isolate the rights of women in a context where both women and men had rights and responsibilities starting with conception. After unfolding these problematic "ambiguities" of the CEDAW Convention, he plead for Chile's own way to eliminate discrimination against women, in which international instruments may be of use, but should never be imposed. In his words, Chile was a sovereign state, not only because of political sovereignty but also "because we are capable to respect and be respected, to enrich and develop our own culture and our way of human progress, and to respond to the deepest anxieties of women, and of all citizens of our fatherland" (Prensa Senado 2002). This statement caused significant reverberation: not only did other representatives of the church and a number of NGOs and independent research institutes back Errázuriz' position, but it also became clear that the OP would not get a majority in the Commission. In addition to the Senators of the opposition, some members of the governing Concertación, mostly belonging to the Christian Democratic Party, also expressed their doubts about ratification.

On the side of the proponents of ratification, the Women's Policy Agency SERNAM as well as women's rights groups publicly reiterated their arguments, predominantly that it was necessary for women who believe their rights had been violated to have access to an international complaint mechanism. Women's and Human Rights NGOs as well as the freemasonry criticized the interference of the Church in issues that should be decided freely by each individual. The *network of health of Latin American and Caribbean women* further stressed that no representative of SERNAM was allowed to participate in the session of the Senate's Commission when Archbishop Errazuriz made his statement, and it appealed for sending protest messages to the Senate's President and the President of the Commission (Red de Salud de las Mujeres Latinoamericanas y del Caribe 2002). As one of the important international NGOs, *Human Rights Watch* expressed its concern about Chile's possible refusal of ratification. In a letter to the President of the Senate's Commission of Foreign Relations, Human

335 “porque somos capaces de respetar y hacer respetar, de enriquecer y desarrollar nuestra propia cultura y nuestro camino de progreso humano, y de responder así a las inquietudes más profundas de las mujeres, y de todos los ciudadanos de nuestra patria”.

336 For example Aranguiz 2002; Freedom and Development 2002; Villagrán 2002.
Rights Watch wrote that non-ratification would be a major setback for Chile (Human Rights Watch 2002).

As a consequence of the dispute, the vote on ratification was postponed until the following year (SERNAM 2002). The director of SERNAM valued the postponement because it "was an indication that the Commission … was looking for more antecedents and for an unanimous decision." She was convinced that all steps would be taken to "contribute to the atmosphere to adopt the protocol and to allow Chile to have its legislation in accordance with the international standards in women's rights." (SERNAM 2002) However, the issue was never taken up again in the Senate, and due to the high probability of rejection, SERNAM did not push to put ratification to vote again. While women's NGOs reiterate the importance of ratification, it seems unlikely that the coalition of opponents will make concessions.

In Mexico, the ratification process did not cause a fundamental ethical conflict: it was not without disagreements but went relatively smoothly. The government of Vicente Fox encouraged the legislation from early on to ratify the OP, civil society groups voiced more support than opposition, and the Senate went through an objective, even if sometimes difficult, debate. One of the issues discussed was that Mexico had declared upon ratification of the Convention that it would lack the resources to assure all necessary mechanisms to achieve de facto equality, and what this would mean for the ratification of the OP. On December 14, 2001 the Senate of Mexico ratified the OP with 77 of 128 senators in favor (CIMAC 2001a, 2001b, 2001c). In the meantime, Mexico became the first state to receive an inquiry under article 8 Optional Protocol (CIMAC 2003). The procedure has been conducted according to the Committee's guidelines (see 9.2.1), and thus has been kept confidential.

9.2.3 Non-governmental strategies: education, proliferation and presentation of first cases

Since the entry into force of the OP, supportive non-governmental organizations have been active in campaigning for ratification, and in gathering expertise on how to use the OP most effectively. Also, two cases that have been under the Committee's consideration are based on non-governmental initiatives.

337 "indica que la Comisión de Relaciones Exteriores del Senado está llana a tener más antecedentes y a buscar una votación unánime." …" todos los pasos que contribuyan al ánimo de aprobar este protocolo y que permitan a Chile tener una legislación acorde con el mundo internacional en materia de derechos de las mujeres."

338 Email communication with La Morada (21 April 2004).
IWRAW Asia Pacific has initiated the most widespread campaign around the OP under the name "Our rights are not Optional!" It could be called a two-level campaign: first, it aims at convincing states to ratify the OP, and second, it develops non-governmental strategies for the practical use of the new instrument. IWRAW Asia Pacific and the national CEDAW action networks in the region jointly exercise this campaign. It consists, on the first level, in lobbying governmental institutions and Parliamentarians, that is, to inform them about the OP and advise them how to initiate and endorse the ratification process. On the second level, the campaign serves to proliferate the responsibilities of the government under the CEDAW Convention, such as elimination of discriminatory legislation. As an Indian expert states, the OP offers an entirely new dimension to scrutinize a state's commitment to gender equality by means of individual cases of violations of rights. This is a sharp contrast to the CEDAW monitoring procedure which implicitly assumes that the existence of public gender policies guarantee that women enjoy their rights (Srivastava 2004).

In Nepal, for instance, the *Forum for Women, Law and Development* as part of the IWRAW campaign is lobbying the government for ratification. Nepal is among the four Asian states that have signed the OP, thus, the government has signaled interest in committing to the instrument. In the view of the activists, swift ratification is of particular importance because there are still a number of discriminatory laws in place, and the OP would be a useful tool to amend these laws. Once Nepal is a State Party to the OP, activists deem that "all violations against women will be judged on the basis of CEDAW." (Adhikari 2002) The campaign has also been taken up by NGOs in Latin America, where regional and national focal points coordinate non-governmental activism. In the African context, NGO activism around the OP is as far as this is verifiable via the Internet - relatively limited. While some regional organization such as WILDAF or Famafrique inform about the OP, it seems that another protocol is more relevant for organized women in Africa: The Optional Protocol to the African Charter on Human and Peoples Rights on Women's rights (Onoria 2002). African women's NGOs were very active in lobbying for this Protocol, which was adopted in July 2003, and since then, WILDAF mobilizes regularly to push governments for ratification. Without going into details of the text, it seems that the African OP is perceived in Africa as an instrument more

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339 In addition to this supranationally organized campaign, there are several national organizations in various countries that pursue the goal to make their government ratify. See for example for the Japan Federation of bar associations (1997).

340 For Brazil as the only Portuguese speaking country, the coordinating organization is AGENDE (Action in Gender, Citizenship and Development); for the Spanish speaking countries, the coordinator is the Program *Woman, Justice and Gender* of ILANUD (Instituto Latinoamericano de Naciones Unidas para la Prevención del Delito y el Tratamiento del Delincuente), based in Costa Rica; and for English and French speaking countries, the coordinator is CAFFRA (see AGENDE 2005).
accurately tailored according to the needs of African women than the OP to CEDAW (see WiLDAF/FeDDAF Afrique de l'ouest 2005).

The second "column" of non-governmental activism is to create expertise on the inspired and effective use of the OP. For this purpose, various expert meetings have taken place, e.g. a workshop organized by *Equality now* in Nairobi in 2001, and another one in Berlin in 2003 hosted by the *German Institute for Human Rights*. According to Equality now, the goal of the 2001 meeting was "to bring together theoretical concepts and practical realities to strategize innovative ways of litigating for sex equality on behalf of women and girls", and to assess the OP's potential in this respect (Equality now 2005b). Usually, judges from different countries are invited to discuss strategies within their specific national legislative contexts. Several approaches are used to bring theory and practice together:

- **Consideration of model cases.** In different issue areas of the Convention such as labor law, citizenship law, marriage and the family, domestic violence or the healthcare sector, possible cases are constructed. The participants then discuss if it would be advisable to use the OP to address this case of violation, and how the provisions of the OP would concretely be applied.

- **Interpretation of the justiciability of each of the Convention's articles in concrete contexts,** or in other words, the detection of state action that violates the obligations under the Convention. In the case of article 2, for example, Freeman suggests that it is not enough for States Parties to revise their Constitutions, laws, regulations and other written policies, but they "must ensure that their administrative and judicial systems are designed to deliver on the obligation", for example in conducting trainings for civil servants (Freeman 2003: 5). Furthermore, while the formulation "to take all appropriate measures" gives the authorities some leeway in terms of its *exact* actions, it means that they "must determine what needs to be done, in what order, based on their legal and political systems." (ibid.) Thus, if state action in accordance with article 2 needs an analysis and a plan with concrete steps to be taken, eclectic and unsystematic measures would be a violation of a State Party's obligation.

- **Clarification of the provisions of the OP in the light of international law.** To assess the functions of the instrument, the OP is compared with other international and regional Human Rights instruments and is interpreted within the international human rights frame-
work. For example, the provision that a case cannot be presented before another international mechanism has been interpreted by the HRC in the sense that only the consideration before a *comparable* international mechanism is unacceptable. In the view of the HRC, especially the Charta-based complaint mechanisms – the 1503 and the CSW complaint procedure (see 4.1.3.2) – offer less protection than a treaty-based mechanism, thus, it decided to accept cases that were already considered by those mechanisms (Connors 2003).

- **Discussion of strategic considerations from the complainant's perspective.** While the important contribution of the OP to International Law creation is often mentioned, experts agree that the protection of the victim(s) has first priority. As Sullivan puts it, the challenges that activists face in using the OP are "how to ensure that the interests of individual women whose rights have been violated are given priority and how to approach collaboration among local, national and international groups and individual lawyers." (Sullivan 2004: 2) In this cooperation, she stresses the ethical obligation of activists towards the victims, in particular of those NGOs with access to resources and publicity. They should consult all their strategies with the victims, especially in terms of confidentiality. Depending on the situation of the victim(s), they should not only be protected, but also financially supported. Tang and Cheung (2003) therefore suggest that NGOs may not only lobby for governments to ratify the OP, but should also urge them to provide for funding for the victims. Furthermore, experts agree that in the interest of the victim, "any attempt at remedying such violations should reflect a strategy based on an assessment of all available avenues of redress. … This choice should be made based on the political climate of a country, the cultural context and level of education of women in general." (Deutsches Institut für Menschenrechte 2003: 26) Thus, what is recommended is a careful consideration of the context in which the OP is used, and of the most suitable remedy. Also, the combined use the OP with other strategies is suggested, such as the monitoring of the state's effort to implement the Convention, or broader awareness raising around violations of women's rights.

A third strategy of NGOs has been to support and prepare the presentation of complaints under the OP. To the author's knowledge, two cases were presented by NGO initiatives to the Committee: The first case of grave and systematic violations of women's rights was brought to the Committee by the NGOs *Casa Amiga* in Ciudad Juárez, Mexico, together with

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343 As Nelles (2002) argues, in the context of a country like Germany, violation of individual cases is less likely to be taking place because of exhaustive domestic legislation, nonetheless, women do suffer from systematic and structural violations of their rights. Accordingly, an inquiry under article 8 would be more suitable than a communication procedure under article 2.
Equality now in October 2002. They asked the Committee to take action in the light of the failure of the Mexican government to respond to the "femicide" that has been taken place in the state of Chihuahua, Mexico; in June 2003, the Mexican Commission for the Defense and Promotion of Human rights joined the two organizations (Equality now 2005c: 1). According to official numbers, 258 women were killed and over 4000 disappeared since 1993. CEDAW had, when reviewing the report of Mexico in 2002, expressed concern regarding the killings, and in particular "over the apparent failure of government investigation to identify and bring the perpetrators to justice." (Equality now 2005c: 1) The case was accepted by the Committee and dealt with under article 8 of the Optional Protocol (see 9.2.1).

The second case brought before the CEDAW Committee concerns the working conditions of female domestic workers in the households of foreign diplomats in the Federal Republic of Germany. The NGO Ban Ying requests the Committee "to conduct an inquiry according to article 8 of the Optional Protocol with the end to examine if the dealing of German authorities with domestic workers in households of foreign diplomats constitutes a breach of article 6 of the Convention (trafficking in women)." (Ban Ying 2004: 1)344 Ban Ying is an NGO that supports Southeast Asian women living in Germany. A number of its clients who work in households of foreign diplomats reported about indecent working conditions and cases of exploitation, abuse and violence. In its report, Ban Ying claims that the proceedings of German authorities are insufficient to protect the human rights of these women, and even increase their dependence from their employers. The NGO therefore asks the Committee to investigate if Germany contributes to "grave and systematic violations" of article 6 CEDAW Convention, that is, if it enhances trafficking and exploitation of women.

9.3 The Optional Protocol – in whose interest? A summary

The OP is an instrument that was created according to the intergovernmental rationale of international law; however, it is also a product of transnational non-governmental activism. The different interests that influenced the drafting process and the development after the OP's entry into force give a hint for the future potential of the instrument: The drafting was based on strong non-governmental activism, the support for this activism by the CEDAW Committee, and an initially reluctant attitude of the responsible intergovernmental body. In the course

344 “ein Untersuchungsverfahren gem. Art. 8 des Fakultativprotokolls ... einzuleiten mit dem Ziel, zu überprüfen, ob der Umgang der deutschen Behörden mit Hausangestellten in Diplomatenhaushalten eine systematische Verletzung von Art 6 des Übereinkommens (Frauenhandel) darstellt.”
of negotiations, the project was endorsed by a committed CSW chairperson and a broad coalition of favorable delegations, yet the opponent delegations got more vocal in the end of the drafting and managed to bring their positions in the text. In the end, the strong orientation towards the interests of the victims was undermined for the sake of strengthening the perspective of state sovereignty – which ultimately means a weakening of the complaint mechanism.

International institutions support the Optional Protocol. The resources provided by the UN Secretariat surpass expectations raised by the vague provision in article 14 of the OP. The CEDAW Committee itself is eager to perform new tasks under the OP, yet has to face two challenges in doing so: on the one hand, it has to proof its capacity to assess complaints according to the international legal framework – a capacity that has been overtly questioned because of the low number of lawyers among the Committee experts. On the other hand, the Committee has to find creative ways to use the OP in the interests of each victim while maintaining cooperative relations with the state concerned.

States attitudes regarding the OP can be divided into three strands: the first group of states agrees with the procedures enshrined in the OP; the second has ideological differences, but is not entirely opposing; and the third rejects the OP completely. In the drafting process, the first two groups were dominant; regarding ratification, the first group is most willing to ratify while the states of the second group have expressed their doubts or were forced to reconsider their support for the OP because of domestic opposition. The states of the third group have not ratified, and are not likely to do so in the future.

How can the attitudes of these three groups be characterized? The "supportive group" seeks to strengthen international standards in women's rights, however, as the states of this group consider themselves to fully endorse and already fulfill these standards, they actually support the strengthening of those standards elsewhere – namely in those states where women's rights are "still" violated. Because of the normative closeness between those states and the international norms, the OP is not regarded as a threatening or imposing international instrument. It lies in the nature of the OP as an international treaty that the complaints submitted within its framework are targeted against those states that have ratified it; thus, the two cases of alleged "grave or systematic violations" of women's rights discussed here concern Germany and Mexico, two of the supportive states. This indicates that discrimination against women is a global phenomenon that occurs in different intensities including in states that are committed to women's rights. Thus, governmental commitment for women's rights is not identical with enjoyment of these rights. This fact defeats the argument that an Optional Protocol to CEDAW is unnecessary, as only those states that already comply with the Convention
would ratify it, while the notorious violators of women's rights would not be reached. From the point of view of those whose rights are violated, there is no sharp distinction between those two groups of states.

Those states that have not ratified the OP are either partly or entirely rejecting the instrument. They are usually making an argument that combines "culture" and "sovereignty": while they declare to fully respect women's rights, they follow a model to advance the status of women that is based on normative foundations different from the international framework, e.g. the rejection of reproductive rights. As this national model is deemed more appropriate to the cultural traditions of the country, international standards should by no means be imposed, and national idiosyncrasies should be respected. Thus, a considerable number of states will presumably decide not to ratify the OP.

Non-governmental activism has clearly strengthened the perspective of the victims in the text of the Optional Protocol. Since the Protocol's entry into force, the non-governmental sector has spent a lot of energy figuring out what exactly to do with the OP. Their strategies include the promotion of the OP, the lobbying of governments to accept the new control mechanism, the interpretation of the Protocol's scope, and the discussion of model cases. Also, some concrete cases were brought to the attention of the Committee. In all these activities, NGOs stress the importance to prioritize the needs of the victim(s) in the procedure, and to embed the complaint procedure in other strategies to optimize its effects.

The discussion of the OP shows different normative constructions and interests of international, national and transnational actors. Internationally, the OP is an innovation that strengthens the general norm of the individual as a subject of international law, in particular, as a bearer of human rights. It thus contributes to a broader normative discourse, both in linking CEDAW more closely to the United Nations Human Rights system, and in symbolically strengthening women's rights around the world. The intergovernmental drafting process seems to entail a learning process, in as far as governmental delegations were willing to integrate the knowledge of non-governmental experts in the field. Further, the international legitimacy of the procedure will depend on the CEDAW Committee's performance regarding its responsibilities under the OP. Different nation states construct themselves either as a representing cooperative or of autonomous sovereignty in relation to the OP. These self-constructions became evident in the differing positions of states in the drafting process and they are expressed in the states' ratification patterns: about a third of all States Parties to CEDAW commit themselves to the OP's international scrutiny and therewith show a principally cooperative manner, the others (still) refuse to accept such external control and prefer
domestic ways to protect the rights of women. From a transnational perspective, the crucial question is if the OP can strengthen the interests of the marginalized, that is of the victims of a violation of rights set forth in the Convention. From that point of view, it is paramount to link the international procedure with cases of violations, and to carefully assess if the OP is of use for the victim. Not surprisingly, NGOs are the actors most engaged in this concrete translating activity.

In sum, the OP is a commendable innovation in the international human rights discourse, it requires considerable resources to materialize into an effective and legitimate procedure on the international level and it partly challenges the principle of national sovereignty, which makes it unacceptable for a number of states. Despite the manifold efforts, it is not predominantly tailored according to the needs of the victims, as the procedure depends on a lot of requirements for the complainant and does not result in a binding legal judgment, let alone in the de-facto ending of the human rights abuse. Thus, to a certain extent, it reiterates exclusionary structures that are based on the state orientation of the international system.
10. Empirical and theoretical conclusions

"Schauen Sie, für mich sind die Theorien in den Sozialwissenschaften unterentwickelt, und die Versuche, Theorien ohne empirische Grundlage zu etablieren, kommt mir wie der falsche Weg vor."
Marie Jahoda (1997: 134)

This study has presented the reconstruction of empirical processes around the CEDAW Convention based on a constructivist theoretical framework. In this conclusion, the findings are discussed in the spirit of Marie Jahoda, one of the pioneers of social science research of the 20th century: as the theoretical perspective chosen has brought about a range of findings, these empirical processes are perceived as source and inspiration for further theory building. Accordingly, this conclusion first summarizes the empirical results of the study. In the light of diverse constructions of meaning of the CEDAW process, it maps out the dimensions of impact of the Convention, as well as the supportive conditions and major impediments for its repercussions (10.1). Second, the empirical findings are reflected upon as results of the methodological perspective and discussed in the light of their potential to contribute to further IR theory building (10.2).

10.1 The repercussions of CEDAW – constructing multilevel impact

The CEDAW Convention came into being as a women's rights regime following an intergovernmental rationale that kept its mandate limited, but international, national and transnational activism has led to an expansion of its functions. This process of strengthening the mechanism has been embedded in an international context being based on the predominance of state sovereignty - that is, on the free decision of states to interact or not with the monitoring body, to accept or not the intensification of the monitoring procedure, and to support or not the international normative discourse on the human rights of women.

During the time of CEDAW's existence, this international context has changed considerably – it was first shaped by block confrontation, then by the dissolution of this confrontation and a resulting confidence in mechanisms of global governance, and finally by a renaissance of fundamentalism and unilateralism. These changes have affected the significance of women's rights norms in general and CEDAW in particular: After a period of intergovern-
mental hostility and emphasis on state sovereignty during the Cold War, the increased confidence in multilateral cooperation has helped to strengthen the CEDAW monitoring procedure. If the current revival of the security discourse combined with several nationalisms and fundamentalisms will have any effect on multilateral human rights protection remains to be seen. For now, this change in the international normative discourse has certainly contributed to delegitimize the United Nations as a whole, yet ironically, the failure of the UN reform has at least kept the material status quo of the Human Rights monitoring mechanisms.

This study analyzed the development of the CEDAW regime in four stages: first, the intergovernmental context of its creation, second, the Convention’s operationalization within the international context of the United Nations, third, national compliance with the Convention, and fourth, transnational activism to enhance the link between international discourses on women’s rights and their domestic interpretation and implementation. It found that the mandate and the possible effects of the Convention expanded significantly beyond its initial intergovernmental construction, yet at the same time, remained tightly connected to it. To elucidate this argument, the findings of the four contexts are summarized with a focus on those developments that have influenced the impact of the Convention.

The intergovernmental context: As graph 2 illustrates, the Convention is the result of an intergovernmental drafting process taking place within the CSW and the GA.

Graph 2: The intergovernmental context of the creation of CEDAW
It provides for a monitoring procedure of advisory character carried out by the CEDAW Committee. The independent experts comprising the Committee are elected by the States Parties to the Convention. The UN Secretariat provides administrative support for the procedure, and Specialized Agencies of the United Nations are invited to contribute relevant information to the constructive dialogue.

The Convention is set in the United Nations system for human rights promotion and protection that is, to a large extent, contingent on the interests of states. For a long time, human rights violations specifically suffered by women were not sufficiently addressed within this framework. Only after several decades of awareness raising on the status of women within the UN and in a time of increased publicity for women's issues did this change. In 1979, the CEDAW Convention became the first international legal document that integrated the human rights of women into a global human rights perspective. Especially its comprehensive definition of discrimination against women and the goal to reach gender equality as spelled out in its articles make the Convention a useful guideline to realize women's rights. However, it remained contentious among governments what "women's rights" should exactly comprise. The crucial line of conflict emerged between a secular construction of women as individual bearers of rights and a religiously informed notion of women as fulfilling certain functions within family and society.

Two features were particularly characteristic for the context of the Convention's creation: Before a concrete text could be drafted, it was first necessary to create a supportive normative background, that is, the integration of women's issues into the human rights discourse. This process of embedding CEDAW took many years and required engaged women's rights proponents within the United Nations. In fact, awareness raising activities did not only take place previously and simultaneously to the drafting process, but have been ongoing ever since. Second, the priorities of states were the principal guidelines along which the Convention was developed – thus, as states reject an effective control mechanism of their inner affairs, the international monitoring mechanism was designed in a cautious manner and is exclusively state-oriented. This general trend notwithstanding, the newly emerging awareness regarding gender issues was also reflected in the negotiations, particularly because many states sent committed women delegates to the negotiations.

The international context of the United Nations: the independent monitoring body provided for in the Convention was established within the United Nations (graph 5). It is embedded in a network of other UN bodies: it is serviced by the Division for the Advancement of Women, it exchanges information with the other Human Rights Treaty Bodies, and it co-
operates with a number of Specialized Agencies, in particular, UNIFEM and UNDP. There is only a low-key working relationship with the Commission on the Status of Women. The CEDAW Committee is accountable to the General Assembly and submits its annual reports via the ECOSOC to the GA.

While the work of CEDAW started under difficult conditions, the monitoring procedure was strengthened over time, particularly due to the engagement of the CEDAW experts and women's rights advocates within several UN bodies. The CEDAW Committee itself is, ideally, an independent monitoring body. In reality, it shows both a great level of diversity, e.g. in terms of professional backgrounds of the experts, and is shaped by exclusionary structures, in as far as the experts have to be proposed and supported by their governments, in as far as men are far less likely to figure as experts on women's rights, and in as far as the expertise required is closely connected to education and proficiency, which excludes gender expertise of people with low educational backgrounds. Over the last decades, the CEDAW Committee has consistently tried to improve its work and working conditions, both within its mandate and in expanding the mandate to assume wider responsibilities. Most importantly, it improved the quality of the constructive dialogue in clarifying its own role as independent monitoring body, in increasing the efficiency of the dialogue and considering additional information submitted by Specialized Agencies and NGOs, and introducing summarized recommendations - the Concluding Comments - with regard to domestic implementation. However, the
complexity of the reporting procedure also bears the danger to become complicated and over-
loaded. Apart from improving the dialogue, the Committee's general recommendations have
developed into authoritative interpretations of the Convention's provisions, and the Commit-
tee has developed an outspoken stance on reservations to CEDAW in declaring its view on
incompatible reservations. Finally, Committee members have engaged in activities beyond
their mandate as independent experts to increase the publicity of the Convention and to en-
hance the integration of a women's rights perspective into other UN activities. Taken together,
these developments have clearly improved the monitoring procedure, yet at the same time,
they concentrate on the regime's international operationalization and do not directly focus on
the elimination of discrimination against women on the domestic level. For example, Com-
mittee experts have hardly engaged in developing tangible follow-up mechanisms to increase
the Convention's domestic impact.

The administrative support the CEDAW Committee has been receiving by the Divi-
sion for the Advancement of Women was initially insufficient, yet developed into satisfying
support comparable to that of the other Human Rights Treaty Bodies, particularly since a unit
with expertise in human rights law was established within the DAW. In the context of the UN
Human Rights System, the CEDAW Committee interacts with the other Human Rights Treaty
Bodies. This networking has been positive for CEDAW, as it transformed its isolated situation
and paved the way to increase the gender awareness of the other Treaty Bodies. The coopera-
tion between CEDAW and a number of Specialized Agencies of the UN has become highly
productive: especially UNIFEM and UNDP have gone far in integrating the CEDAW princi-
ples into their work. UNIFEM in particular has gathered experience in how to bring global
norms and local contexts together and thus adds to a bottom-up view of national and local
actors using and assessing the CEDAW Convention. The relationship between the CSW and
CEDAW is shaped by the understanding that both bodies have to be independent from each
other but at the same time, could benefit from cooperation.

Two overarching factors characterize this international network of CEDAW: First, the
working conditions of specific mechanisms such as CEDAW depend on an international nor-
mative framework. In times when women's rights were not considered relevant internationally
– e.g. in the 1980s –, the work of CEDAW was under-funded and thus cumbersome and ineffi-
cient. In contrast, a general rise of acknowledgement regarding women's rights as it took
place in the 1990s improved the working conditions of the Committee. If the current interna-
tional priority on security will result in restructuring the UN Human Rights System is still an
open question. Second, shaping international normative discourses requires concrete action to
link dialogues, exchanges of views, and to initiate learning processes. These connections are often established by individuals, e.g. the Committee members and staff of different UN bodies. Thus, international normative structures and concrete mechanisms to promote women's rights mutually constitute each other.

**National compliance processes:** The responses of States Parties to the CEDAW Convention show a great deal of diversity regarding both their international and domestic compliance. The overview of *international compliance* suggests that the performance of States Parties regarding their international duties depends both on ideological affinity to the Convention and on the resources states dispose of. In descending order, reporting obligations are fulfilled best by states from the *Developed Regions*, followed by states from *Latin America and the Caribbean, Asia and Pacific*, and *Africa*. However, this picture changes regarding patterns of domestic compliance, where virtually all levels of compliance can be found in all four regions, with the particularity that the best complier is an African state. The quality of delegations States Parties send to enter in dialogue with the Committee has improved over time, particularly their awareness of the complexity of the tasks they have to perform. Further, States Parties' attitudes towards the matter of reservations vary considerably: some have entered reservations to core provisions of the Convention, others made compatible reservations, and a small group objects to fundamental reservations of other States Parties. However, these different views regarding the integrity of the treaty are not openly discussed to avoid conflict.

The analysis of *domestic compliance patterns* in 43 States Parties reveals a moderate and low/moderate degree of compliance in the majority of states, while only seven states show a high or high/moderate degree. As generally supportive domestic conditions for good compliance with CEDAW could be identified:

- A pluralistic political context that allows the substantial representation of women's interests.
- The rhetorical support of governments for international gender norms.
- Civil society organizations that "import" international gender norms and develop support strategies based on their transnational cooperation.
- A high level of prosperity helps states to implement the Convention, particularly in the fields of socio-economic rights, yet is not a prerequisite for good compliance *as such*.
- As a tendency, there is no correlation between a high "cultural match" with CEDAW and a high level of national compliance. However, ideological affinity or distance does affect compliance: on the one hand, states with a lower cultural match are not likely to fulfill the *whole spectrum* of the Convention's provisions, but they might use it as a starting point in
their efforts to eliminate gender-based discrimination. Thus, they are not automatically low-level compliers. On the other hand, a number of States Parties with a good record in public gender policies do not consider themselves but other, seemingly less advanced states in need of an international monitoring procedure. The construction of high cultural affinity with CEDAW then results in non-compliance combined with an understanding of national superiority.

The case of the United States that is not a State Party to CEDAW underlines the argument that international and domestic normative contexts are more likely to overlap than either "match" or "mismatch". It also sheds light on the principal reasons of states to refuse becoming a State Party to the Convention. These are general reluctance towards any form of international control, lack of credibility of the treaty from the point of view of domestic actors, and misinterpretation of the nature of the CEDAW monitoring procedure.

The analysis of domestic compliance dynamics in Chile and Finland confirm the relevance of supportive factors. As table 2 illustrates, the positive factors prevail in Finland, especially regarding the political system, prosperity and transnational connections, while in Chile, particularly the political system and representation of women's interests are less favorable for meaningful implementation. The two states also differ regarding the "cultural match" – thus, different ways of compliance can be assumed.

### Table 2: Factors enhancing compliance with CEDAW in Chile and Finland

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<thead>
<tr>
<th></th>
<th>Chile</th>
<th>Finland</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Political System</strong></td>
<td>Not Favorable (-)</td>
<td>Favorable (+)</td>
</tr>
<tr>
<td><strong>Rhetoric of State Leaders</strong></td>
<td>Partly Supportive (+/-)</td>
<td>Supportive (+)</td>
</tr>
<tr>
<td><strong>Transnational links</strong></td>
<td>Established by both Women's Rights Proponents and Opponents (+/-)</td>
<td>Established by Women's Policy Agency (+)</td>
</tr>
<tr>
<td><strong>Prosperity</strong></td>
<td>High and Unevenly Distributed (+/-)</td>
<td>High and Evenly Distributed (+)</td>
</tr>
<tr>
<td><strong>Cultural Match</strong></td>
<td>Considerable Mismatch (-)</td>
<td>Largely Compatible (+)</td>
</tr>
</tbody>
</table>

Which types of compliance strategies have domestic actors developed in these widely differing contexts? The following processes – visualized in graph 13 - could be identified:
In both Chile and Finland, the WPAs have used CEDAW to shape public policies and to influence legislation. In Chile, this was possible in those fields where CEDAW is compatible with domestic gender norms - e.g. in policies supporting "responsible motherhood" or preventing domestic violence. In Finland, the ratification process of the Convention was used for a comprehensive review of legislation. Legal changes in reference to the Convention could also be found in many other States Parties to CEDAW; sometimes, as in the case of Japan, these changes required strong NGO commitment to pressure reluctant governments and legislators.

In both Chile and Finland, the dialogue with the CEDAW Committee has led to an increased awareness of international obligations. In Finland, especially in the issue of violence against women was taken up as an impulse of the Committee. In Chile, the procedure has intensified the debate around reproductive rights. In other cases, this awareness was only rhetorical, yet used by NGOs to emphasize the government's obligations domestically.

In Chile, both the WPA and women's organizations have used CEDAW to stimulate domestic normative change and to widen the discursive space, especially in the field of reproductive rights. Especially the NGOs working in the field use their transnational con-

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345 E.g. in the cases of Zimbabwe, NGOs used the statement of the government before CEDAW to prevent the repeal of a law granting gender equality; in Mauritius, NGOs published the Committee's concern on the lack of legislation prohibiting sex based discrimination that had been withheld by the government (UNIFEM 1998: 35; 37).
nections to underline the legitimacy of their – domestically widely disapproved - arguments. However, civil society groups opposing the notion of reproductive rights enshrined in CEDAW have also referred to the Convention in a negative way to emphasize their position. In Finland, CEDAW was used as a discursive framework to strengthen specific understandings of gender equality in legislative debates.

- In Chile, especially women's organizations have engaged in promoting CEDAW among 'ordinary women' to make them aware of their rights. In the Chilean context of political and socio-economic exclusion, it is a crucial for the impact of international gender norms that women are enabled to know and claim their rights.

Some complementary findings to the two case studies based on the dynamics in other States Parties should be added:

- Contrary to Chile and Finland, the Convention was used in several countries in court cases with the end to change discriminatory legislation. For example, in Nepal, NGOs specialized in public interest litigation before the Supreme Court to challenge discriminatory laws by invoking CEDAW. In some cases, the judgment followed their reasoning and suggested legislative change.

- In the exceptional case of South Africa, the Convention was used both by civil society organizations and by state institution to implement a women's rights perspective in the process of regime transformation. CEDAW was referred to in drafting a new Constitution and in reforming legislature, yet beyond this, CEDAW served as international framework to overcome not only racist, but also sexist structures of South African society.

The international compliance patterns of states show that, first, the constructive dialogue with the CEDAW Committee serves to a certain extent as a platform enabling learning processes in governments. This tendency supports the argument that monitoring mechanisms emphasizing a joint problem-solving perspective can have a significant degree of influence. Second, states develop differing constructions of their national sovereignty facing their obligations under CEDAW: some interpret their national sovereignty as autonomy and make their compliance contingent upon so-called cultural traditions. Other states stress an understanding

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346 The use of the Convention to strengthen the rights of women’s in domestic discourses is part of implementation strategies in most States Parties. For example, this is true for four cases described in 6.2.3, namely South Africa, Nepal, Panama and Japan.

347 Not only in Chile is this strategy of promoting the Convention a crucial part of NGO activism; both transnational NGOs engaged in spreading knowledge about CEDAW and international women's rights among NGOs in various states (see 8.3.1.3; 8.3.2.1).

348 Similarly, laws were changed as a result of judiciary judgments in Botswana (Citizenship Act) and Tanzania (inheritance of clan land). The laws were found to be discriminating against women using CEDAW as guideline (UNIFEM 1998: 20f).
of "cooperative sovereignty" (see 2.1.3.5): they fulfill their reporting duties, try to benefit from the dialogue, and take measures to protect the integrity of the treaty from too far-reaching reservations. The avoidance of open confrontation in the question of admissible reservations could either be interpreted as the subordination of international norms under national interests, or as the attempt to make the treaty inclusive and to avoid ideological splitting.

The analysis of domestic compliance indicates that compliance patterns depend on material and discursive conditions. In Finland, high and evenly distributed economic prosperity is combined with a self-construction of a gender-equal state and society and an international attitude of cooperative sovereignty. Thus, the Finnish compliance process is predominantly shaped by state actors themselves, and it includes corrective measures that are based on the allocation of a significant amount of resources. In Chile, socio-economic prosperity is unevenly distributed, and public policies do either not reach or are not designed for all segments of society. Chilean state institutions have a strong international orientation, but due to domestic pressure, often take an attitude of "autonomous sovereignty", particularly in matters with a low cultural match, e.g. reproductive rights of women. As a consequence, compliance with CEDAW by state institutions has its limits where predominant social idiosyncrasies disagree with CEDAW, and most measures lack sufficient funding. At the same time, civil society organizations have turned to transnational strategies to put pressure on the state, both to promote and to block the implementation of CEDAW. Another interesting dynamic of implementation of international norms in domestic contexts is that the integration of the norm into domestic discourses seems to be a prerequisite for institutional and policy change (Cortell and Davis 2000). However, more than a process of discursive implementation, it is a process of appropriation, that is, the international norms are adjusted to the domestic context, and sometimes even modified. Thus, international norms are not defined in international arenas and then exported to the domestic contexts, but they become meaningful in an ongoing process of interpretation, both in international and domestic negotiations. Best guarantors for an adequate contextualization of norms without their relativization are transnational proponents of these norms, particularly in cases where international and domestic discourses are not well connected and differ from each other. However, as the case of Chile shows, bridge-building activism alone does not necessarily lead to norm harmonization, but may find its limits in domestic hegemonic structures that firmly reject international norms.

Transnational activism linking CEDAW and domestic visions of women's rights: Transnational NGOs have established links between the international women's rights dis-
course, national actors responsible for designing gender policies, and domestic civil society
organizations formulating and struggling for women's rights most meaningful in their specific
context. While this kind of activism was not originally part of the CEDAW monitoring proce-
dure, it has arguably added a crucial new dimension to it and has significantly increased the
domestic repercussions of the Convention. The two most relevant transnational organizations
are IWRAW and IWRAW Asia Pacific. As graph 14 illustrates, they have in several ways
contributed to enrich the CEDAW procedure and to extend it into the domestic sphere:

Graph 14: Transnational non-governmental activism around CEDAW

- Both organizations have improved the CEDAW procedure in bringing independent inform-
ation and national NGOs to the monitoring process.
- Through transnational networking, the CEDAW Convention became better known among several women's organizations with a predominantly domestic scope.
- Both organizations have engaged in influencing the international human rights discourse
within the CEDAW Committee and beyond it.
- IWRAW Asia Pacific has developed a multilevel approach to connect local, international, and national efforts to realize women's rights: it strengthens local activism through capacity building on international women's rights; it contributes to the international human rights discourse in adding a contextualized gendered perspective; and it uses this transna-
tional link to support domestic implementation of the CEDAW Convention. UN agencies
such as UNIFEM cooperate with IWRAW Asia Pacific in these activities.
IWRAW and IWRAW Asia Pacific's transnational activism is an example of promoting a reciprocal way of connecting domestic with international women's rights norms. One the other hand, the dynamics disprove the notion of international norm creation as "trickling down", on the other hand, transnational activism transforms the dominant notion of national sovereignty into a form of sovereignty that implies cooperation across boundaries. The idea of cooperation, linkage and mutual influence between international, local and governmental actors also sheds new light on the interrelation of these different spheres: domestic appropriation of international norms may reinterpret them, yet also strengthens the international framework because it becomes integrated in domestic power structures. Thus, appropriation of international norms by domestic actors is the crucial mechanism of norm implementation; social change in the light of international norms is most likely to be produced if internal actors integrate these norms into their strategies.

Transnational NGO activism is based on the principle that for the achievement of substantial equality of women, it makes sense to use the international human rights framework and to establish an ongoing dialogue or even cooperation with the government. Both transnational NGOs follow a strategy of connecting unconnected discourses and integrating excluded perspectives in the international human rights framework, and thus implicitly try to overcome exclusionary structures of the international system. In this sense, they have enhanced marginalized voices to contribute to the CEDAW monitoring procedure – both in enabling discursive representation and real presence before the Committee. These interventions have contributed significantly to show that most women of the world are not exclusively discriminated because of their gender, but also because of dimensions such as nationality, race and class, and they have drawn the Committee's attention to a wide range of hegemonic structures that reinforce gender hierarchies.

The newly created mechanism of a complaint procedure laid down in the Optional Protocol to CEDAW reiterates the argument found in this study that the Convention expanded beyond its initial intergovernmental construction, yet at the same time, remained tightly connected to it. The Optional Protocol is both a product of intergovernmental negotiations and transnational non-governmental activism. The project was endorsed by a broad coalition of favorable delegations among UN member states and a number of NGOs, yet the opponent delegations also shaped the text significantly, which meant a weakening of the perspective of the victims for the sake of strengthening the principle of state sovereignty. Internationally, the Optional Protocol is – other than the Convention itself in its initial years - embedded in appropriate resources. The CEDAW Committee has started its activities regarding the OP, and
in doing so, has to find creative ways to use the OP in the interests of each victim while maintaining cooperative relations with the states concerned. States attitudes regarding the OP can be divided into three strands: the first group of states agrees with the procedures the OP provides for and has ratified it, yet as these states consider themselves to fully endorse and already fulfill the international standards, they actually support their implementation elsewhere. However, the cases brought before the Committee indicate that governmental commitment for women's rights is not identical with enjoyment of these rights. The second group of states has partial ideological differences, and the third group is entirely rejecting the OP. States of both groups usually make an argument that combines "culture" and "sovereignty": they declare to fully respect women's rights, yet follow a model to advance the status of women that is different from the international framework and reject any form of imposing international standards.

NGOs have spent a lot of energy to fruitfully use the OP. Their strategies include the promotion of the OP, the lobbying of governments to accept the new control mechanism, the interpretation of the Protocol's scope, and the discussion of model cases. Also, NGOs have brought concrete complaints to the attention of the Committee.

The Optional Protocol to CEDAW contains different normative constructions and interests of international, national and transnational actors. Internationally, the OP strengthens the individual woman as bearer of the set of rights set forth in the Convention. The intergovernmental drafting process entailed a learning process, in as far as governmental delegations were willing to integrate the knowledge of non-governmental experts in the field. Different States Parties relate to the OP either in terms of cooperative or of autonomous sovereignty: about a third of all States Parties to CEDAW commit themselves to the OP's international scrutiny and therewith show a principally cooperative manner, the others refuse to accept such external control. From a non-governmental perspective, the crucial question is if the OP can strengthen the interests of the victims. From that point of view, it is paramount to link the international procedure with cases of violations. In sum, the OP is a commendable innovation in the international human rights discourse, it requires considerable resources to materialize into a effective and legitimate procedure on the international level, it is partly a threat to state sovereignty, and thus not accepted by a number of states. It is, despite the manifold efforts, not predominantly tailored according to the needs of the victims, as the use the OP depends on a lot of requirements for the complainant, yet does not result in a binding judgment including compensations for the suffered violation of rights.

Given these results, what are crucial enforcement strategies for the CEDAW Convention, and what are the impediments for such enforcement? The empirical findings of this
study indicate that the implementation of an international set of norms requires, beyond an international monitoring procedure, additional activism that connects separated international and domestic discourses. The CEDAW process has been significantly improved by NGOs unfolding this kind of activism, even if the need for transnational connections was not considered necessary when the instrument was created. Also, the increasingly cooperative attitude of governmental actors has contributed to translating the Convention into domestic settings; the Finnish response to the CEDAW Committee's inquiry regarding domestic violence is one example for such governmental commitment (see 7.2.3.1). Successful strategies to implement CEDAW aim at bringing overlapping value systems together instead of separating them: for example, the CEDAW monitoring networks initiated by IWRAW Asia Pacific try to unite governmental policies and non-governmental strategies under the normative umbrella of CEDAW, even if they may follow different goals. In the Pakistani case of the 33% quota for women in local governments, the cooperative strategy led both to a significant increase of women in political decision making and to an emancipatory shift in public discourses. This would not have been possible without the NGOs' broad vision of social change in the spirit of the Convention (see 8.3.2.3).

To increase repercussions of the CEDAW Convention, transnational activism should not only be rhetorically encouraged, but also enhanced in terms of resources. Both the UN and governments of States Parties could be far more proactive in this regard. An organizational model for linking domestic activism with the international monitoring procedure has been developed around the Committee on the Rights of the Child: a Liaison office of the NGO-Group for the Convention on the Rights of the Child financed by UNICEF links national NGO coalitions with the international reporting procedure with the aim to strengthen domestic follow up processes (see 8.1). Of the seven Human Rights Treaty Bodies, however, the CRC is the only one that disposes of such supportive structures; in the case of CEDAW, the initiative for creating a transnational network enhancing implementation has almost entirely been the work of NGOs. In sum, strategies to enhance the impact of CEDAW need to strengthen independent non-governmental expertise, and at the same time convince governments to take part in joint measures to make the enjoyment of rights a reality for women. The implementation of international norms in domestic contexts has to be understood as a process of active appropriation by part of domestic governmental and non-governmental actors.

The greatest impediments for the implementation of CEDAW lie in its basic principle, that is the exclusive focus on states under conditions of their sovereign decision if and how to comply. One the one hand, it is a problematic concept to aim at the elimination of discrimina-
tion against women without addressing also private actors. Women's rights are often violated in private relations where the responsibility of states is only indirect and thus, accountability of states is difficult to construct. On the other hand, many states comply only to a very limited extent with their international obligation to eliminate discrimination against women. As they are sovereign entities, it is difficult to figure any strategy to reliably increase the States Parties' willingness to implement CEDAW. Coercive measures – if they were possible - would first and foremost foster domestic resistance to international women's rights norms; the hostile reactions of a considerable amount of States Parties to any measure that has increased accountability under the Convention, e.g. the Optional Protocol, support this assumption (see 9.2.2).

Another crucial impediment for the implementation of CEDAW is that the Convention stands for a set of rights, but it is a discursive mechanism without any additional material structures that could spread the normative foundations of gender equality. In contrast, many institutions that promote gender differences and hierarchies, e.g. several religious organizations, have over a long time established structures to spread ideologies in combination with material and spiritual support for the well being of many people. Arguably, a mechanism with such scarce resources as CEDAW has only limited means to weaken long established institutions representing norms adverse to gender equality. In the light of these encumbering structures, it is even more necessary to understand the implementation of CEDAW as a decentralized process within transnational networks of supportive actors.

10.2 Methodological and theoretical contributions to further IR theory building

How can these empirical findings be connected with methodological and theoretical considerations? The following reflections first ponder the impact of methodology on research results, and then discuss the contribution of this study to IR theory building as well as to transgressing the limits of the discipline.

The empirical research in this study is based on the assumption that processes of impact of CEDAW can be best explained by the description and appraisal of involved actors and institutions (see 3.1). Thus, the study is predominantly based on qualitative research methods such as document analysis and expert interviews (see 3.2). In how far has this methodology influenced the findings? Parts of the data are of intersubjective nature and were articulated from different positions. Each of these positions constructs the dynamics around CEDAW in a specific way, but does not provide a holistic picture of it. Accordingly, the author has been
confronted with a variety of differing opinions, self-constructions, constructions of other actors, and description and assessments of the process. To interpret these perspectives, it was important not to treat them as factual data, but to treat the fact that these perspectives were articulated as data (see 3.3 and Mannheim and Rich 1986:133). The realization of interviews with actors that have different views on the CEDAW process helped to prevent an overemphasis on any particular perspective (Meuser and Nagel 1991: 466).

The empirical positions most relevant for the construction of the dynamics around CEDAW portrayed in this study are: independent experts; the United Nations; governmental actors; and non-governmental women's rights activists. Members of the CEDAW Committee are experts in women's rights, yet they understand this expertise as reaching beyond a legal dimension and encompassing all spheres of women's lives. They understand their function as crucial to bring governments to improve the situation of women, and thus have both a cooperative and critical attitude towards state actors. They welcome everything that improves the CEDAW procedure, e.g. upgraded administrative servicing or increased input of independent information. Experts in international law emphasize the international legal discourse as paramount to reach a global understanding of human rights. They also underline the relevance of law to realize human rights. From this perspective, women's rights as well as all activities supporting them are important in as far as they complement the general human rights framework. The position of the United Nations both represents intergovernmentalism and expands this framework into a position of "unbiased multilateralism". In other words, instead of favoring particular state interests, the UN represents the interests of the community of states as a whole. It safeguards multilateral agreements and offers space for inter-governmental negotiations and international norm creation. In this self-construction of impartiality represented by UN staff members, states remain constituting elements for the United Nations, yet independent monitoring mechanisms such as CEDAW add to the organization's legitimacy. The position of governmental actors is many-faceted: It contains rhetorical or substantial support for the CEDAW monitoring procedure. State actors sometimes combine this internationally articulated support with effective implementation strategies, sometimes with a self-construction of domestic powerlessness, and thus, lack of significant implementation. Other governments' support for the instrument is curbed by diverging domestic norms or power constellations that prevent compliance. Finally, governments also openly reject or criticize the instrument. For governmental positions in general, CEDAW should ideally be a helpful, but not a demanding procedure to enhance domestic policies. The position of non-governmental women's rights activists reconstructs the international framework and its norms from an external perspective,
that is, from the point of view of de-facto use for women. Contrary to the state-centered framework of international law, the focus of NGOs is on individual enjoyment of rights. They integrate CEDAW as an element into their political strategies if this is considered promising for their goals.

All positions have one characteristic in common: they contain a self-construction of legitimacy and rationality, while deficiencies, if mentioned, are externalized. For instance, Committee members construct the Committee as hard working and showing an excellent performance, while its shortcomings are presented as a result of inadequate working conditions. While CEDAW experts construct a form of adequate expertise that is holistic and goes beyond legal proficiency, experts in international law consider high-profile legal expertise as most important for the work of the Human Rights Treaty Bodies. Thus, the "other" perspective is, in both positions, less satisfactory. Especially in situations of intersubjective data collection was this self-construction of legitimacy and rationality articulated. In addition, in interviews with women's rights proponents, the implicit integration of the researcher into an "international feminist community" may also have added to a positive self-projection. The study has tried to balance these influences in grounding the analysis on differing positions and not on one of them in particular.

What are the theoretical implications of this multi-faceted construction of meaning of CEDAW? Its development from an international women's rights regime to a transnational implementation network bears at least four crucial contributions to IR theory: First, the necessity to acknowledge the complexity of political practice as base for theory building; second, the expansion of the scope of IR theory to capture transnational processes; third, new dimensions of the principle of state sovereignty; and fourth, a new perspective on the nature of international cooperation.

**Acknowledging complexity of political practice:** The empirical findings presented indicate that tracing complex realities is enriching for sound theory building. In other words, this study is a plea for inductive theory building. While a power- or interest-based approach may be suitable to test the relevance of one particular category in a political process, the perspective developed here captures all kinds of influences enhancing or hindering the CEDAW process. A realist approach would probably have seen a non-coercive international monitoring procedure that is contingent upon states' interests and thus, unlikely to change their normative behavior. While the power of state sovereignty is one crucial element in the CEDAW process, the analysis has revealed further ingredients, in particular: CEDAW as a concrete monitoring procedure is embedded in a broader international discourse on the human rights of women.
The mechanism is both shaped by this discourse and contributes to its further development – thus, when women's rights are more acknowledged as an international norm, this strengthens the CEDAW mechanism. Further, the monitoring procedure has induced learning processes in state institutions, e.g. in documenting the status of women, and in becoming more aware of the complexities of gender-based discrimination. In this sense, CEDAW has contributed to implement international women's rights within governmental structures, even if it is often difficult to trace if this increased awareness has resulted in state action. The mechanism was also suitable to integrate originally excluded positions, namely those of transnational and national women's organizations representing situated perspectives of women regarding their rights. Thus, the view on the impact of CEDAW has to consider the contextualization of the instrument: impact is not only if States Parties present a clearly identifiable measure to realize a given CEDAW article domestically. It comprises also the strengthening of the international women's rights discourse of which CEDAW is a crucial element, as well as the connection with additional actors that proliferate the norms enshrined in CEDAW. All these dimensions indirectly add to the realization of women's rights and therewith, make the Convention meaningful.

*Expanding the scope of IR theory building to capture transnational processes:* This study shows that to fully envisage repercussions of international normative standards, an IR perspective has to be connected with other disciplines, in particular with Comparative Politics to integrate domestic policy dynamics. To capture the idiosyncrasies of specific national socio-cultural contexts and their mechanisms of integrating new influences, Area Studies and Geography have contributed additional insights. Further, ethnological, anthropological and psychological approaches could, depending on the research interest, add to the comprehensiveness of the analysis.

The findings of this study reveal that the discourse on international norms is not restricted to international arenas, on the contrary, contextualized appropriation is the crucial mechanism to make norms pervasive. Appropriation processes differ widely, for example, sometimes only parts of the international set of norms are accepted in a certain context and even these parts have to be very specifically interpreted to improve concrete living conditions of individuals and communities. Thus, norm realization is a highly complex process that cannot be analyzed with concepts limited to international politics and neglecting the domestic realm. The concept of human rights implies the concept of human dignity and self-determination on the individual and community level, and a responsibility to enhance and promote this goal on the state-level. From an international angle, the puzzle is to envision
both the creation of a set of norms and its growing acceptance around the world in principle, the domestic contestations of these norms when it comes to their realization, and the transnational activism that connects these dynamics.

**New dimensions of the principle of state sovereignty:** State sovereignty is the foundation of International Law and international politics, and accordingly, of IR theorizing. This study found a broad variation of how state sovereignty is constructed in the context of the CEDAW process. This variety indicates that it is theoretically misleading to perceive states as one sort of actors – as a matter of fact, not only their size, wealth and power, but also their self-construction as player in the international system makes states largely heterogeneous. In the context of this study, states' constructions of sovereignty have meant cooperation with an international reporting procedure; the ability and willingness to learn from the constructive dialogue with the Committee; the subordination of international principles under national idiosyncrasies; and the complete rejection of the legitimacy of international norms in the domestic context. The discussion on the reasons for such different constructions needs to be further developed. Following the argumentation of Meyer et al. (1997), it is the affinity of certain states with world culture that makes them cooperative international players; accordingly, Finland is not a surprising representative of "cooperative sovereignty", and neither is Iran a surprising non-State Party to CEDAW. However, the reluctance of the US to ratify the Convention as well as the rather intense use of it in Nepal cannot be explained in this theoretical framework. Instead, domestic dynamics, the authority of certain non-governmental actors and their transnational connections need to be considered. Thus, domestic influences on the construction of state sovereignty have to be given higher priority in IR as they have considerable repercussions on the international system. Likewise, this perspective could add to identify factors that increase states' inclination to cooperative sovereignty, as voluntary acceptance of international norms is crucial for domestic norm appropriation.

Connected to the reformulation of state sovereignty, this study brings also new insights on the nature of international cooperation: designed within the intergovernmental rationale of state sovereignty, the CEDAW procedure has been expanded by the engagement of non-governmental actors representing a marginalized position, namely that of the excluded individual bearer of rights. It is argued here that this new dimension changed the nature of international cooperation to a significant extent. One important innovation is that transnational activists have brought new voices to the international discourse on women's rights, namely women speaking from a variety of discriminated positions and thus adding to the understanding of international hegemonic structures that particularly affect women. This has helped
States Parties to understand the meaning of realization of rights. Further, non-governmental activism has developed a kind of intervention in the CEDAW procedure that is in the highest interest of the victims: in a cooperative attitude towards governments, it aims at motivating state institutions to comply with their international duties and thus appeals to states' sovereign responsibility for cooperation. This innovation finally has repercussions on the international system, as the transnational NGO activism strengthens international norms domestically and thus produces their embodiment in a way that was not conceptualized in international institutions themselves. In sum, the dynamics that make norms internationally and domestically convincing have to be understood as an ongoing process of cooperation and negotiation on different levels, as a process of reciprocity between these levels, and as a process of interpretation, appropriation and contextualized reformulation.
### Appendix 1: List of interviews

<table>
<thead>
<tr>
<th>Number of interview</th>
<th>Function of interviewee</th>
<th>Home Country</th>
<th>Professional Position</th>
<th>Expertise on the ... level</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CEDAW expert</td>
<td>Germany</td>
<td>independent consultant</td>
<td>international</td>
</tr>
<tr>
<td>2</td>
<td>CEDAW expert</td>
<td>South Africa</td>
<td>unknown</td>
<td>international</td>
</tr>
<tr>
<td>3</td>
<td>CEDAW expert</td>
<td>Bangladesh</td>
<td>economist</td>
<td>international</td>
</tr>
<tr>
<td>4</td>
<td>CEDAW expert</td>
<td>Italy</td>
<td>retired</td>
<td>international</td>
</tr>
<tr>
<td>5</td>
<td>CEDAW expert</td>
<td>New Zealand</td>
<td>judge of High Court</td>
<td>international</td>
</tr>
<tr>
<td>6</td>
<td>CEDAW expert</td>
<td>Ghana</td>
<td>dental surgeon</td>
<td>international</td>
</tr>
<tr>
<td>7</td>
<td>CEDAW expert</td>
<td>Mexico</td>
<td>diplomat</td>
<td>international and international</td>
</tr>
<tr>
<td>8</td>
<td>Chairperson CSW</td>
<td>Germany</td>
<td>diplomat</td>
<td>international</td>
</tr>
<tr>
<td>9</td>
<td>Chief of women's rights unit DAW</td>
<td>Australia</td>
<td>employee of UN Secretariat</td>
<td>international</td>
</tr>
<tr>
<td>10</td>
<td>Chief of gender advisory service unit DAW</td>
<td>Algeria/ Japan</td>
<td>employee of UN Secretariat</td>
<td>international</td>
</tr>
<tr>
<td>11</td>
<td>UNIFEM, responsible for CEDAW activities</td>
<td>unknown</td>
<td>employee of Unifem</td>
<td>international</td>
</tr>
<tr>
<td>12</td>
<td>HRC expert</td>
<td>Australia</td>
<td>judge</td>
<td>international</td>
</tr>
<tr>
<td>13</td>
<td>Former Under-Secretary General of the UN</td>
<td>Finland</td>
<td>retired (lawyer, international expert)</td>
<td>intergovernmental and international</td>
</tr>
<tr>
<td>14</td>
<td>Head of IWRAW</td>
<td>USA</td>
<td>lawyer, NGO professional</td>
<td>international and transnational</td>
</tr>
<tr>
<td>15</td>
<td>IWRAW research director</td>
<td>Poland</td>
<td>NGO professional</td>
<td>transnational</td>
</tr>
<tr>
<td>16</td>
<td>Equality now research director</td>
<td>USA</td>
<td>NGO professional</td>
<td>transnational</td>
</tr>
<tr>
<td>Number</td>
<td>Position/Role</td>
<td>Organization/Scope</td>
<td>Country</td>
<td>Nationality</td>
</tr>
<tr>
<td>--------</td>
<td>---------------------------------------------</td>
<td>--------------------------</td>
<td>---------</td>
<td>------------------</td>
</tr>
<tr>
<td>17</td>
<td>SERNAM, juridical division</td>
<td>Chile</td>
<td>lawyer, employee of SERNAM</td>
<td>national</td>
</tr>
<tr>
<td>18</td>
<td>SERNAM, international division</td>
<td>Chile</td>
<td>employee of SERNAM</td>
<td>national</td>
</tr>
<tr>
<td>19</td>
<td>HRC expert</td>
<td>Chile</td>
<td>professor of law</td>
<td>national and international</td>
</tr>
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<td>20</td>
<td>Domestic lawyer, expert on women's rights</td>
<td>Chile</td>
<td>lawyer</td>
<td>national</td>
</tr>
<tr>
<td>21</td>
<td>Domestic judge, expert on women's rights</td>
<td>Chile</td>
<td>judge</td>
<td>national</td>
</tr>
<tr>
<td>22</td>
<td>NGO representative La Morada</td>
<td>Chile</td>
<td>lawyer, NGO professional</td>
<td>national and transnational</td>
</tr>
<tr>
<td>23</td>
<td>NGO representative Foro de Salud y Derechos Reproductivos</td>
<td>Chile</td>
<td>NGO professional</td>
<td>national and transnational</td>
</tr>
<tr>
<td>24</td>
<td>REMOS, network of working class women's organizations</td>
<td>Chile</td>
<td>NGO activists</td>
<td>national</td>
</tr>
<tr>
<td>25</td>
<td>Ombudsperson for Equality</td>
<td>Finland</td>
<td>civil servant</td>
<td>national and international</td>
</tr>
<tr>
<td>26</td>
<td>Former Secretary of the Council for Equality</td>
<td>Finland</td>
<td>civil servant</td>
<td>national</td>
</tr>
<tr>
<td>27</td>
<td>Ministry of Labour, international affairs</td>
<td>Finland</td>
<td>civil servant</td>
<td>national</td>
</tr>
<tr>
<td>28</td>
<td>Expert on equality law</td>
<td>Finland</td>
<td>professor of law</td>
<td>national</td>
</tr>
<tr>
<td>29</td>
<td>Expert on equal opportunity policies</td>
<td>Finland</td>
<td>professor of political science</td>
<td>national</td>
</tr>
<tr>
<td>30</td>
<td>NGO representatives</td>
<td>Finland</td>
<td>NGO professionals; unknown</td>
<td>national</td>
</tr>
<tr>
<td>31</td>
<td>Secretary of NYTKIS (umbrella organization of women's NGOs)</td>
<td>Finland</td>
<td>NGO professional</td>
<td>national</td>
</tr>
<tr>
<td>32</td>
<td>HRC expert</td>
<td>Finland</td>
<td>professor of law</td>
<td>national and international</td>
</tr>
<tr>
<td>33</td>
<td>IWRAW Asia Pacific representative</td>
<td>unknown</td>
<td>NGO professional</td>
<td>transnational</td>
</tr>
</tbody>
</table>
Appendix 2: Categorization of compliance with CEDAW in 43 States Parties to the Convention

<table>
<thead>
<tr>
<th>State</th>
<th>Degree of compliance</th>
<th>Actors</th>
<th>Action</th>
<th>Explanatory/ contextual factors</th>
<th>Source</th>
</tr>
</thead>
</table>
| Australia | Low/moderate compliance: The Convention is part of the domestic discourse, but does not produce significant change. Concrete governmental action only based on court ruling. | Government, Judiciary      | - Amendment of employment related laws and Sex Discrimination Act in reference to CEDAW  
- Court ruling: federal government is obliged to ensure that CEDAW principles supersede the division of power between federal and national authorities; federal government had to pass a national law prohibiting sexual harassment | - High degree of prosperity (HDI rank 4)  
- Political system democratic; since 1977 high level WPA – previous/ parallel to international impulses  
- Press: free (10)  
- Cultural match: High (GDI rank 4 (0), GEM rank 11 (-); no contradictory traditions)  
- NGO activism: connected with international dynamics  
- Further institutional commitments: BPFA  
- Supportive rhetoric of state leaders | Heyns and Viljoen 2001; UNIFEM 1998 |
| Bangladesh| Moderate compliance: The norms enshrined in CEDAW have produced some change (in public policies and discourses), but still have to confront countervailing institutions/ convictions. | NGO, Government            | - Workshops on the Convention on national and local levels; media campaign; transnational connections and training; cooperation with government on the basis of Committee’s concluding comments; public education  
- After Beijing, National action plan developed; improvement in reporting before CEDAW Committee – better understanding of discriminatory practices; project to address violence against women; improvements in political participation and reproductive rights; partly withdrawal of reservations | - Medium/ low degree of prosperity (HDI rank 139)  
- Political system democratic; since 1991 high level WPA – reaction to international impulses  
- Press: partly free (50-60)  
- Cultural match: Medium-low, rising tendency (GDI rank 112 (0), GEM rank 69 (+); incompatible reservations some of which were withdrawn; contradictory traditions, e.g. Sharia-based personal law)  
- NGO activism: connected with international dynamics  
- Further institutional commitments: BPFA  
- Supportive rhetoric of state leaders | Afsharipour 1999 |
| Brazil    | Moderate compliance: The norms enshrined in CEDAW have produced some change (in public policies and discourses), and have even produced some measures to realize rights; but still have | Joint government/ legislature/ NGO, Government, Joint local | - Constitution rewritten in 1988, urge for proper recognition of women's rights  
(gender equality, gender-based violence, equal rights in marriage, family planning, equal employment provisions);  
- Previous reservation withdrawn  
- Specific Convention for Sao Paulo, | - Medium degree of prosperity (HDI rank 65)  
- Political system since 1985 democratic; since 1985 lower level WPA, parallel to international impulses  
- Press: free, tending towards "partly free" (30-32)  
- Cultural match: Medium (GDI rank 58 (0), | UNIFEM 1998; IWRAW listserv |
<table>
<thead>
<tr>
<th>Country</th>
<th>Compliance Level</th>
<th>Key Observations</th>
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<tbody>
<tr>
<td>Botswana</td>
<td>Moderate compliance</td>
<td>The norms enshrined in CEDAW have produced some change (in public policies and discourses), but still have to confront countervailing institutions/convictions.</td>
</tr>
<tr>
<td>Cameroon</td>
<td>Low compliance</td>
<td>The norms enshrined in CEDAW have produced little change in public discourses and jurisdiction, but countervailing institutions are much more relevant.</td>
</tr>
<tr>
<td>Canada</td>
<td>Low compliance</td>
<td>Compatibility study of laws before - High degree of prosperity (HDI rank 8)</td>
</tr>
</tbody>
</table>

**Botswana**
- **Government/legislature/NGO**
- Joint government/NGO
- NGO

- Including legislative action to implement CEDAW (affects public administration, day-care, education, employment, violence against women)
- Workshop on recommendations of the Committee and development of strategies to implement them
- Lobbying regarding violence against women based on CEDAW
- Government/NGO Joint government/NGO NGO

- GEM not ranked; contradictory traditions expressed in some patriarchal laws
- NGO activism: connected with international dynamics
- Further institutional commitments: BPFA, Latin American mechanisms
- Supportive rhetoric of state leaders

**Cameroon**
- **Judiciary/activist**
- Government

- Challenge of citizenship act that determined a child's nationality according to the father's; argument of discrimination, which is forbidden in Constitution; High court ruled that government has made clear international commitments; it should either change the law or amend the Constitution and explicitly allow discrimination based on sex;
- in the course of ratifying CEDAW, government amended citizenship act which is now in gender-neutral terms; 1997, comprehensive study of laws conducted by WPA to screen incompatibilities with CEDAW
- Low degree of prosperity (HDI rank 125)
- Political system democratic with traditional elements; since 1981 high level WPA, previous/parallel to international impulses
- Press: not free (high 70s)
- Cultural match: Medium-low (GDI rank 114 (+1), GEM not ranked; contradictory traditions reflected in prevailing customary laws and practices)
- NGO activism: no information
- Further institutional commitments: DEDAW, BPFA
- Supportive rhetoric of state leaders: no information

**Canada**
- **Government**

- Compatibility study of laws before
- High degree of prosperity (HDI rank 8)

- Low degree of prosperity (HDI rank 142)
- Political system democratic; since 1999 high level WPA in reaction to international impulses
- Press: not free (high 70s)
- Cultural match: Medium-low (GDI rank 114 (+1), GEM not ranked; contradictory traditions expressed in prevailing customary laws and practices)
- NGO activism: no information
- Further institutional commitments: BPFA
- Supportive rhetoric of state leaders: no information


Heyns and Vil-
<table>
<thead>
<tr>
<th>Country</th>
<th>Compliance Level</th>
<th>Description</th>
<th>Changes in Public Institutions, Policies, and Discourse</th>
<th>Changes in De-facto Situation</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chile</td>
<td>Moderate compliance</td>
<td>The norms enshrined in CEDAW have produced change (in public policies, institutions and discourses), but have to confront strong countervailing institutions/convictions.</td>
<td>Foundation of WPA, based on CEDAW - Screening of laws, including amendments of discriminatory laws (e.g. marriage law), enactment of new laws (violence against women) - Campaigning, e.g. for reproductive rights and for signing the Optional Protocol to CEDAW</td>
<td>- High degree of prosperity (HDI rank 43) - Political system democratic with authoritarian elements; since 1990 high level WPA in reaction to international impulses - Press: free (22-30) - Cultural match: High-medium (GDI rank 43 (-), GEM rank 51 (-); contradictory traditions prevalent, especially articulated by the Catholic church) - NGO activism: connected with international dynamics - Further institutional commitments: BPFA, Latin American mechanisms - Supportive rhetoric of state leaders</td>
<td>See 7.1</td>
</tr>
<tr>
<td>China</td>
<td>Low compliance</td>
<td>The norms enshrined in CEDAW have produced limited change (in public institutions, policies and discourse), but have not influenced de-facto situation.</td>
<td>Law on protection of women's rights and interests to implement constitutional guarantees and obligations under CEDAW (1992); implementation depends on governments discretion</td>
<td>- Intermediate degree of prosperity (HDI rank 104) - Political system People's Republic; since 1992 lower level WPA in reaction to international impulses - Press: not free (80-89) - Cultural match: Medium (GDI rank 83 (+1), GEM not ranked; contradictory traditions: no &quot;human rights culture&quot;, but socialism favorable for gender norms) - NGO activism: no information</td>
<td>Shalev 2001; UNIFEM 1998</td>
</tr>
</tbody>
</table>

**Domestic gender policies have been designed based on domestic human rights entitlements. No concrete governmental action, moderate NGO action in reference to CEDAW.**
<table>
<thead>
<tr>
<th>Country</th>
<th>Compliance</th>
<th>National Commitments</th>
<th>Institutional Commitments</th>
<th>UNIFEM Year</th>
</tr>
</thead>
</table>
| Colombia    | Moderate compliance | The norms enshrined in CEDAW have produced some change (in public policies and discourses), and have even produced some measures to realize rights, but still have to confront countervailing institutions/convictions. | - Constitution building, NGO manage to include CEDAW principles (regarding substantive and legal equality, temporary special measures, family relations, violence, and reproductive rights)  
- Public health plan for women (based on CEDAW provision that women have the right to adequate health care)  
- Campaigns for women's rights; lobby government  
- Constitutional court relied on CEDAW in 1993 decision on contraceptives for female prisoners | UNIFEM 1998 |
| Costa Rica  | Moderate/ high compliance | The norms enshrined in CEDAW have produced considerable change (in public policies and discourses), and have also produced some measures to realize rights. While there is opposition, broad sectors of society support gender equality. | - Case brought to the Constitutional court challenging the practice of requiring husband's consent for sterilization; it violates equality provision in Constitution; Constitution should be interpreted according to CEDAW; ruling: government has a positive obligation in this matter; result: de-facto change  
- After ratification, comprehensive equality law was passes in 1990 targeting women's political participation (quotas and special funding), education, economic/social life, and violence (aiming at implementing CEDAW); broad civil society engagement to support it | UNIFEM 1998 |
| Croatia     | Low/moderate compliance | The CEDAW monitoring procedure has instigated a public debate, yet it is unclear how much governmental commitment may follow from this. | - High degree of prosperity (HDI rank 47)  
- Political system democratic; since 1986, lower level WPA, upgraded 1990 to high level WPA in reaction/parallel to international impulses  
- Press: partly free (50-60)  
- Cultural match: High-medium (GDI rank 44 (+1), GEM rank 36 (+), contradictory traditions: first Constitution with provision on substantive equality in 1991)  
- NGO activism: connected with international dynamics  
- Further institutional commitments: BPFA, Latin American mechanisms  
- Supportive rhetoric of state leaders | UNIFEM 1998 |
<table>
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<tr>
<th>Country</th>
<th>Compliance</th>
<th>Description</th>
<th>Government</th>
<th>United Nations/ ESCAP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Egypt</td>
<td>Moderate compliance</td>
<td>The norms enshrined in CEDAW have produced some change in public institutions and policies. However, the norms still have to confront countervailing institutions/ convictions.</td>
<td>Government</td>
<td>Dairiam 2003; Heyns/ Viljoen 2001</td>
</tr>
<tr>
<td>Fiji</td>
<td>Moderate compliance</td>
<td>The norms enshrined in CEDAW have produced some change (in public policies and discourses), especially due to NGO mobilization, but have to confront countervailing institutions/ convictions.</td>
<td>Joint: NGO/ government/ int. agency</td>
<td>UN/ ESCAP 2000</td>
</tr>
<tr>
<td>Finland</td>
<td>Moderate/ high compliance</td>
<td>The norms enshrined in CEDAW have caused some changes in public policies, and the Convention is part of a domestic discourse</td>
<td>Government/ legislative</td>
<td>see 7.2</td>
</tr>
</tbody>
</table>

- **Resistances to gender equality because it was previously prescribed**
- **NGO activism: connected with international dynamics**
- **Further institutional commitments: BPFA**
- **No supportive rhetoric of state leaders**

- **Compatibility study of laws before ratification; since 2000, WPA monitors and implements CEDAW; support of political participation of women; legislative committee of WPA reviews draft laws (passports issued without consent of husband; on new family code); after 10 years of consultation, new law on divorce; protection from polygamy; marriage after rape law repealed**

- **Medium degree of prosperity (HDI rank 120)**
- **Political system combination of democratic and authoritarian elements; since 1994 high level WPA**
- **Press: not free (average 70)**
- **Cultural match: Medium-low (GDI rank 99 (-1), GEM rank 68 (+); incompatible reservations; contradictory traditions based on special interpretation of Sharia)**
- **NGO activism: no information**
- **Further institutional commitments: BPFA**
- **Supportive rhetoric of state leaders (and their wives), adverse rhetoric from social leaders**

- **Medium degree of prosperity (HDI rank 81)**
- **Political system combination of democratic and traditional elements; since 1998 high level WPA in reaction to international impulses**
- **Press: partly free (high 50s, but dropped to 40s and 30s in 2001 and 2002)**
- **Cultural match: Medium (GDI rank 67 (+1), GEM not ranked; compatible reservations withdrawn; contradictory traditions)**
- **NGO activism: connected with international dynamics**
- **Further institutional commitments: BPFA**
- **Supportive rhetoric of state leaders: no information**

- **High degree of prosperity (HDI rank 14)**
- **Political system democratic; since 1987 high level WPA, parallel to international impulses**
- **Press: free (10-15)**
- **Cultural match: High (GDI rank 10 (+4), GEM rank 5 (+); no contradictory traditions)**
that is already quite gender sensitive.

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<thead>
<tr>
<th>Country</th>
<th>Compliance Level</th>
<th>Actors</th>
<th>Key Strategies</th>
<th>Notes</th>
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<tbody>
<tr>
<td>Germany</td>
<td>Low compliance</td>
<td>Legislative/ Government NGO</td>
<td>- Public debates on reports, publications around CEDAW - Awareness raising regarding CEDAW; limited lobbying, increasing in the 1990s, especially regarding migrant women - High degree of prosperity (HDI rank 18) - Political system democratic; in 1979, lower level WPA, upgraded in 1986, previous/ parallel to international impulses - Press: free (11-15) - Cultural match: High (GDI rank 15 (+3), GEM rank 8 (+), no contradictory traditions) NGO activism: connected with international dynamics - Further institutional commitments: BPFA, EU - Supportive rhetoric of state leaders</td>
<td>Germany Low compliance: The norms enshrined in CEDAW are part of domestic discourse and regarded as already being implemented. No concrete governmental action; moderate NGO action.</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>Special case – no ranking</td>
<td>NGO/ legislature</td>
<td>- As preparation to accession to China and accordingly, the extension of CEDAW to Hong Kong, women's rights were increasingly discussed and a sex discrimination bill was passed to meet the (future) requirements under CEDAW - High degree of prosperity (HDI rank 26) - Political system (protectorate/ part of China; WPA: no information) - Press: not scored, in former years free (30) - Cultural match: High-medium (GDI rank 26 (0), GEM not ranked; special status of Hong Kong did not provide for anti-discrimination legislation) - NGO activism: connected with international dynamics - Further institutional commitments: BPFA</td>
<td>Hong Kong Special case – no ranking NGO/ legislature</td>
</tr>
<tr>
<td>Hungary</td>
<td>Low/ moderate compliance</td>
<td>NGO</td>
<td>- Have used international standards such as CEDAW and BPFA to raise awareness regarding violence against women; pressure for some response from a reluctant political establishment - High degree of prosperity (HDI rank 38) - Political system democratic, post-authoritarian; since 1995 lower level WPA in reaction to international impulses - Press: free (high 20s) - Cultural match: High-medium (GDI rank 36 (+1), GEM rank 41 (+); contradictory traditions: resistance to gender equality because it was previously prescribed) - NGO activism: connected with international dynamics - Further institutional commitments: BPFA, EU - No supportive rhetoric of state leaders</td>
<td>Hungary Low/ moderate compliance: Domestic actors use CEDAW to influence public discourse, legislative change unclear; other elements (like EU accession) more relevant; countervailing convictions prevail.</td>
</tr>
<tr>
<td>Country</td>
<td>Compliance Level</td>
<td>Description</td>
<td>Joint: NGO/ judiciary/ government</td>
<td>NGO</td>
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<tr>
<td>India</td>
<td>Moderate compliance: The norms enshrined in CEDAW have produced some change (in public policies and discourses), but still have to confront countervailing institutions/ convictions.</td>
<td>- Case was brought to court by NGOs claiming that India should have laws to protect women from sexual harassment in the workplace; judiciary used CEDAW and BPFA to show India's commitment to international norms; national guidelines on sexual harassment were set up as interim measure until suitable legislation was passed; they strongly drew on CEDAW General recommendation No. 19; further joint measure: follow up measures on Committee's concluding comments - Petition to the Supreme Court on India's reservation on art. 16 (state does not interfere in matters of personal law regulated by religious communities); government should state how it determines the &quot;will&quot; of religious communities to maintain discriminatory regulations; training and awareness raising workshops</td>
<td>NGO</td>
<td>- Medium degree of prosperity (HDI rank 127) - Political system democratic with authoritarian elements; since 1977 lower level WPA, upgraded in 1990, previous and in response to international impulses - Press: partly free (37-42) - Cultural match: Intermediate-low (GDI rank 103 (0), GEM not ranked; incompatible reservations; discriminatory personal laws based on religious rules) - NGO activism: connected with international dynamics - Further institutional commitments: BPFA - Supportive rhetoric of state leaders</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Low/ moderate compliance: The norms enshrined in CEDAW have produced some change (in public policies and rare court cases), yet countervailing norms predominate.</td>
<td>- Two regulations to strengthen implementation of CEDAW in employment (no dismissal based on pregnancy, equal pay); 30% quota for Parliamentary elections (without sanctions); national Commission on Violence against women (after 1998 riots) - CEDAW has been cited in the courts</td>
<td>Government</td>
<td>- Medium degree of prosperity (HDI rank 112) - Political system authoritarian; since 1978 lower level WPA, upgraded 1993, previous and in reaction to international impulses - Press: now partly free (low 50s), before not free (70s) - Cultural match: Medium-low (GDI rank 91 (+1), GEM not ranked; contradictory traditions expressed in Shari a based personal law) - NGO activism: no information - Further institutional commitments: BPFA - Supportive rhetoric of state leaders: no information</td>
</tr>
<tr>
<td>Japan</td>
<td>High/ moderate compliance: The norms enshrined in CEDAW have produced</td>
<td>- In context of ratification, new legislation in Employment (Equal employment opportunity law, 1985, amended in</td>
<td>Government</td>
<td>- High degree of prosperity (HDI rank 9) - Political system democratic; since 1994 high level WPA in reaction to international impulses</td>
</tr>
<tr>
<td>Country</td>
<td>Compliance Level</td>
<td>Government/NGO Actions</td>
<td>Press Freedom</td>
<td>Cultural Match</td>
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<tr>
<td>Jordan</td>
<td>Moderate compliance</td>
<td>National strategy for women to implement CEDAW and BPFA, including gender perspective in economic and social development plan - Legal reforms in the Penal Code discussed; public policies regarding violence against women including creation of special department within Directorate of Public Safety; mandatory registration of marriages and divorces</td>
<td>Press: partly free (50-60)</td>
<td>Medium - low (GDI rank 75 (−2), GEM rank 45 (+); incompatible reservations; contradictory traditions expressed in a certain interpretation of the Shari’a)</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Low/ moderate compliance</td>
<td>Relaxation in nationality law; amendment of Constitution including prohibition of gender-based discrimination; amendment of guardianship act – same child custody rights for women, including Muslim women; - Lobbying for national legal changes by means of transnational cooperation (IWRAW facilitating project)</td>
<td>Press: not free (60-70)</td>
<td>Medium - low (GDI rank 53 (0), GEM rank 45 (+); incompatible reservations; contradictory traditions: personal law discriminatory and according to religious communities)</td>
</tr>
<tr>
<td>Country</td>
<td>Compliance Level</td>
<td>Status</td>
<td>Compliance Details</td>
<td>Prosperity</td>
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<tr>
<td>Mauritius</td>
<td>Low/ moderate compliance</td>
<td>The norms enshrined in CEDAW have produced some change (in public policies and discourses), but still have to confront countervailing institutions/ convictions.</td>
<td>NGO - Published the Committee's concluding comments including criticism on failure to pass legislation prohibiting sex discrimination; the government first denied, but criticism was proved - Soon after NGO activism, amendment of Constitution prohibiting sex based discrimination</td>
<td>Medium degree of prosperity (HDI rank 62) - Political system democratic with authoritarian elements; since 1994 high level WPA in reaction to international impulses - Press: free (17-20) - Cultural match: Medium (GDI rank 59 (-4), GEM not ranked; contradictory traditions, law based on discriminatory interpretation of the Shari a) - NGO activism: connected with international dynamics - Further institutional commitments: BPFA - Supportive rhetoric of state leaders</td>
</tr>
<tr>
<td>Morocco</td>
<td>Low/ moderate compliance</td>
<td>The norms enshrined in CEDAW have produced some change in public policies and discourses. However, the norms have to confront countervailing institutions/ convictions.</td>
<td>NGO - Instigated a public debate after Morocco's first presentation before CEDAW, in which the conviction of the government was challenged that the current legal status of women was result of consensus in the country</td>
<td>Medium degree of prosperity (HDI rank 126) - Political system authoritarian with democratic elements; since 1992 lower level WPA, in reaction to international impulses - Press: partly free (48-58) - Cultural match: Medium-low (GDI rank 102 (0), GEM not ranked; incompatible reservations; contradictory traditions based on religion) - NGO activism: connected with international dynamics - Further institutional commitments: BPFA - Partly supportive rhetoric of state leaders</td>
</tr>
<tr>
<td>Nepal</td>
<td>Moderate/ high compliance</td>
<td>The norms enshrined in CEDAW have produced some relevant changes (in public policies, institutions and discourses), but still have to confront countervailing institutions/ convictions.</td>
<td>Government/ legislature - Constitution refers in its fundamental rights partly to CEDAW; WPA scrutinizes laws if inconsistent with CEDAW and introduced a domestic violence bill; discriminatory inheritance law amended in 2002; - Lobbying of government/ legislature; strong activism regarding the discriminatory inheritance law; transnationally connected and trained; filing of court cases that invoke CEDAW - Consider cases, and sometimes sent directives to the government to recon-</td>
<td>Low degree of prosperity (HDI rank 143) - Political system democratic with authoritarian elements; since 1987 lower level WPA, mostly in reaction to international impulses - Press: partly free (52-60) - Cultural match: Low (GDI rank 119 (-3), GEM not ranked; contradictory traditions, e.g. discriminatory inheritance and family laws; ratification &quot;without infrastructure&quot;) - NGO activism: connected with international dynamics - Further institutional commitments: BPFA - Supportive rhetoric of state and other leaders</td>
</tr>
<tr>
<td>Country</td>
<td>Compliance Level</td>
<td>Report on CEDAW</td>
<td>National Impacts</td>
<td>Comments</td>
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<tr>
<td>Netherlands</td>
<td>Moderate compliance</td>
<td>The Convention is part of domestic discourse, while its provisions are regarded already being reality. Concrete governmental action was only taken reacting to public awareness raising of NGOs.</td>
<td>Joint: Legislature/ government/ NGO</td>
<td>- Reporting to CEDAW is designed in a very participatory way (extra report before legislature with strong NGO involvement) which has strengthened awareness of Convention; report very critical; - Concrete results: legislation on accepting discriminatory Islamic marriage provisions was rejected; as were changes in social security law that worsened situation of pregnant women - NGOs held workshop on impact of CEDAW - CEDAW was invoked in some court cases, but not accepted by judges, mostly because CEDAW contains state obligations, and cannot be used for individual cases before Dutch courts</td>
</tr>
<tr>
<td>Pakistan</td>
<td>Low/ moderate compliance</td>
<td>The norms enshrined in CEDAW have produced small changes in public discourses, and due to NGO activism, also in public policies. However, the norms are generally more rejected than accepted.</td>
<td>Independent commission/ government</td>
<td>- Scrutinized laws in light of CEDAW and recommended to repeal a number of them; government refused to follow recommendations - CEDAW monitoring network lobbied for 33% quota for women in local decision making bodies; NGO launched broad campaigns and convinced enough women to run for elections - Ruled that an adult woman has the right to marry the man of her choice and can't be forced by her family into marriage</td>
</tr>
<tr>
<td>Panama</td>
<td>High/ moderate compliance</td>
<td>The Convention has raised public awareness and has changed policies and public institutions. While international gender norms are not fully implemented,</td>
<td>NGO/ government/ Legislature/ government</td>
<td>- Proliferation of Convention; - Use in support of public policies, plans and programs (e.g. the Women in Development Plan 1994-2000); transnational training (IWRAW) - In 1995, creation of a WPA that has the mandate to monitor implementation</td>
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<td>- High degree of prosperity (HDI rank 5) - Political system democratic; since 1978 high level WPA, previous and parallel to international impulses - Press: free (15) - Cultural match: high (GDI rank 7 (2), GEM rank 6 (-); no contradictory traditions) - NGO activism: connected with international dynamics - Further institutional commitments: BPFA, EU - Supportive rhetoric of state leaders for gender equality, but not for the treaty, because standards are already met</td>
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<td>- Low degree of prosperity (HDI rank 144) - Political system democratic with authoritarian elements; since 1989 lower level WPA in reaction to international impulses - Press: partly free (57-60) - Cultural match: Low (GDI rank 120 (-3), GEM rank 58 (+); incompatible reservations; contradictory traditions based on certain interpretation of Islam) - NGO activism: connected with international dynamics - Further institutional commitments: BPFA - No supportive rhetoric of state leaders</td>
</tr>
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<td>- Medium degree of prosperity (HDI rank 59) - Political system democratic; since 1995 lower level WPA, in reaction to international impulses - Press: free (30) - Cultural match: Medium (GDI rank 54 (0), GEM rank 50 (+); contradictory traditions: limited &quot;human rights culture&quot;)</td>
</tr>
<tr>
<td>Country</td>
<td>Status</td>
<td>Notes</td>
<td>UN/ ESCAP 2000</td>
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<tr>
<td>Papua New Guinea</td>
<td>Moderate compliance: The norms enshrined in CEDAW have produced some change (in public policies and discussions), especially due to NGO mobilization, but have to confront countervailing institutions/convictions.</td>
<td>- Awareness raising regarding the rights of women and discriminatory laws; work on domestic violence, inheritance rights and polygamy, political participation - Established a CEDAW-implementing agency, yet with scarce resources, and an inter-agency core committee on CEDAW, formulating a national implementation plan for CEDAW - National workshop on political participation of women and other aspects of CEDAW</td>
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<tr>
<td>Philippines</td>
<td>Moderate compliance: The norms enshrined in CEDAW have produced some change (in public policies and in two court cases).</td>
<td>- Legal changes regarding sexual harassment, rape and protection of victims in the prosecution of rape cases; family courts have jurisdiction on domestic violence against women; plan for gender-sensitive development - CEDAW cited in two court cases, one of them work-related (on dismissal of women because of marriage), one of them regarding the right of a woman to choose her domicile and stand for elections; - Invocation in four test cases which were all rejected; awareness-raising measures</td>
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<tr>
<td>Country</td>
<td>Compliance Level</td>
<td>Description</td>
<td>NGOs</td>
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<tr>
<td>Samoa</td>
<td>Moderate compliance</td>
<td>The norms enshrined in CEDAW have produced some change, predominantly in public discourse and especially due to NGO mobilization, but have to confront countervailing institutions/convictions.</td>
<td>NGO</td>
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<td>Joint NGO/government/NGO/agency</td>
<td>- Focus on violence against women, work in the field of political participation of women to overcome traditional male-dominated political system; - Training on the Convention (community paralegals and police) - Workshops to promote CEDAW with NGO and governmental agencies and plan measures for implementation (e.g. a domestic violence law)</td>
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<td>UN/ESCAP 2000</td>
<td>- Medium degree of prosperity (HDI rank 70) - Political system democratic with traditional elements; since 1997 high level WPA in reaction to international impulses - Press: partly free (30s) - Cultural match: Presumably low-intermediate (GDI and GEM not ranked; contradictory traditions) - NGO activism: no information - Further institutional commitments: BPFA - Supportive rhetoric of state leaders</td>
</tr>
<tr>
<td>Senegal</td>
<td>Moderate/low compliance</td>
<td>The norms enshrined in CEDAW have produced some change in public policies and discourses, but countervailing institutions remain more relevant.</td>
<td>Government/legislature</td>
<td>- Amendment of Criminal code based on CEDAW; national plan of action for Senegalese women</td>
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<td></td>
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<td>Heyns and Viljoen 2001</td>
<td>- Low degree of prosperity (HDI rank 156) - Political system democratic; since 1990 high level WPA in reaction to international impulses - Press: partly free (30s) - Cultural match: Low (GDI rank 128 (0), GEM not ranked; contradictory traditions) - NGO activism: no information - Further institutional commitments: BPFA - Supportive rhetoric of state leaders: no information</td>
</tr>
<tr>
<td>South Africa</td>
<td>High compliance within a process of regime change. The Convention has raised public awareness, public discourse, and has changed policies and public institutions. While int. gender norms are not fully imple-</td>
<td>Joint NGO/government/-</td>
<td>- In drafting of new Constitution, a coalition of women worked together to ensure that women's rights were properly represented – concepts in reference to CEDAW - In the reformation of the legal system, CEDAW principles are used to make system gender-representative; amend-</td>
<td>Foster 2000; UNIFEM 1998</td>
</tr>
</tbody>
</table>
mented, this is also a question of resources. Normative resistance in society is existing, but not predominating.

<table>
<thead>
<tr>
<th>Country</th>
<th>Compliance Level</th>
<th>Observations</th>
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<tbody>
<tr>
<td>Tanzania</td>
<td>Low/ moderate compliance</td>
<td>The norms enshrined in CEDAW have produced some change (in public policies and discourses), but still have to confront countervailing institutions/ convictions.</td>
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<tr>
<td></td>
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<td>NGO</td>
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<td></td>
<td>- Lobbying for ratification; input for legislation with reference to CEDAW (e.g. on domestic violence); training on use of CEDAW</td>
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<td>Judiciary</td>
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<td>- Case claiming that customary law discriminates women in inheriting and selling clan land, which is against the Constitution (that prohibits discrimination, but not explicitly based on sex); court referred to CEDAW and the state's obligation of protection from sex-based discrimination and declared the customary law provisions unconstitutional</td>
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<td>Government/ legislature</td>
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<td>- Amendment of personal status code (based on legal equality of men and women; husband is not anymore economic custodian; women can get child custody after divorce; inheritance: if a deceased has only daughters, estate goes to them, not to paternal uncles)</td>
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<td>- Enactment of Family Protection Law (domestic violence); in 1998, Parliamentary Commission asserts CEDAW as</td>
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<td>- Low degree of prosperity (HDI rank 160)</td>
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<td></td>
<td>- Low degree of prosperity (HDI rank 91)</td>
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<tr>
<td>Tunisia</td>
<td>Low/ moderate compliance</td>
<td>The norms enshrined in CEDAW have produced some change in public policies, and they partly coincide with the state's modernization project, but they have to confront countervailing institutions.</td>
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<td>Judiciary</td>
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<tr>
<td></td>
<td></td>
<td>- Amendment of personal status code (based on legal equality of men and women; husband is not anymore economic custodian; women can get child custody after divorce; inheritance: if a deceased has only daughters, estate goes to them, not to paternal uncles)</td>
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<td>- Medium degree of prosperity (HDI rank 91)</td>
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<td>- Medium degree of prosperity (HDI rank 96)</td>
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<tr>
<td>Turkey</td>
<td>Moderate compliance</td>
<td>The norms enshrined in CEDAW have produced some change</td>
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<td>Government</td>
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<tr>
<td></td>
<td></td>
<td>- Enactment of Family Protection Law (domestic violence); in 1998, Parliamentary Commission asserts CEDAW as</td>
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<td>- Medium degree of prosperity (HDI rank 91)</td>
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<td></td>
<td></td>
<td>- Medium degree of prosperity (HDI rank 96)</td>
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</tbody>
</table>

**Notes:**
- NGO activism: connected with international dynamics
- Further institutional commitments: BPFA
- Supportive rhetoric of state leaders
- Low degree of prosperity (HDI rank 160)
- Political system democratic with authoritarian elements; since 1985 lower level WPA, upgraded in 1991 in reaction to international impulses
- Press: partly free (49)
- Cultural match: Low (GDI rank 130 (+1), GEM not ranked; contradictory traditions e.g. in customary law)
- NGO activism: no information
- Further institutional commitments: BPFA
- Supportive rhetoric of state leaders
- Low degree of prosperity (HDI rank 91)
- Political system authoritarian; since 1992 high level WPA in reaction to international impulses
- Press: not free (low 70s)
- Cultural match: medium (GDI rank 76 (-2), GEM not ranked; incompatible reservations; contradictory traditions e.g. in the legal system)
- NGO activism: no information
- Further institutional commitments: BPFA
- Supportive rhetoric of state leaders
- Low degree of prosperity (HDI rank 91)
- Medium degree of prosperity (HDI rank 96)
- Political system combination of democratic and authoritarian elements; since 1991 lower level
<table>
<thead>
<tr>
<th>Country</th>
<th>Compliance Level</th>
<th>Description</th>
<th>Key Actions</th>
<th>Current Status</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uganda</td>
<td>Low/ moderate</td>
<td>The norms enshrined in CEDAW have produced some change in the Constitution, but most laws remain unaffected by international women's rights standards. Customary norms discriminating against women shape the de-facto situation.</td>
<td>- Constitution rewritten 1995; the group of women members of Parliament jointly develop positions, and manage to include important CEDAW principles; NGO campaign around drafting of Constitution and succeeded in introducing a quota for political participation</td>
<td>- Low degree of prosperity (HDI rank 147) - Political system authoritarian; since 1991 high level WPA in reaction to international impulses - Press: partly free (40 average) - Cultural match: Low (GDI rank 117 (+3), GEM not ranked; contradictory traditions such as customary law) - NGO activism: connected with international dynamics - Further institutional commitments: BPFA - Supportive rhetoric of state leaders</td>
<td>Mugwanya 2001; UNIFEM 1998</td>
</tr>
<tr>
<td>Ukraine</td>
<td>Moderate compliance</td>
<td>The norms enshrined in CEDAW have produced some change (in public policies, institutions and discourses), but they have to confront countervailing priorities due to post-communism.</td>
<td>- No impact in Soviet times; Parliamentary hearing on CEDAW in 1995 – first &quot;public&quot; step; creation of the WPA under authority of president, later ministry; CEDAW principles in the Constitution; law prohibiting trafficking in women and children; law on Human Rights ombudsman - Interest in CEDAW since 1995 (hearing); important initiatives regarding improvement of status of women and quotas</td>
<td>- Medium degree of prosperity (HDI rank 75) - Political system democratic with authoritarian elements; since 1998 lower level WPA in reaction to international impulses - Press: partly free (50-60) - Cultural match: medium (GDI rank 63 (+1), GEM rank 61 (+); contradictory traditions: after socialism, gender equality as a norm and strong state influence is rejected) - NGO activism: connected with international dynamics - Further institutional commitments: BPFA - No supportive rhetoric of state leaders</td>
<td>Rudneva 2000</td>
</tr>
<tr>
<td>Vanuatu</td>
<td>Moderate compliance</td>
<td>The norms enshrined in CEDAW have produced some change.</td>
<td>- Promotion of CEDAW, with emphasis on violence against women - National workshop to promote</td>
<td>- Medium degree of prosperity (HDI rank 128) - Political system democratic with traditional elements; no information on WPA</td>
<td>UN/ ESCAP 2000</td>
</tr>
<tr>
<td>Country</td>
<td>Compliance Level</td>
<td>Norms Enshrined in CEDAW</td>
<td>Change in Public Policies, Institutions and Discourses</td>
<td>Further Institutional Commitments</td>
<td>Supportive Rhetoric of State Leaders</td>
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<tr>
<td>Venezuela</td>
<td>Moderate compliance</td>
<td>The norms enshrined in CEDAW have produced some change (in public policies and public discourses).</td>
<td>Act on Equal Opportunities for Women, based on CEDAW, 1993, and Violence against Women and the Family act, 1998; Used these principles against a provision of the penal code which granted compensation for victims of rape only when they were single, widows, and &quot;chaste&quot;</td>
<td>Medium degree of prosperity (HDI rank 69)</td>
<td>Supportive rhetoric of state leaders</td>
</tr>
<tr>
<td>Vietnam</td>
<td>Moderate compliance</td>
<td>The norms enshrined in CEDAW have produced some changes (in public policies, institutions and discourses).</td>
<td>Amendment of marriage and family law (same rights granted to men and women); of the labor code (preference for women in employment, recruitment, social insurance); training for women political candidates, including quotas; strengthening of institutional mechanisms; a range of studies conducted; awareness raising</td>
<td>Medium degree of prosperity (HDI rank 106)</td>
<td>Supportive rhetoric of state leaders</td>
</tr>
<tr>
<td>Zambia</td>
<td>Low/moderate compliance</td>
<td>The norms enshrined in CEDAW have produced change in are court cases, yet de-facto situation remains largely unaffected. NGO</td>
<td>Two court rulings (against hotels that treat women in a discriminatory way; High Court ruled in favor of complainant, referring to Constitution and Zambia's international obligations, such as CEDAW; in favor of a single mother to</td>
<td>Low degree of prosperity (HDI rank 163)</td>
<td>Supportive rhetoric of state leaders</td>
</tr>
</tbody>
</table>

Notes:
- Press: partly free (40 average), free in 2002 (24)
- Cultural match: presumably low (GDI no information, GEM not ranked; contradictory traditions: "Kastom" – customary rules and norms)
- NGO activism: connected with international dynamics
- Further institutional commitments: BPFA

References:
- United Nations/ DAW 2000a: 192f
- Dairiam 2003
- Heyns and Viljoen 2001;
- UNIFEM 1998;
- IWRAW 1996;
- IWRAW listserv
involvement might lead to more significant legal changes.

<table>
<thead>
<tr>
<th>Country</th>
<th>Level of Compliance</th>
<th>NGO Efforts</th>
<th>Judiciary Efforts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zimbabwe</td>
<td>Low/ moderate compliance: The norms enshrined in CEDAW have helped to defend rights that are threatened by &quot;cultural&quot; arguments and have thus influenced the public discourse and policies.</td>
<td>- NGO: put the name of her children on her passport; however, the same discriminatory practices remain common. - Pressure/ awareness raising for ratification; use Convention as focal points for activities; lobby to integrate CEDAW principles in new constitution and to remove discriminatory articles; lobby for 30% quota and law on violence against women.</td>
<td>- As legislature aims to amend the comprehensive 1982 equality law, mobilization is organized in its defense; in particular, NGOs draw on international self-complimenting of government before the CEDAW Committee, and criticize &quot;cultural&quot; argumentation in legislation against the law; law was finally retained. - Intention to create balance between customary law and international standards such as CEDAW; enforcement is often discriminatory against women, e.g. inheritance.</td>
</tr>
</tbody>
</table>

- Cultural match: Low (GDI rank 133 (+1), GEM not ranked; contradictory traditions, e.g. in customary law)  
- NGO activism: connected with international dynamics  
- Further institutional commitments: BPFA  
- Supportive rhetoric of state leaders

- Low degree of prosperity (HDI rank 145)  
- Political system authoritarian with democratic elements; since 1997 high level WPA in reaction to international impulses  
- Press: not free (60s, 2002: 83), in former years partly free (below 60)  
- Cultural match: Low-medium (GDI rank 113 (+5), GEM not ranked; contradictory traditions: customary law)  
- NGO activism: connected with international dynamics  
- Further institutional commitments: BPFA  
- Supportive rhetoric of state leaders: no information

Interview 11; United Nations/ DAW 2000a: 125f; UNIFEM 1998;
Appendix 3: Text of the Convention on the Elimination of All Forms of Discrimination against Women

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote
social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article I

For the purposes of the present Convention, the term "discrimination against women" shall mean 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.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
(e) To take all appropriate measures to eliminate discrimination against women by any
person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish exist-
ing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against
women.

**Article 3**

States Parties shall take in all fields, in particular in the political, social, economic and
cultural fields, all appropriate measures, including legislation, to ensure the full develop-
ment and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment
of human rights and fundamental freedoms on a basis of equality with men.

**Article 4**

1. Adoption by States Parties of temporary special measures aimed at accelerating de
facto equality between men and women shall not be considered discrimination as defined in
the present Convention, but shall in no way entail as a consequence the maintenance of un-
equal or separate standards; these measures shall be discontinued when the objectives of
equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained
in the present Convention, aimed at protecting maternity shall not be considered discriminat-
ory.

**Article 5**

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a
view to achieving the elimination of prejudices and customary and all other practices which
are based on the idea of the inferiority or the superiority of either of the sexes or on stere-
typed roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a
social function and the recognition of the common responsibility of men and women in the
upbringing and development of their children, it being understood that the interest of the chil-
dren is the primordial consideration in all cases.

**Article 6**

States Parties shall take all appropriate measures, including legislation, to suppress all
forms of traffic in women and exploitation of prostitution of women.
PART II

Article 7
States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8
States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9
1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10
States Parties shall 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 to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;
(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of childcare facilities;
(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

**Article 12**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the postnatal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

**Article 13**

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;
(b) The right to bank loans, mortgages and other forms of financial credit;
(c) The right to participate in recreational activities, sports and all aspects of cultural life.

**Article 14**

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;
(b) To have access to adequate health care facilities, including information, counseling and services in family planning;
(c) To benefit directly from social security programmes;
(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
(f) To participate in all community activities;
(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15
1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16
1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
   (a) The same right to enter into marriage;
   (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
   (c) The same rights and responsibilities during marriage and at its dissolution;
   (d) The 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 paramount;
   (e) 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;
   (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
   (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
   (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18
1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:
   (a) Within one year after the entry into force for the State concerned;
   (b) Thereafter at least every four years and further whenever the Committee so requests.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19
1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.

Article 20
1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21
1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22
The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.
PART VI

Article 23
Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:
(a) In the legislation of a State Party; or
(b) In any other international convention, treaty or agreement in force for that State.

Article 24
States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25
1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26
1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27
1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28
1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

**Article 29**

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

**Article 30**

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.
Appendix 4: Types of questions Committee members ask in the dialogue

- on general information (e.g., to provide statistics or explain in more detail a program that was just briefly presented)
- on more information according to the Convention’s provisions ("Article 5 requires that states… would you provide additional information on that topic…")
- clarification if information is contradictory or vague (e.g. "What does it mean that prostitution is not legal but not punishable either?")
- references to former reports that seek for long-term development (e.g. "In the last report, you announced a program to prevent teenage pregnancy, what happened since its introduction?")
- questions (including doubts) on the effectiveness of gender equality measures (E.g. if only direct but not indirect discrimination is targeted by laws; if measures regarding reproductive health only focus on pregnancy)
- questions on gaps in the report or presentation ("You have not provided information on measures you are taking against trafficking in women and girls, please add")
- questions on implementation or impact of laws
- questions that take international Conventions as reference, e.g. ILO Conventions that the state signed
- comments to encourage states to continue and strengthen their efforts, especially with states that are not in best (e.g. economic) conditions to be ideal compliers, but that have shown commitment
- incentives for “good compliers” (e.g. "Germany is seen as a leader in implementing women’s rights standards, other countries look at it, you have to be aware of your role")
- questions on future measures
- questions regarding funding (of the Women's Policy Agency, of government programs, or women’s NGOs)
- open critique, especially with countries that make no effort ("How do you think to achieve gender equality if men are heads of households by definition")
- questions that confront a delegation with information differing from that provided by official sources ("You said..., I have the information that – so what is correct, please clarify...")
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