

Background

No. 2227
January 9, 2009



Published by The Heritage Foundation

CEDAW: How U.N. Interference Threatens the Rights of American Women

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The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the United Nations General Assembly and initiated in 1981 after its ratification by 20 member states; today 185 countries are party to CEDAW. The United States Senate—under both Democrat and Republican leadership—has consistently chosen not to ratify it, with good reason.¹

While women's groups and some politicians have lobbied the Senate to ratify CEDAW, arguing that it would be a useful instrument in championing women's rights at home and abroad, the treaty has rarely made it out of the Senate Foreign Relations Committee for full Senate consideration.² The reasons that the Senate has historically rejected CEDAW remain relevant, particularly the challenges it would create for the United States' federalized system of government. Furthermore, the 30 years that have passed since CEDAW's inception continue to illustrate how little the treaty has accomplished to improve women's rights in some of the most oppressive nations that have ratified it, such as Saudi Arabia, and how United Nations "experts" have used the treaty to create new rights and to intimidate countries into adopting radical social policies.

The U.S. Constitution has been a far better protector of women's rights in America than has any international treaty, and the Senate should not subject the Constitution to this one. The Senate Foreign Relations Committee, the full Senate, and the White House must more effectively explain to Americans, particu-

Talking Points

- The U.S. Constitution has been a far better protector of women's rights in America than has any international treaty; the Senate should not subject the Constitution to CEDAW.
- The reasons why the Senate has historically rejected CEDAW remain relevant, particularly the problems it would create for the United States' federalized system of government. Many of the issues addressed by CEDAW belong under the purview of state or local jurisdictions.
- The CEDAW Committee consistently oversteps its mandate, issuing instructions to countries that do not share its radical social agenda.
- CEDAW is an ineffective and inappropriate instrument for advancing women's rights. It has accomplished little to improve women's rights in some of the most oppressive nations that have ratified it, such as Saudi Arabia. American women's freedom and personal dignity are best protected by the U.S. Constitution and the rule of law it establishes.

This paper, in its entirety, can be found at:
www.heritage.org/Research/Family/bg2227.cfm

Produced by the Richard and Helen DeVos
Center for Religion and Civil Society

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

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larly women, why CEDAW and the United Nations are not protectors of their interests.

CEDAW's Purpose and Politicization

CEDAW contains many points that mirror America's efforts to promote equal opportunity for women, yet it also poses many problems for America's federalist system of government and the rights established in the U.S. Constitution. Many of the issues with which CEDAW concerns itself, such as access to health care and education, belong under the purview of state or local jurisdiction in the U.S. constitutional order.³

CEDAW requires national governments to work toward eliminating gender-based discrimination in every area of life, using this expansive definition of discrimination against women:

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.⁴

Furthermore, countries that have ratified CEDAW are evaluated based on their compliance with CEDAW by the CEDAW Committee, which meets at the United Nations several times a year.⁵

The committee consistently oversteps its mandate, acting as a quasi-judicial body issuing forceful instructions to countries that often do not share its radical social agenda, and committee meetings inevitably serve as a forum for reinterpreting the terms agreed upon by the treaty members.

CEDAW is an ineffective and inappropriate instrument for advancing women's rights around the world. In the case of gross abuses of women's rights, such as sex trafficking or female circumcision, it has been less effective than targeted instruments to address them, such as the American-led effort to adopt the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons.⁶

In the case of American women, their freedom and personal dignity are best protected by the U.S. Constitution and the rule of law it establishes. The United States should continue to advance the standing of women domestically and abroad by refusing to ratify CEDAW.

The Enforcers: The CEDAW Committee

The CEDAW Committee was created in 1982 to monitor states' implementation of the Convention on the Elimination of All Forms of Discrimination against Women and issue recommendations for how states can better comply with the treaty.⁷ The committee is what is known in U.N. lingo as a "treaty body."⁸

1. President Jimmy Carter, however, signed the Convention in 1980.
2. Luisa Blanchfield, "The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Congressional Issues," CRS Report for Congress, updated October 28, 2008, at http://assets.opencrs.com/rpts/RL33652_20081028.pdf (January 5, 2009).
3. For more detailed examples of how CEDAW undermines the family, 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 <http://www.heritage.org/Research/InternationalOrganizations/BG1407.cfm>.
4. United Nations, Department of Economic and Social Affairs, Division for the Advancement of Women, "The Convention on the Elimination of All Forms of Discrimination against Women," at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article1> (January 5, 2009).
5. The CEDAW Committee met for its 42nd session in Geneva October 20–November 7, 2008.
6. The United States and Argentina introduced a draft protocol in 1999, and the General Assembly adopted a revised Protocol on Trafficking on November 15, 2000. For more information on the U.S. response to trafficking in persons, see Clare Ribando Seelke and Alison Siskin, "Trafficking in Persons: U.S. Policy and Issues for Congress," CRS Report for Congress, updated August 14, 2008, at <http://fas.org/sgp/crs/misc/RL34317.pdf> (January 5, 2009).
7. Until this year, the CEDAW Committee fell under the purview of the United Nations Division for the Advancement of Women, but it now exists under the Office of the High Commissioner for Human Rights.

Members of the CEDAW Committee are self-identified gender experts chosen from the various countries that are party to CEDAW—although they serve in their individual capacities, and not as official representatives of their country’s governments.⁹ Elected by countries participating in CEDAW, they serve terms of four years and are eligible for re-election. Each country that is party to CEDAW must submit written and oral reports to the committee every four years. The committee questions the delegation and issues concluding observations and recommendations for the state party to follow.¹⁰ In practice, the CEDAW Committee habitually bullies the delegations sent to deliver their countries’ reports. The committee pressures state parties to change their domestic policies, and most alarmingly, it regularly reads more into the convention than exists in the actual text of the document. Although the committee is not technically a judicial body, its conclusions and recommendations have been cited in court decisions around the world, including the U.S. Supreme Court.¹¹

The CEDAW Committee in Session: A 2008 Example

The committee met for its 41st session from June 30 to July 18, 2008, to review the periodic reports submitted by Yemen, Lithuania, Nigeria, Iceland, Finland, the United Kingdom, Tanzania,

and Slovakia. Its questions to the state party delegations generally focused on the following matters: whether national judiciaries are relying on CEDAW to make legislative decisions while bypassing or changing any conflicting domestic law; using quotas and incentives to achieve equal participation of women in business, politics, and academia; the division of labor and domestic responsibilities between men and women in the home; the protection of women’s rights from infringement by “conservatives” and “religious people”; and, “sexual and reproductive health.”

Domestication of the Convention. The committee questioned every country under review about the extent to which the convention has been incorporated into the country’s domestic law, specifically inquiring about what kind of training is in place for the judiciary about how to refer to CEDAW in its rulings. For example, the committee chair asked the delegation from Slovakia whether there are any cases before Slovak courts in which CEDAW has been invoked.¹² Another committee member asked for proof that the government of Nigeria is taking the convention seriously.¹³

In its concluding observations on Lithuania’s report, the committee expressed concern “that the Convention’s provisions and the Committee’s general recommendations are not sufficiently known by

8. For further discussion of treaty bodies, see Office of the United Nations High Commissioner for Human Rights, “The United Nations Human Rights Treaty System,” Fact Sheet No. 30, undated, at <http://www2.ohchr.org/english/bodies/docs/OHCHR-FactSheet30.pdf> (January 5, 2009).
9. For further discussion, see Austin Ruse, “International Law: Also at Stake this Election,” *The Catholic Thing*, August 1, 2008, at http://thecatholicthing.org/index.php?option=com_content&task=view&id=328&Itemid=2 (January 5, 2009).
10. “Committee on the Elimination of Discrimination Against Women—Mandate,” Office of the United Nations High Commissioner for Human Rights, December 18, 1979, at <http://www2.ohchr.org/english/bodies/cedaw/mandate.htm> (January 5, 2009).
11. For example, the concurring opinion of Justices Ginsburg and Breyer in *Grutter v. Bollinger*, 539 U.S. 306 (2003) stated that the majority’s “observation that race-conscious programs ‘must have a logical end point’” is supported by language in CEDAW and the Convention to Eliminate All Forms of Racial Discrimination.
12. Question from chair Dubravka Šimonovi, expert from Croatia, “Reporting to Women’s Anti-Discrimination Committee, Slovakia’s Government Strongly Denies Involvement in Alleged Sterilization of Roma Women,” United Nations Department of Public Information, General Assembly WOM/1696, July 14, 2008, at <http://www.un.org/News/Press/docs/2008/wom1696.doc.htm> (January 5, 2009).
13. Question from Cornelis Flinterman, expert from the Netherlands, “Nigeria Poised to Vote on Bill to Enforce Women’s Anti-Discrimination Convention after Initial Rejection, Delegation of 73 Members Tells Monitoring Committee,” United Nations Department of Public Information, General Assembly WOM/1691, July 3, 2008, at <http://www.un.org/News/Press/docs/2008/wom1691.doc.htm> (January 5, 2008).

the majority of judges, lawyers, prosecutors [and women]...as indicated by the absence of any court decisions that refer to the Convention.”¹⁴ Apparently, Lithuania’s proof of compliance with CEDAW depends on its judges citing the treaty. A member of the committee asked the Lithuanian representatives whether the Lithuanian constitution has any provisions that would make the application of “temporary special measures” (affirmative action) on behalf of women unconstitutional. If so, she asked, “[Are] there plans to amend the Constitution? In what area [does] Lithuania plan to apply temporary special measures?”¹⁵

The committee went even further than pushing countries to adopt CEDAW into law, urging them to enact legislation to comply with the committee’s “general recommendations.” In concluding observations on Tanzania, for example, the committee “call[ed] on the State party to accelerate its law review process and to work effectively with Parliament in ensuring that all discriminatory legislation is amended or repealed to bring it into compliance with the Convention *and the Committee’s general recommendations.*”¹⁶ (Emphasis added.) This is an example of the committee behaving as a quasi-judicial body promulgating substantive interpretations of CEDAW, rather than confining itself to the role of a technical body of experts, as was stipulated in the treaty itself.

Quotas and De Facto Equality. Not satisfied with demonstration of equality of the sexes before the law, the CEDAW Committee seeks *de facto*

equalization of women’s status in every sphere of society, and often advocates quotas or incentives to achieve it. It recommended that Tanzania “pursue sustained policies aimed at the promotion of women’s full and equal participation in decision-making *as a democratic requirement* in all areas of public and professional life.”¹⁷ (Emphasis added.) In its recommendations to Lithuania, the committee urged the government to “systematically adopt such laws on temporary special measures including goals and time-tables or quotas...in order to accelerate the realization of women’s *de facto* equality with men in the areas of political and public life, education and public and private employment.”¹⁸ That is, Lithuania must adopt laws to ensure that the gender of its legislators (and presumably the rest of its government) reflects its population. During the committee review of the United Kingdom’s report, one committee member asked the delegation, “how both the equality of opportunity and the equality of *results* would be guaranteed” (emphasis added) for women throughout the country.¹⁹

While especially interested in achieving gender parity in governing bodies, the committee also monitors women’s participation in academia and the private sector. Consider these examples: One committee member praised Iceland for its 30 percent female representation in Parliament, and expressed her disappointment that only 18 percent of the professors at Iceland’s largest university are women.²⁰ Another asked the Finnish delegation whether it had a timeline for increasing the number

14. “Concluding observations of the Committee on the Elimination of Discrimination Against Women: Lithuania,” CEDAW, July 18, 2008, p. 3, at <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.LTU.CO.4.pdf> (January 5, 2009).
15. Question from Ms. Schöpp-Schilling, expert from Germany, “Women’s Anti-Discrimination Committee Commends Lithuania’s Gender Equality Laws, But Questions Draft Bill to Severely Restrict Legal Abortion,” United Nations Department of Public Information, General Assembly WOM/1690, July 2, 2008, at <http://www.un.org/News/Press/docs/2008/wom1690.doc.htm> (January 5, 2009).
16. “Concluding Observations of the Committee on the Elimination of Discrimination Against Women: United Republic of Tanzania,” CEDAW, July 18 2008, CEDAW/C/TZA/CO/6, p. 4, at <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.TZA.CO.6.pdf> (January 5, 2009).
17. *Ibid.*, p. 8.
18. “Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Lithuania,” p. 3.
19. Question from Mary Shanthi Dairiam, expert from Malaysia, “United Kingdom Champions Gender Equality in Public Policy, Anti-Discrimination Legislation, But Closing Gap Between Sexes Unfinished Business, Experts Told,” United Nations Department of Public Information, General Assembly WOM/1694, July 10, 2008, at <http://www.un.org/News/Press/docs/2008/wom1694.doc.htm> (January 5, 2009).

of women on the governing boards of both private and government-owned companies.²¹ Lithuania was asked about what obligations the private sector faced in order to reduce job segregation and the gender pay gap.²² Another expert voiced her concerns about women's employment in Yemen, telling Yemen's delegation that the government ought "to pursue the equality of results as opposed to the formal equality of laws. Men and women should have the same job security and equal remuneration."²³

Family Life. Beyond the public sphere, the committee calls on state parties to enforce CEDAW by intruding into private family and household matters. It aims to modify interactions between spouses and parental decisions regarding children, regardless of how tenuously related such regulation is to the advancement of women's rights. One committee member questioned several country delegations about corporal punishment and the rights of the "girl child." She asked the delegation from Iceland whether the government is "incorporating so-called 'positive disciplining' in its educational booklets on corporal punishment prevention."²⁴

Article 5 of CEDAW calls for the elimination of cultural stereotypes that discriminate against

women. The CEDAW Committee uses this directive to instruct state parties on such personal matters as the division of domestic responsibilities within the family. The committee called on Yemen "to foster a better understanding of equality between women and men at all levels of society with a view to transforming stereotypical attitudes and negative cultural norms about the responsibilities and roles of women and men in the family and society."²⁵ It similarly recommended that Finland work "to promote equal sharing of domestic and family tasks between women and men,"²⁶ and that Slovakia strengthen its efforts "to fully sensitize men to their equal participation in family tasks and responsibilities."²⁷

Disregard for culturally distinct patterns of pursuing the advancement of women and their preferences for work-life balance was on display in the committee's treatment of Iceland. The country sought to inform the committee about its own societal norms, explaining that women are more likely to seek part-time employment to be able to carry out their family responsibilities. The Icelandic delegation also referenced surveys that revealed that women are more likely than men to take family commitments into account in their decisions on participation in the labor market. That prompted

20. Question from Meriem Belmihoub-Zerdani, expert from Algeria, "New Law on Equal Status, Equal Rights Boosts Icelandic Women's Protection, Women's Anti-Discrimination Committee Hears, But Struggle for Equality 'Long and Arduous,'" United Nations Department of Public Information, General Assembly WOM/1692, July 8, 2008, at <http://www.un.org/News/Press/docs/2008/wom1692.doc.htm> (January 5, 2009).
21. Question from Cornelis Flinterman, "Finland's New Gender Equality Plan Will Advance Women's Rights, Prevent Domestic Violence, Reduce Gender Pay Gap, Women's Anti-Discrimination Committee Told," United Nations Department of Public Information, General Assembly WOM/1693, July 9, 2008, at <http://www.un.org/News/Press/docs/2008/wom1693.doc.htm> (January 5, 2009).
22. Question from Mary Shanthi Dairiam, expert from Malaysia, "Women's Anti-Discrimination Committee Commends Lithuania's Gender Equality Laws, But Questions Draft Bill to Severely Restrict Legal Abortion."
23. Question from Ms. Patten, expert from Mauritius, "Yemen's Delegation Acknowledges Obstacles to Women's Empowerment, Highlights Government's Efforts to Reverse Discriminatory Patterns, in Women's Committee," United Nations Department of Information, General Assembly WOM/1689, July 1, 2008, at <http://www.un.org/News/Press/docs/2008/wom1689.doc.htm> (January 5, 2009).
24. Question from Ms. Chutikul, expert from Thailand, "New Law on Equal Status, Equal Rights Boosts Icelandic Women's Protection, Women's Anti-Discrimination Committee Hears, But Struggle for Equality 'Long and Arduous.'"
25. "Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Yemen," CEDAW, July 18, 2008, p. 3, at <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.YEM.CO.6.pdf> (January 5, 2009).
26. "Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Finland," CEDAW, July 18, 2008, p. 6, at <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.FIN.CO.6.pdf> (January 5, 2009).
27. "Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Slovakia," CEDAW, July 18, 2008, p. 7, at <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.SVK.CO.4.pdf> (January 5, 2009).

one committee member to ask the Icelandic delegation what measures the government has taken “to change these patterns of behaviour.”²⁸ Her assumption, which the rest of the committee seems to share, is that women do not choose to focus primarily on family responsibilities, and if they do, they must be victims of discrimination.

Sexual Orientation and Nontraditional Families. The CEDAW Committee also uses its mandate to eliminate gender discrimination as an opportunity to advance the homosexual-lobby agenda. Several members of the committee suggested that the status of women in same-sex relationships or non-traditional families ought to receive greater attention from the state parties. The expert from Brazil posed many questions regarding sexual orientation. She asked the Finnish delegation why it had not included non-heterosexual women in its list of vulnerable groups, the measures Finland is taking to promote equality for women of other sexual orientations, and data on women who are victims of hate crimes and suicide as a result of their sexual orientation.²⁹ Another committee member wanted to know whether co-habiting partners in Slovakia have the same rights as married couples after the dissolution of their relationship, and the government’s calculation of the number of same-sex cohabiting couples.³⁰

Religion and Morality. The Committee regards religious communities and individuals—particularly conservatives—as a threat to women’s freedom. It regularly recommends that state parties to the convention be vigilant in monitoring such threats, instructing Slovakia, for example, to “adequately regulate the invocation of conscientious objection by health professionals so as to ensure

that women’s access to health and reproductive health is not limited.”³¹ In other words, if a Slovakian doctor invokes a conscientious objection to performing an abortion or prescribing a contraceptive, the Slovakian government must “regulate” the invocation of such an objection. The committee wants Slovakia to require doctors to perform abortions regardless of their moral or religious beliefs. The committee expects religious principles and cultural values to accommodate the convention—and the committee’s recommendations—not vice versa.

Consider these remarks from one member of the committee during the review session with Nigeria’s delegation about the country’s proposed anti-public-nudity legislation: “Would the police go around with a tape measure to check the length of clothes or see if a breast was exposed?” She continued, declaring that women have “a right to the aesthetic of their bodies and the right to present themselves any way they [want]. A woman’s body [is] the only piece of real estate on which she [owes] no mortgage. Dress codes [are] about power, and dressing a woman from head to toe [is] a form of rape.”³²

Sexual and Reproductive Health. Article 12 of CEDAW pertains to women’s access to health care, specifically requiring that state parties “ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”³³

CEDAW is a much-debated and carefully negotiated document, and access to abortion is not required, nor even mentioned. But the committee’s actions are an entirely different matter. In its discussion of women’s health, the committee focuses almost exclusively on contraception and abortion,

28. Question from Magalys Arocha Dominguez, expert from Cuba, “New Law on Equal Status, Equal Rights Boosts Icelandic Women’s Protection, Women’s Anti-Discrimination Committee Hears, But Struggle for Equality ‘Long and Arduous.’”

29. Question from Ms. Pimentel, expert from Brazil, “Finland’s New Gender Equality Plan Will Advance Women’s Rights, Prevent Domestic Violence, Reduce Gender Pay Gap, Women’s Anti-Discrimination Committee Told.”

30. Question from Ms. Tan, expert from Singapore, “Reporting to Women’s Anti-Discrimination Committee, Slovakia’s Government Strongly Denies Involvement in Alleged Sterilization of Roma Women.”

31. “Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Slovakia.”

32. Comment from Glenda Simms, expert from Jamaica, “Nigeria Poised to Vote on Bill to Enforce Women’s Anti-Discrimination Convention after Initial Rejection, Delegation of 73 Members Tells Monitoring Committee.”

33. CEDAW, Article 12, ¶2.

referencing its own General Recommendation No. 24 to require countries to liberalize their laws regarding abortion.³⁴ The committee called on Nigeria “to assess the impact of its abortion law on the maternal mortality rate and to give consideration to its reform or modification.”³⁵ Yemen was reminded that “contraceptives should be free or affordable.”³⁶ One committee member wanted to know whether women in Lithuania had access to affordable contraceptives, including emergency contraceptives, and was particularly concerned about a proposal under consideration in Lithuania to restrict legal abortion. She warned that, “If the Government [intends] to restrict abortion, the consequences would be disastrous for women.”³⁷

Conclusion

Injustice against women around the world is a reality. It is serious and sometimes even life-threatening. Regrettably, the Convention on the Elimination of All Forms of Discrimination against Women and the CEDAW Committee have done a disservice to the cases of abject discrimination against and mistreatment of women, choosing instead to focus on the advancement of a particular radical social agenda.

It is not the responsibility of the United Nations to set social policy for the United States. Americans rely on their elected representatives in state legislatures and Congress to reflect their values and traditions when legislating domestic issues such as health care, education, marriage, and family policy.

The American constitutional order protects the sphere of civil society—families, religious organizations, and private associations—from government intrusion, leaving Americans to determine the course of their private lives, including religious expression and family decisions.³⁸ Other matters that CEDAW addresses, such as gender equality in the workforce and political participation, are generally sorted out in the free market of ideas, without heavy-handed, government-mandated quotas. American women are free, legally and culturally, to pursue opportunities and relationships of their choosing. Americans should continue to fight incidental discrimination, while preserving the security afforded by the U.S. system of rights enshrined in the U.S. Constitution and protected under federal and state laws.

The actions of the CEDAW Committee are a stark reminder of the dangers of being a party to such multilateral treaties. The U.S. Senate should uphold its responsibility to the American people and not subject them to the tyranny of the CEDAW treaty. Ratifying CEDAW, and by extension subjecting the U.S. to the bullying of the CEDAW Committee, would neither advance women’s equality nor serve American foreign policy interests, including the security and advancement of women around the globe.

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34. General recommendations made by the Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24 (20th session, 1999), at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom24> (January 5, 2009).

35. “Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Nigeria,” July 18, 2008, p. 8, at <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.NGA.CO.6.pdf> (January 5, 2009).

36. “Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Yemen.”

37. Question from Ms. Hayashi, expert from Japan, “Women’s Anti-Discrimination Committee Commends Lithuania’s Gender Equality Laws, But Questions Draft Bill to Severely Restrict Legal Abortion.”

38. For a more detailed discussion of how these issues are treated at the U.N., see Jennifer A. Marshall and Grace V. Smith, “Human Rights and Social Issues at the U.N.: A Guide for U.S. Policymakers,” Heritage Foundation *Backgrounder* No. 1965, August 31, 2006, at <http://www.heritage.org/Research/WorldwideFreedom/bg1965.cfm>.