

Background

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Human Rights and Social Issues at the U.N.: A Guide for U.S. Policymakers

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Introduction

Whittaker Chambers once described the Cold War as the “critical conflict of...the two irreconcilable faiths of our time—Communism and Freedom.”¹ Freedom prevailed in that grave clash of the 20th century, but it remains embattled in a new cold war of ideas.

As the United States defends its freedom at home and abroad, it can expect to be endlessly engaged in cold wars of ideas. America is a nation built on an idea: specifically, the principle “that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.” That idea had its enemies in 1776, and it continues to have them today.

“[W]ars of ideas are fought in terms of ideas and for the sake of ideas. It follows that ideas...must be in good fighting shape,” wrote the late Adda Bozeman, an expert on the interrelation of culture and statecraft.² Today, a number of the ideas essential to the American order—including those about the importance of family, religion, and civil society in relation to freedom—are not in prime “fighting shape.” This leaves the United States vulnerable to opposing views advanced in the international arena, particularly at the United Nations.

The American concept of freedom is influenced by the character of American culture. Civil society in America has been marked by a strong tradition of religious belief and practice and by the type of private associations that intrigued Alexis de Tocqueville as an early 19th century visitor. These features distinguish

Talking Points

- The character of American culture influences the American concept of freedom. America’s strong civil society institutions—family, religious congregations, and private associations—reinforce our founding ideas about limited government and individual liberty.
- In America, the stated purpose of sovereignty is to secure a society in which citizens are free to enjoy the rights of life, liberty, and the pursuit of happiness. Preserving American civil society is an inherent purpose of U.S. national security.
- International peacekeeping at the United Nations has grown into international policy-making in great administrative detail on a wide range of social issues, from education to women’s health.
- The President and Congress should consider the implications of the scope of U.N. social policymaking for U.S. constitutional governance and national security.

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American freedom as much as its market economy does. A civil society in which moral authority is exercised by religious congregations, family, and other private associations is fundamental to the American order. Such moral authority supports limited government by obviating the need for expansive government regulations. In this way, strong civil society institutions—family, religious congregations, and private associations—reinforce the American founding ideas about limited government and individual liberty. On the other hand, when these elements of civil society are weakened or hemmed in, freedom is more susceptible to erosion, both conceptually and practically, at home and abroad.

One defining characteristic of national sovereignty is the authority to protect and preserve both a public and a private sphere. A nation must defend its government and its people in their private lives. In the case of America, the self-stated purpose of sovereignty is to secure a society in which citizens are free to enjoy the rights of life, liberty, and the pursuit of happiness. Preserving American civil society is an inherent purpose of U.S. national security.

During the 20th century, the role of government in American society increased substantially. With the New Deal and Great Society, the national government took on an increasingly broad role in administering aspects of citizens' daily lives, including welfare and family-related issues. The understanding of religious liberty became more and more circumscribed.³

At the same time, international relations were tending toward administrative detail. Since World War II, international peacekeeping at the United Nations has grown into international policymaking on a wide range of issues. Historically, international law has been concerned with matters among states,

such as rules of war, freedom of the seas, and treatment of foreign nationals and diplomats.⁴ In recent decades, however, international treaties and conventions, customary law, and regulatory declarations by technical experts have affected policy on social issues from education to women's health.

From the U.S. constitutional perspective, such social issues fall within the sovereign domain of the United States. Further, many of them remain the province of state or local authorities or are outside the purview of public policy altogether as matters subject to individual private decisions. These social issues properly belong within the jurisdiction of the citizens of the United States, who should determine which level of government should formulate public policy or whether the matter should be left within the sphere of civil society, protected within—but not regulated by—the constitutional order of the United States.

U.S. government officials should protect American civil society and retain jurisdiction over domestic social issues by resisting policy encroachment into these areas by the United Nations and its many subsidiaries. As the elected, legislative branch of U.S. government with the primary responsibility for policymaking at the federal level, Congress should maintain increased awareness of the scope of U.N. policymaking and exercise greater oversight of U.S. involvement in U.N. policymaking bodies. Preserving constitutional authority over domestic policy should be a clear objective within overall U.S. foreign policy. Protecting civil society is critical to the freedom agenda.

Definition of Terms

The following are key terms and concepts for evaluating the United Nations' handling of human rights and social issues.

1. Whittaker Chambers, *Witness* (New York: Random House, 1952), p. 4.
2. Adda B. Bozeman, *Strategic Intelligence and Statecraft* (Washington, D.C.: Brassey's, Inc., 1992), p. 19.
3. The U.S. Supreme Court began to promote a new conception of religious liberty and the idea of "the wall of separation between Church and State" beginning with Justice Hugo Black's opinion in *Everson v. Board of Education* (1947). This logic continued in *Lemon v. Kurtzman* (1971), which established the "lemon test" for violation of the Establishment Clause.
4. For a more detailed discussion of international law, see Lee A. Casey and David B. Rivkin, Jr., "International Law and the Nation-State at the U.N.: A Guide for U.S. Policymakers," Heritage Foundation *Background* No. 1961, August 18, 2006, at www.heritage.org/Research/WorldwideFreedom/bg1961.cfm.

Civil Society vs. the Administrative State. The American Founders frequently asserted that virtue and religion are essential to maintaining a free society because they “secur[e] the moral conditions of freedom.”⁵ Man is capable of both justice and evil, they believed, and needs to be inspired to love his neighbors and restrained from harming them by a moral authority beyond government edict. Political solutions must take man’s nature into account, moderating it through checks and balances for those in power and encouraging it toward profitable activity in the private sphere.

If affections like familial love and religious faith have the power to pacify the human passions that provoke conflict, family and religion can be counted among the allies of freedom. Furthermore, if the family can provide for the welfare of individuals, particularly children, more effectively than the state can, then marriage and parental authority should have the respect of the law. In a free society, law and policy should create an environment in which family, religious observance, and private associations will flourish. This means, in part, securing the private sphere in which these institutions can thrive free from both external threat and internal governmental encroachment.

“Necessitous men are not free men,” said President Franklin D. Roosevelt in 1944.⁶ If men in need cannot be free men, a government dedicated to the preservation of freedom must also commit itself to the elimination of need among its citizens. Such a view leads to a proliferation of government services and a list of “rights” that has no logical end. For Roosevelt, these “economic truths” were as self-evident as the Declaration’s truths “that all men are created equal, that they are endowed by their Creator with certain unalienable rights.” The rights to life and liberty, however, “proved inadequate to

assure us equality in pursuit of happiness,” declared Roosevelt, and that demanded “a second Bill of Rights under which a new basis of security and prosperity can be established.” Roosevelt’s list included the right to a job and a “decent home,” the right to “adequate medical care and the opportunity to achieve and enjoy good health,” and the right to protection from the “economic fears of old age, sickness, accident, and unemployment,” among others. “All of these rights spell security,” he concluded.⁷

The New Deal of the 1930s, followed in the 1960s by the Great Society, began to enact Roosevelt’s new “rights” as entitlements: as services, from welfare to education to health care, that the state owes to individuals. This significantly changed the relationship between government and civil society. Rather than securing the space in which individuals in their social context of family and private association are free to pursue their happiness, government would satisfy their needs. Entitlement programs have changed the character of government as well, from the well-balanced three branches conceived in the Constitution to a national government dominated by administrative bureaucracy and promulgating extensive regulation of everyday life in America.⁸

The Internationalization of Administrative Government. In 1944, Roosevelt linked his domestic agenda directly to an international peace-keeping agenda then emerging at the end of the Second World War:

The one supreme objective for the future...for each nation individually, and for all the United Nations, can be summed up in one word: Security. And that means not only physical security which provides

5. Thomas G. West, “Religious Liberty: The View from the Founding,” Claremont Institute, January 1997, at www.claremont.org/writings/970101west.html (August 18, 2006).
6. English judge quoted in Franklin D. Roosevelt, “State of the Union Message to Congress,” January 11, 1944, at www.presidency.ucsb.edu/ws/index.php?pid=16518 (August 18, 2006).
7. *Ibid.*
8. For a more thorough analysis of the Roosevelt Doctrine and human security, see James Jay Carafano, Ph.D., and Janice A. Smith, “The Muddled Notion of Human Security at the U.N.: A Guide for U.S. Policymakers,” Heritage Foundation *Background*, forthcoming.

safety from attacks by aggressors. It means also economic security, social security, moral security—in a family of Nations.⁹

This expansive definition of security, both at home and abroad, would change the nature of the relationship between state and citizen, as well as relations among nation-states.

Two world wars had convinced some that the international system was hopelessly mired in power struggles. The nature of the relationships among nations and institutions, not the nature of man, was seen as the root of conflict. One strategy for overcoming power politics was to increase administrative cooperation among nation-states. Interaction would produce interdependence that could supersede national interest, it was argued. The world needed “a working peace system,” according to Romanian political scientist David Mitrany, an early member of the faculty at the Institute for Advanced Study in Princeton, New Jersey,¹⁰ “Not a peace that would keep the nations quietly apart, but a peace that would bring them actively together.”¹¹

In terms like those used by FDR, Mitrany defined security as “an undisturbed social life,” not “the out-dated sense of security of a physical territory, to be protected by tanks and planes.”¹² This could best be achieved through what he called a “functional” approach, “making frontier lines meaningless by overlaying them with a natural growth of common activities and common administrative agencies.” Power politics then would give

way to harmonious international relations built around functions, such as fighting poverty or advancing education. Promoting welfare was intended to prevent warfare.¹³

This would transcend territorial sovereignty and military might and instead “distribute power in accordance with the practical requirements of every function.”¹⁴ Technical expertise and competency, not claims of sovereign jurisdiction over territory, would be the prerequisites of authority. Bureaucracy, not the executive or legislature, would be the operative agent of international relations.

One of the merits of this method, from Mitrany’s perspective, was that progress was not dependent on formal agreement at every turn. He considered it a flaw of previous peace attempts that they had sought to make terms explicit by treaty when what was really needed was to make them actual in practice.¹⁵ Here he drew a lesson from FDR’s New Deal:

The significant point in the emergency action [by Roosevelt] was that each and every problem was tackled as a practical issue in itself. No attempt was made to relate it to a general theory or system of government. Every function was left to generate others gradually, like the functional subdivision of organic cells.... A great constitutional transformation has thus taken place without any changes in the Constitution.... People have gladly accepted the service when they might have questioned the theory.¹⁶

9. Roosevelt, “State of the Union Message to Congress.”

10. Mitrany served on the British Labour Party’s Advisory Committee on International Affairs from 1918–1931, wrote on foreign policy for *The Manchester Guardian* as Europe emerged from World War I, and taught at Princeton before joining the Institute for Advanced Study in the early 1930s. See David Mitrany, *The Functional Theory of Politics* (New York: St. Martin’s Press, 1975), pp. 8–9 and 28.

11. David Mitrany, *A Working Peace System: An Argument for the Functional Development of International Organizations*, 4th ed. (London: National Peace Council, 1946), p. 59.

12. *Ibid.*, p. 35.

13. “[F]unctionalism treats the promotion of welfare as an indirect approach to the prevention of warfare.” Inis L. Claude, “International Organisation: The Process and the Institutions,” *International Encyclopedia of the Social Sciences*, Vol. 8, pp. 34–35, quoted in Mitrany, *The Functional Theory of Politics*, p. 226.

14. Mitrany, *A Working Peace System*, p. 52.

15. “It is too often overlooked that written constitutions have in the main served as a check to authority.” *Ibid.*, p. 9.

International organizations figure prominently in functional theory.¹⁷ Writing on the 25th anniversary of the United Nations in 1970, Mitrany suggested that the U.N.'s future success was dependent on expanding its functional activity.¹⁸ The United Nations has indeed taken such a course (described below), adding to its number of "functional bodies" over the decades, with the administrative scope of each of these subsidiary bodies dramatically expanding at the same time.

But while functional interaction among nations has increased through the U.N. and related organizations, it has not ushered in an era of peace. The internationalization of the administrative state has merely opened a new front for political conflict among nations. States lacking military power have a new means of confronting traditionally stronger nations on the world stage. Expanded international policymaking has thus heightened, not transcended, power politics.

Moreover, the functional relationships that have emerged are not nearly so organic as theorists of this school might have imagined; instead, like the vanguard to help the proletariat achieve the revolution it did not know it wanted, the functional networks that have emerged in international organizations are dominated by politicized factions that frequently do not represent the views of the populations that they claim to represent. States and nonstate actors alike pursue their interests and seek to impose their agendas globally through the functional avenues that Mitrany and others had envisioned for keeping the peace.

The U.N. Architecture for Human Rights and Social Issues. Headlines about cease-fires and negotiations to avert war often obscure the ongoing

functional work of the United Nations. Far from being merely a forum in which the nations of the world can assemble in moments of crisis, the U.N. and its agencies in fact debate, oversee, and budget for projects and issues well beyond military and humanitarian emergencies. Although not originally promoted as an entity that would become involved in actively seeking to shape member states' domestic policies, the U.N. has become increasingly intrusive in these arenas. Its purposes include:

to promote social progress and better standards of life in larger freedom, to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples.¹⁹

The international machinery has become quite intricate. The United Nations is composed principally of the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat. By its own admission, however, the "United Nations family... is much larger," consisting of 15 agencies and numerous additional programs and entities.²⁰ Each of these other U.N. agencies has its own governing body and budget.

Together, the U.N.'s agencies, programs, funds, and commissions "provide technical assistance and other forms of practical help *in virtually all areas of economic and social endeavour*."²¹ The U.N. Department of Economic and Social Affairs alone includes 12 divisions and offices, ranging from the Office of

16. *Ibid.*, pp. 29–30.

17. For example, see John Gillingham, *European Integration, 1950–2003: Superstate or New Market Economy?* (Cambridge: Cambridge University Press, 2003), p. 28, and James E. Dougherty and Robert L. Pfaltzgraff, Jr., *Contending Theories of International Relations: A Comprehensive Survey*, 5th ed. (New York: Longman, 2001), p. 512.

18. Mitrany was encouraged by "the growing body of international administrative law... [which] parallels the rapid growth of [national] administrative law." David Mitrany, *The Functional Theory of Politics*, p. 227.

19. Charter of the United Nations, at www.un.org/aboutun/charter (August 15, 2006).

20. United Nations, "The United Nations: Organization," at www.un.org/aboutun/basicfacts/unorg.htm (July 27, 2006).

21. *Ibid.* (emphasis added).

the Special Adviser on Gender Issues and the Advancement of Women to the Secretariat of the United Nations Forum on Forests.²² A chart of the various U.N. bodies and structures includes six principal organs, 11 subsidiary bodies, nine functional commissions, 19 specialized agencies, 17 departments and offices of the Secretariat, 14 programmes and funds, five research and training institutes, five regional commissions, four other bodies, five other U.N. entities, and four related organizations.²³ Mitrany's observation about the expansion of the New Deal seems to describe the growth of the U.N. as well: "Every function was left to generate others gradually, like the functional subdivision of organic cells."

Treaties and conventions are the most formal documents generated by the U.N. system; they are legally binding on the signatories and require great negotiation and scrutiny. The more common and voluminous products of the U.N. system include declarations, protocols, and administrative documents issued by "treaty bodies," sometimes referred to as "implementing committees."

Treaty bodies are staffed with technical experts who are tasked with ensuring that states that have ratified a treaty implement its provisions at the national level. Although member states' delegates negotiate a treaty and their national governments sign and ratify it, it is the treaty body that largely determines the treaty's ongoing impact years into the future. Each treaty body is composed of independent experts who retain the ongoing policy-making authority to define, interpret, and expand the parameters of treaty compliance, which are binding on treaty signatories. States are obligated to submit periodic reports to the treaty body to demonstrate their domestic progress in complying with the treaty. The treaty body investigates the state's

reported action, communicates its concerns, and issues recommendations for the state's future action. The state is then "expected to undertake the necessary measures to implement the recommendations of the treaty bodies."²⁴

In addition, U.N. functional forums have greatly increased the significance of nonstate actors and their agendas. These forums give occasion for nongovernmental organizations (NGOs) to express political agendas separate from, and even at odds with, the policies of most nation-states. Such groups typically specialize in economic and social policy advocacy and have used avenues such as U.N. conventions, committee reports, and customary international law to great effect in changing the domestic policies of nations around the world. These NGOs are numerous at the United Nations. As of March 2005, there were 2,613 NGOs in consultative status with the U.N. Economic and Social Council (ECOSOC).²⁵ NGOs are heavily involved in the controversies surrounding the various social issues discussed below.

Current Controversies

Some of the current controversies at the U.N. are of particular significance to the United States in maintaining its sovereign jurisdiction over domestic policymaking and preserving the freedom of American civil society.

Human Rights: Individual Rights vs. Social Rights. Although international declarations and covenants applaud human rights, and states and nongovernmental organizations alike pledge to defend them, there is no agreement within the framework of the U.N. as to what distinguishes human rights from other sorts of rights, what they include, who has such rights, and the authority from which they are derived.²⁶

22. U.N. Department of Economic and Social Affairs, "Divisions and Offices," at www.un.org/esa/desa/divisions.html (July 27, 2006).

23. U.N. Department of Public Information, "The United Nations System," March 2004, at www.un.org/aboutun/unchart.pdf (August 15, 2006).

24. Office of the U.N. High Commissioner for Human Rights, "Treaty Bodies," at www.unhcr.ch/pdf/leafletontreatybodies.pdf (August 15, 2006).

25. Global Policy Forum, "NGOs and the UN: Basic Information," Web site, at www.globalpolicy.org/ngos/ngo-un/infoindex.htm (July 28, 2006). For the full list of these NGOs, see U.N. Economic and Social Council, "NGOs in Consultative Status with ECOSOC," July 25, 2005, at www.un.org/esa/coordination/ngo/pdf/INF_List.pdf (July 28, 2006).

The U.N. General Assembly adopted the Universal Declaration of Human Rights by unanimous consent (with eight abstentions) in 1948. Although it is not a legally binding treaty, the Universal Declaration serves as the foundation of international human rights law.²⁷ The U.N. treaties that have further defined international human rights law are the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966); the Convention on the Elimination of All Forms of Racial Discrimination (1966); the Convention on the Elimination of All Forms of Discrimination Against Women (1979); the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (1984); the Convention on the Rights of the Child (1989); and the Convention on the Protection of the Rights of All Migrant Workers and Their Families (1990).

As an illustration of the ambiguity surrounding U.N. human rights documents, the U.S. has declined to ratify the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child, arguing that while these treaties ostensibly deal with human rights, they actually infringe on domestic policymaking concerning family and would impede U.S. government capacity to protect individual rights.²⁸

The Universal Declaration recognizes “the inherent dignity and . . . the equal and inalienable rights of all members of the human family.”²⁹ Unlike the United States’ Declaration of Independence, however, it never identifies a source of or rationale for humanity’s inherent dignity or man’s inalienable

rights. The failure to address these fundamental philosophical questions has hampered the efficacy of human rights law and has not prevented egregious violations of basic human rights. More than 50 years after the creation of the U.N., ongoing wide-scale abuse and genocide, most notably in places like Sudan, demonstrate the inadequacy of U.N. functional bodies in promoting and protecting basic human rights.

While the Universal Declaration states that “all human beings are born free and equal in dignity and rights” and asserts that “everyone has the right to life, liberty and security of person,” it also insists that no one ought to suffer “attacks upon his honour and reputation” and that “everyone has the right to rest and leisure, including . . . periodic holidays with pay.”³⁰ According to Mary Ann Glendon, Professor of Law at Harvard University and former delegate to the Fourth U.N. Conference on Women, the Universal Declaration today “is almost universally regarded as a kind of menu of rights from which one can pick and choose according to taste.”³¹

Another example of a U.N. action that has diffused the definition of human rights is the “right to development,” defined in a 1986 U.N. statement as “an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development.”³² (It also calls for “general and complete disarmament” and for all nations to ensure that resources resulting from such disarmament are redirected to development.)³³ In response to efforts to assert, within the context of human rights deliberations, a “right to development” on the part of nations, a U.S. repre-

26. For a discussion of the issue of rights vs. entitlements, see Helle C. Dale, “Economic and Political Rights at the U.N.: A Guide for U.S. Policymakers,” Heritage Foundation *Background* No. 1964, August 30, 2006.

27. United Nations, “A United Nations Priority,” at www.un.org/rights/HRToday/declar.htm (April 9, 2006).

28. For further discussion, see Patrick F. Fagan, “How U.N. Conventions on Women’s and Children’s Rights Undermine Family, Religion, and Sovereignty,” Heritage Foundation *Background* No. 1407, February 5, 2001, at www.heritage.org/Research/InternationalOrganizations/BG1407.cfm.

29. United Nations, Universal Declaration of Human Rights, Preamble, at www.un.org/Overview/rights.html (March 27, 2006).

30. United Nations, Universal Declaration of Human Rights, Articles 1, 3, 12, and 24.

31. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), p. xviii.

sentative clarified that it does not make sense to claim “a nation’s right to development...for the simple reason that nations do not have human rights.” Nations “may have sovereign rights, but...[w]e are here to talk about human rights—the rights of individuals and the responsibilities of states to see that those rights are respected.”³⁴

The confusion about human rights stems from a dispute about the nature of rights in general. In 1947, even before the Universal Declaration of Human Rights was adopted, David Mitrany observed:

[G]rand international “Declarations” of human rights had become generally irrelevant and unenforceable with the transformation in the relationship between state and society. In the new planned “welfare state” traditional, essentially negative, individual rights were being translated into positive collective rights...within the ambit of the spreading administrative web.³⁵

Social rights could be applied across national boundaries to specific groups in society along common interest lines. This transformation led to the understanding of rights in terms of classes—e.g., women’s rights, children’s rights, migrants’ rights—which has detracted from the principle of universal natural human rights.

Mitrany cut to the heart of the conflict between the classic view of individual rights and the emerg-

ing social rights: “Between individual rights in the traditional sense and social rights in the modern sense there is indeed an inevitable compensating relationship.... [T]he one can only increase at the expense of the other.”³⁶ That mid-century observation is an apt commentary on the U.N. human rights situation today.

Reproductive and Sexual “Rights.” “Reproductive health” has become one of the most contentious social issue battlefronts at the United Nations, and abortion has been at the center of the ongoing debate. The Beijing Declaration and Platform for Action, the product of the Fourth World Conference on Women in 1995, defines reproductive health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes.”³⁷ The Platform for Action—the document that details the strategic objectives and actions that governments committed to undertake to achieve the Beijing Declaration’s stated goals—goes on to assert that people ought to be “able to have a satisfying and safe sex life and...the capability to reproduce and the freedom to decide if, when and how often to do so.”³⁸ The U.N. Population Fund explicitly “calls for women’s empowerment in all spheres of life, particularly regarding their reproductive and sexual health and rights.”³⁹

32. U.N. General Assembly, Declaration on the Right to Development, Article 1.1, December 4, 1986, at www.unhcr.ch/html/menu3/b/74.htm (August 28, 2006). Taking exception to this definition, the United States has repeatedly stated its understanding that the term “right to development” means “that each individual should enjoy the right to develop his or her intellectual or other capabilities to the maximum extent possible through the exercise of the full range of civil and political rights.” U.S. Delegation to the 61st Commission on Human Rights, “Explanation of Vote on Right to Development,” April 12, 2005, at www.state.gov/p/io/44595.htm (August 28, 2006).

33. U.N. General Assembly, Declaration on the Right to Development, Article 7.

34. Statement by Lino J. Piedra, Public Member, U.S. Delegation to the 61st Session of the U.N. Commission on Human Rights, March 22, 2005, at geneva.usmission.gov/humanrights/2005/0322Item7.htm (August 23, 2006).

35. Mitrany, *The Functional Theory of Politics*, p. 24.

36. *Ibid.*, p. 72.

37. U.N. Fourth World Conference on Women, *Beijing Declaration and Platform for Action* (New York: U.N. Department of Public Information, 1995), p. 58, paragraph 94.

38. *Ibid.*

39. U.N. Population Fund, “Critical Area 9: Human Rights of Women,” at www.unfpa.org/intercenter/beijing/rights.htm (March 27, 2006).

International advocacy groups have gone a step further. According to Human Rights Watch, for example:

[W]omen's decisions about abortion are not just about their bodies in the abstract, but rather about their human rights relating to personhood, dignity, and privacy more broadly. Continuing barriers to such decisions...interfere with women's enjoyment of their rights.⁴⁰

Human Rights Watch has argued that "international human rights legal instruments and interpretations of those instruments by authoritative U.N. expert bodies compel the conclusion that access to safe and legal abortion services is integral to the fulfillment of women's human rights generally."⁴¹ The NGO's claim is based on the conclusions and recommendations that U.N. treaty-monitoring bodies have issued to member states.

This regulatory practice is prevalent. As of early 2005, U.N. treaty bodies had issued recommendations in at least 122 instances urging 93 countries to modify their abortion laws.⁴² Like many other countries, the United States has sought repeatedly to keep these sensitive matters within its sphere of sovereignty.⁴³

The movement to create sexual rights has included an effort to define sexual orientation as a human right. To this end, the Human Rights Com-

mittee has been critical of many member states, including the U.S., for their laws respecting sexual orientation. For example, in recent concluding observations about the U.S., the Human Rights Committee "notes with concern the failure to outlaw employment discrimination on the basis of sexual orientation in many [U.S.] states."⁴⁴ A 2004 press release from Amnesty International is particularly illuminating:

Sexual rights are human rights... There is a long legacy of advocacy on sexuality and human rights within the U.N. arena that will continue until all people are free to exercise all their human rights without discrimination of any kind.⁴⁵

Family: Rhetoric Without Recognition for Parental Authority. U.N. documents refer to the family as "the basic unit of society"⁴⁶ and "the natural environment for the growth and well-being of all its members"⁴⁷ and even call for its protection. However, more specific policy statements do not follow through on that rhetoric.

The U.N. Convention on the Rights of the Child includes numerous provisions that would distance children from their parents' oversight, infringing on parental rights and authority in their child's education and upbringing. For example:

The child shall have the right to freedom of expression; this right shall include freedom

40. Human Rights Watch, "International Human Rights Law and Abortion in Latin America," July 2005, p. 1, at hrw.org/backgrounder/wrd/wrd0106 (March 24, 2006).

41. *Ibid.*

42. *Ibid.*, p. 4.

43. In a statement of its position regarding abortion-related matters, the U.S. mission to the U.N. has clarified that: "The United States understands that there is international consensus that the terms 'reproductive health services,' 'reproductive right,' and 'reproductive health' do not include abortion or constitute support, endorsement, or promotion of abortion or the use of abortifacients." Press release, "Explanation of Position by Laurie Lerner Shestack, Adviser, on Women in Development, in the Second Committee," U.S. Mission to the United Nations, December 19, 2005, at www.un.int/usa/05_271.htm (August 16, 2006).

44. U.N. Human Rights Committee, "Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant," advance unedited edition, 87th Sess., July 10–28, 2006, paragraph 25, at www.ushrnetwork.org/pubs/CCPR.C.USA.CO.pdf (August 28, 2006).

45. Amnesty International, public statement, POL 30/020/2004, April 21, 2004.

46. U.N. Fourth World Conference on Women, "Beijing Declaration and Platform for Action," p. 27, paragraph 29.

47. U.N. General Assembly, Convention on the Rights of the Child, Preamble, at www.unhchr.ch/thml/menu3/b/k2crc.htm (March 31, 2006).

to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.⁴⁸

U.N. conventions and declarations also curtail parental rights when they declare sexual health privacy rights for adolescents. Although minors ought to have their parents' or guardians' guidance in sensitive health issues, the Beijing Declaration laments, "Counseling and access to sexual and reproductive health information and services for adolescents are still inadequate or lacking completely, and a young women's right to privacy, confidentiality, respect and informed consent is often not considered."⁴⁹

Making an International Issue of Gender. Considering the original premise of the United Nations, the organization's engagement in the politics of gender is an extraordinary example of mission creep. The name of the U.N. Office of the Special Advisor on Gender Issues and Advancement of Women exemplifies the specificity with which the U.N. addresses social issues. According to that office, gender is not merely the condition of being male or female. Rather, gender is "socially constructed," "context/time-specific and changeable," and "part of the broader socio-cultural context."⁵⁰

The United Nations' stated strategy of "gender mainstreaming" is its policy implementation of this radical concept of gender. Gender mainstreaming is

the practice of "ensuring that gender perspectives and attention to the goal of gender equality are *central to all activities*—policy development, research, advocacy/dialogue, legislation, resource allocation, and planning, implementation and monitoring of programmes and projects."⁵¹ The U.N. has proven a more promising avenue for promoting this agenda than have the political processes of most nations.

The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) resembles the feminist agenda in the United States.⁵² While CEDAW does address egregious cases of discrimination, it goes well beyond this in an effort to effect social transformation, stating 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" and arguing that "the upbringing of children requires a sharing of responsibility between men and women and society as a whole."⁵³ The specifics of how to achieve these goals for each country that ratifies CEDAW are left to the treaty body, the Committee on the Elimination of Discrimination Against Women, which in one example exercised its mandate against "traditional roles" in criticizing Belarus: "The Committee is concerned by the continuing prevalence of sex-role stereotypes and by the reintroduction of such symbols as a Mothers' Day and a Mothers' Award, which it sees as encouraging women's traditional roles."⁵⁴

48. *Ibid.*, Article 13.

49. U.N. Fourth World Conference on Women, "Beijing Declaration and Platform for Action," pp. 57–58, paragraph 93.

50. U.N. Office of the Special Advisor on Gender Issues and Advancement of Women, "Gender Mainstreaming Concepts and Definitions," at www.un.org/womenwatch/osagi/gendermainstreaming.htm (February 23, 2005).

51. *Ibid.* (emphasis added).

52. According to CEDAW, discrimination against women includes "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." U.N. General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, at www.un.org/womenwatch/daw/cedaw/text/econvention.htm (August 16, 2006).

53. *Ibid.*

54. U.N. General Assembly, *Report of the Committee on the Elimination of Discrimination Against Women*, A/55/38, 22nd Sess., January 17–February 4, 2000, and 23rd Sess., June 12–30, 2000, paragraph 361, at www.un.org/womenwatch/daw/cedaw/reports/a5538.pdf (August 18, 2006).

The CEDAW Committee frequently includes recommendations on the subject of prostitution, urging countries to adopt more lenient prostitution laws or even to decriminalize and treat prostitution the same as any other form of labor. In 1999, it gave China this report: “The Committee is concerned that prostitution, which is often a result of poverty and economic deprivation, is illegal in China. The Committee recommends decriminalization of prostitution.”⁵⁵

The Committee urged the Swedish government “to evaluate the effect of the current policy of criminalizing the purchase of sexual services”⁵⁶ and reported its concern to Germany that, “although they are legally obliged to pay taxes, prostitutes still do not enjoy the protection of labour and social law.” It recommended “that the Government [of Germany] improve the legislative situation affecting these women so as to render them less vulnerable to exploitation and increase their social protection.”⁵⁷

The United States has refused to sign or ratify CEDAW, but countries that have signed it are legally bound to implement its provisions. Signatories “are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.”⁵⁸ Despite the U.S. government’s refusal to ratify CEDAW, Supreme Court Justice Ruth Bader Ginsberg cited it in her concurring opinion in *Grutter v. Bollinger*.⁵⁹

Conclusion

With attention focused on the United Nations following high-profile scandals like Oil-for-Food and the approaching transition in the Office of

U.N. Secretary-General, this is a prime opportunity for the President and Congress to assess the scope of U.N. policymaking, which has expanded over the decades, and consider the implications for U.S. constitutional governance. It is critical that the U.S. government carefully scrutinize each negotiating circumstance not only with respect to its discrete content, but within the broader context of U.S. national security.

Specifically, the United States should:

- **Reject treaties that infringe on U.S. domestic jurisdiction over social issues.** The President should not sign, nor should the U.S. Senate ratify, treaties that abrogate the authority of American government—whether national, state, or local—to make policy on domestic social issues.
- **Maintain increased awareness of the extent of U.N. social policymaking to guard against encroachment on congressional authority and the American constitutional order.** As the elected, legislative branch of government, Congress has the primary policymaking authority within the federal government. To guard that authority, Members of Congress must be aware of the scope of U.N. policymaking and resist encroachments. Congress must also maintain oversight of unelected U.S. officials who negotiate family, religion, and civil society issues at the United Nations. A major purpose of national security is to defend the civil society within American society. Congress should play the leading role in shaping how that goal will be integrated into overall foreign policy, including

55. U.N. Office of the High Commissioner for Human Rights, “Concluding Observations of the Committee on the Elimination of Discrimination Against Women: China,” A/54/38, February 3, 1999, paragraphs 288–289, at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/1483ffb5a2a626a980256732003e82c8?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/1483ffb5a2a626a980256732003e82c8?Opendocument) (August 23, 2006).

56. Office of the High Commissioner for Human Rights, “Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Sweden,” A/56/38, July 31, 2001, paragraph 355, at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/80bb4b9d34212c1fc1256acc004f72e2?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/80bb4b9d34212c1fc1256acc004f72e2?Opendocument) (August 23, 2006).

57. Office of the High Commissioner for Human Rights, “Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Germany,” A/55/38, February 2, 2000, paragraphs 325 and 326, at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/64d8644ed9ea3f788025688c0054c3f4?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/64d8644ed9ea3f788025688c0054c3f4?Opendocument) (August 23, 2006).

58. U.N. General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women.

59. *Grutter v. Bollinger*, 539 U.S. 344–346 (2003).

measures to prevent U.N. policymaking for the United States.

- **Preserve and encourage a strong civil society in the interest of protecting constitutional order and individual rights.** Representatives of the U.S. government should present the case that family, religious practice, and private associations are essential to freedom and that the U.S. will not participate in international policymaking that would create an environment that is not conducive to them. Moreover, the federal government should refrain from expanding the scope of the administrative state domestically and seek strategies to roll it back so that civil society will thrive. One successful example is the welfare reform of 1996, which decreased dependence on the government and reduced poverty. Only by restraining the administrative state at home will the United States be equipped to resist it and restrain it on the international level.
- **Recognize that many nations and nonstate actors view functional deliberations as means of exercising power.** This is particularly true for those that do not possess significant military or political power. Further, it includes states and nonstate actors that do not share a confidence in or commitment to the primacy of the nation-state in general, particularly U.S. national sovereignty. To better defend American interests, U.S. policymakers must assess the interests that motivate participants in functional forums.
- **Consider the cost before opening new international social policymaking fronts, and weigh the national interest in participating in ongoing policymaking forums.** Once opened, functional forums demand attention. Before becoming party to a new functional forum or agreeing to participate in an existing body, U.S. policymakers should consider whether participation is in the national interest; define the objectives of participation (e.g., monitoring and intelligence gathering, defending a key policy, or advancing a strategic agenda); and weigh costs and benefits, particularly in terms of the resources that will be required to accomplish

the stated objectives. By definition, functional forums are staffed by bureaucrats with specialized administrative job descriptions who frequently have extensive technical expertise in bureaucracy and/or the subject matter at hand. It is important to reckon soberly in terms of personnel, resources, strategic integration, and support from other foreign policy sectors what will be needed to achieve success in an ongoing mission to a functional forum. In doing so, U.S. policymakers should recognize that they are engaging on foreign terms of debate, since the internationalization of administrative governance in domestic policy issues is antithetical to American freedom.

- **Develop a strategy for engaging in cold wars of ideas and defending civil society.** The United States will be involved perpetually in cold wars of ideas. Such wars in the ideological realm also require strategy, and the U.S. should approach them with an offensive, rather than defensive, footing. This should include enhanced public diplomacy and a coherent strategy for dealing with international organizations. A clear tenet of this strategy should be protecting American civil society.
- **Treat U.N. functional forums as an opportunity for public diplomacy.** When U.S. representatives participate in U.N. forums on social issues, they should be equipped to champion the U.S. model for protecting individual rights and advancing the general welfare and prosperity of Americans through limited government and civil society. On issues from human rights to women's status, the U.S. has a strong record. NGOs that recognize the benefits of the American constitutional order for family, faith, and freedom should participate actively in presenting this message at the United Nations.

As the United Nations engages in administrative policymaking on an increasingly wide range of issues, it threatens the security of civil society in the United States. Family, religious faith, and private associations have been bulwarks of America's freedom throughout its history. Surrendering policymaking authority in these areas would erode some of the great sources of strength for the American

order. Constitutional government remains the best protection for individual rights and civil society, and the United States should continue to secure them within its sovereign sphere rather than relinquishing authority to international decision makers who are not committed to America's founding ideals.

In the end, the interests of civil society institutions coincide with the interests of freedom. By protecting civil society, constitutional government ensures its own longevity and fortifies its security in the world. The character of our culture shapes our idea of freedom in powerful ways. As George Weigel has

observed, "history is driven, over the long haul, by culture—by what men and women honor, cherish, and worship; by what societies deem to be true and good and noble...by what individuals and societies are willing to stake their lives on."⁶⁰

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60. George Weigel, *The Cube and the Cathedral: Europe, America, and Politics Without God* (New York: Basic Books, 2005), p. 30.