

**Chapter 3:
Theorizing Treaty Commitment**

In

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International Human Rights: Law, Politics, and Accountability

By

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Please note: This paper is a chapter in a broader project on commitment to and compliance with international human rights treaties. The first half of the project theorizes and explores empirically the question of why governments commit themselves to such treaties. It focuses on ratification, reservations, and reporting as indicators of commitment to a treaty regime. The second half of the project explores whether these treaties influence governmental behavior. It discusses civil rights, torture and detention, women's rights, and the issue of child soldiers.

Chapter 3: Theorizing Treaty Commitment

I believe the decision by totalitarian states to formally (if not practically) recognize these shared values results in part from the international program of support for human rights movements around the world. These legal commitments serve both as the encouraging fruit of efforts to force observance of human rights and as a useful tool by which to transform totalitarian governments into more democratic ones.

*Leonid Romanov, member of the St. Petersburg Legislative Assembly and chairman of the parliament's Commission on Education, Culture, and Science.*¹

Why do states give us these whips to flagellate themselves with?

*Nigel Rodley, former legal adviser of AI and current [at the time of writing] UN Special Rapporteur on Torture, 1993*²

The international effort to protect individual human rights has been a unique hallmark of the post-1945 world. The previous chapter demonstrated that at no other point in history has the issue of how governments ought to treat their own citizens been so widely accepted as a matter of international concern. Over the course of the past half-century, a web of legal arrangements has been negotiated and elements have been widely ratified, transforming human rights from a moral issue to an international legal one.

The eagerness of governments to sign on to various international human rights treaties from one perspective is unremarkable. Leonid Romanov's statement above points out that even totalitarian states sign these treaties because of political and social pressures to do so; what he refers to as "the international program of support for human rights movements around the world." Why shouldn't every government be willing to ratify human rights accords? Even those with poor rights records have been willing to ratify. The reason, as so many scholars have pointed out, is that there potentially are benefits to signing – from the highly symbolic to the politically and economically tangible – but hardly any costs at all to doing so. Thanks to the pressures of citizens, transnational organizations, and the expectations of their official peers, combined with a weak international

¹ (Power and Allison 2000) (p. 64)

² (Clark 2001) p. 4.

enforcement structure, treaty commitment are nearly universal. And why not? The expected value of committing is typically small but positive.

Yet Romanov's concluding sentence indicates the potential catch. Legal commitments are a "useful tool" for encouraging governments to improve their rights behavior. They are both politically and legally useful. Politically, they create focal points for the formulation of political demands primarily from domestic groups that want domestic practices and institutions to change. Legally, they can provide leverage for enforcing particular rights within the domestic courts of the government in question. Internationally, flouting a treaty obligation denigrates law as a collective good in which all governments have an interest.

This chapter argues that international treaty commitments are costly, that these costs vary across political and legal systems, and that governments make a rational calculation about whether to ratify or not based on these costs as well as the costs of compliance pressures once a treaty has been ratified. This argument stands in contrast to two common alternatives. The first assumes these treaties are costless exercises in symbolic expression. According to this line of thinking, governments ratify treaties because they allow a costless expression of support for the principles they contain. Proponents of this view expect widespread support for these treaties with no impact on subsequent human rights behavior. A second view assumes that governments do not fully appreciate the consequences of their actions at the time they are taken. They ratify human rights treaties to enjoy the social and political benefits of formally supporting the regime, but find (contrary to their initial expectation) various publics and official peers apply pressure for them to live up to their commitments. Proponents of this view would expect no systematic explanations for treaty commitment, but nonetheless expect ratification to be associated with some improvement in behavior. I argue that governments more often ratify these treaties well informed about the consequences of doing so. They are more likely to ratify treaties that match their preferences than to engage in merely symbolic action. At the margins, governments are concerned to avoid unflattering international comparisons. They may also engage in strategic efforts at the margins to influence the post-negotiation expectations surrounding a treaty's content. To anticipate Chapter 7, treaties provide a focal point that governments know will make it difficult for them to justify flagrant non-compliance. If this view is correct, we should see both systematic explanations for commitment as well as some detectable effect on behavior. Treaties constrain precisely because there is a heightened expectation of compliance, which is anticipated by the government and factored into their decision to commit in the first place.

International human rights treaty commitments can therefore be analyzed as calculated decisions that depend on domestic preferences and institutions as well as external social and political conditions. Decisions are made not only in accordance with a government's preferences over the treaty content, but also taking into account the potential costs involved in incorporating the treaty into the domestic legal system. After all, treaties are legal structures. Just how they reverberate in a particular domestic legal context has a significant impact on the incentives governments have to ratify them.

The chapter is organized as follows. The first section demonstrates that something more than "costless commitment" must be involved in the treaty ratification process. Ratifications vary widely by region and by treaty, which makes homogenizing assertions of "costlessness" unsatisfying. The second section theorizes treaty commitment. Three explanations are considered: preferences, external influences, and domestic institutions. The main message of this chapter is that treaty commitments are a choice predicted by domestic rights preferences, subject to the constraints domestic institutions placed on ratification and domestic legal incorporation, with timing influenced marginally by external social pressures and strategic calculations for influencing regime understandings.

I. Cautious Commitments: The Six Core Human Rights Treaties

Governments make rational calculations governments when they make international human rights treaty commitments. These calculations acknowledge that ratification involves raising expectations of compliance. Yet two influential lines of argument suggest that governments cannot or do not anticipate compliance pressures once a commitment is made. One approach views treaties as essentially costless expressions of symbolic support. Another suggests that ratification is based on a misunderstanding of the eventual consequences. Neither of these approaches withstands theoretical or empirical scrutiny.

Consider first claims that treaty ratification is merely expressive and implies no serious expectations of compliance. Oona Hathaway present a recent and sophisticated version of this argument (Hathaway 2002). Although ratification is not an explicit part of her empirical analysis, her findings with respect to treaty compliance imply that governments ratify in order to enjoy the benefits of the "expressive" benefits that committing to international human rights treaties afford. These benefits include "rewards 'for positions rather than for effects;'" her theory is that governments "can and will take positions that they do not subsequently conform to and benefit from doing so." Because

human rights agreements are not effectively monitored, “the expressive benefits that countries gain from the act of joining the treaty will be enjoyed to some extent by all those who join, regardless of whether they actually comply with the treaty’s requirements.” The act of ratification will have nothing to do with preferences and expectation about performance, and everything to do with the potential benefits of signing an agreement that goes unmonitored. In this case, everyone signs on, regardless of their attitudes toward individual rights.

Hathaway’s argument has theoretical weaknesses that render it difficult to accept as formulated. It is true that there is room for slippage between the act of ratification and future compliance. As I will show in chapters 8 through 10, however, the evidence of treaty compliance is much better than Hathaway suggests. Moreover, the formal and informal accountability mechanisms I have outlined in Chapter 2 provide more scope for monitoring than Hathaway allows. But even if we differ over these matters, it is difficult to see how governments can enjoy much benefit from making disingenuous expressions through treaty ratification. At some point – and soon – the international community catches on. If rewards for position-taking exist at all, they are likely to be quite short lived. Indeed, there is likely to be a backlash against such disingenuousness when foreign governments, non-governmental organizations, and indeed local citizens realize the government had no intention of fulfilling its commitment. Not only will criticism of rights practices resume; the government will have a damaged reputation for denigrating an underlying principle of the international system, *pacta sunt servanda*.³

One of the most obvious empirical refutations of the simple assertion that committing to international human rights treaties is a costless form of symbolic expression is the fact that not all governments have signed these treaties, and that many have taken decades to do so. It took ten years for the requisite thirty-five countries to ratify the International Covenant on Civil and Political Rights (ICCPR) to bring it into force, and thirty-five years later, accession is still not universal.⁴ Ratification rates have varied significantly by treaty. Civil and political rights have been quite contentious and slow to gain adherents, while children’s rights have enjoyed swift and widespread support. Support for the Convention on the Elimination of Racial Discrimination was initially swift, and then tapered off toward the end of the decolonization period. The Convention Against Torture has gleaned the fewest adherents. Only slightly over half of the countries have ratified over the past twenty years. (See figures and accompanying text in Appendix 3.1 for statistical details.)

³ For a clear critique of this theoretical approach see (Goodman and Jinks 2003)

⁴ The US, for example, is strongly criticized by NGOs as a laggard with respect to international human rights treaty ratification (Roth 2000).

Clearly, not all governments are in a rush to express even “symbolic support” for the six core human rights treaties.

Moreover, while these six core conventions are universal in principle, there are clearly important regional differences in governments’ willingness to ratify them. Figure 3.1 shows that the European countries were, as of 2000, by far the most likely to commit to all six of these treaties. Figure 3.2 shows, additionally, that in the case of the ICCPR for example, Europe is the region most profoundly committed to this treaty, as indicated by a much greater tendency to accept optional obligations that give the treaty more potential enforceability.

[FIGURES 3.1 AND 3.1 ABOUT HERE]

Surprisingly, however, the eastern Europeans slightly edged out their counterparts in the west with respect to average ratification of the six treaties under consideration here, a possible indication of their eagerness to commit themselves to global rights practices upon their transition to democracy over the course of the 1990s.⁵ Governments in East Asia and the Pacific region are least enthusiastic about signing these treaties.⁶ By 2000, states in that region were committed, on average, to only three of the six conventions. They were especially reluctant to ratify the ICCPR and the CAT, though were no less likely than other regions to accept rights of the child. Nor are optional ICCPR obligations taken on by east and south African, central Asian, or middle eastern governments. These regional differences once again cast doubt on the claim that these treaties can be thought of homogeneously as mere expressive opportunities. If treaty ratification is basically costless, what explains the variations in ratification across treaties, over time, and across regions of the world?

A second approach is to assume that governments are naïve ratifiers. In this formulation, governments miscalculate the possibilities that they will be pressured to live up to their international treaty commitments at the time of ratification. As in the formulation above, they ratify international human rights treaties under the assumption that they will be costless, or nearly so. Thomas Risse and Kathryn Sikkink develop an argument to explain norm violation that provides an analogy for our naïve ratifier. Treaty ratification may simply be a “tactical concession” that governments make to domestic pressure groups. “When they make these minor concessions,” Risse and Sikkink write,

⁵ This observation comports with Andrew Moravcsik’s argument about transition governments’ use of human rights treaties as mechanisms to lock in recent democratic changes. (Moravcsik 2000).

⁶ Note also that Asia is the only region in the world that does not have a regional intergovernmental human rights regime (Muntarhorn 1998) p. 413.

“states almost uniformly underestimate the impact of these changes, and overestimate their own support among their population. They think the changes are less costly than they are, and they anticipate that they have greater control over international and domestic processes.” Unfortunately, governments get trapped in their own rhetoric, and are often surprised by the impact of an apparently small concession to human rights, such as ratifying a treaty. Risse and Sikkink argue that when entering the “tactical concession phase,” governments “cannot be expected to know the extent of pressures” they would face to substantially improve rights practices.⁷

Essentially this is an argument that commitments, or rights rhetoric more generally, can have unintended consequences for governments that make such tactical concessions. They don’t believe they will be held to their promises or to the tenor of their rhetoric. This formulation has some appeal in explaining why governments make treaty commitments and then find they are uncomfortably bound by their obligations. It also predicts that governments commit easily, but admits that treaty obligations – by virtue of the politics they unleash – may have more bite than theories of expressive symbolism allow. This formulation is only plausible, however, if we assume that governments don’t learn much by watching the effects of the tactical concessions of others. We can agree that governments do not always know the full implications of their actions. What is not clear, though, is why they would systematically and repeatedly, err on the side of *underestimating* pressure to reform given such a concession. Furthermore, this formulation would expect swifter ratifications of the earlier treaties (where naivety is more widespread), and more circumspection on the part of governments for later treaties, once the lessons of making tactical concessions had been learned. As we saw above, the empirical record is the reverse: more recent treaties (Rights of the Child, Elimination of Discrimination against Women) have precipitated swifter ratification rather than slower. More generally, however, it is difficult to remain naïve over the possible political and social consequences of pro-rights concessions given the dense network of transnational advocacy groups that have come to populate the social landscape of the past few decades.

For these reasons, it seems theoretically more satisfying to link treaty commitments with preferences. As a first cut, we should assume that governments tend to ratify treaties they (or their median voter) “like” and with which they expect to be able and willing to comply. A few governments might be outliers, but most know that publicly accepting an obligation will hold them up to scrutiny; they had thus better be willing for the most part to comply with the treaties they ratify. Of course, this preference-based selection process into the treaty regime will make it more difficult to

⁷ (Risse and Sikkink 1999:27)

infer a *causal* influence on compliance to the treaty commitment itself: it leaves our model potentially open to the criticism that parties to the treaty tend already to be good compliers, making it difficult to show what the treaty commitment adds on the margin.⁸ But as a theoretical matter we should expect governments who share the values contained in the treaty to commit most readily and most intensively. Governments that already have made credible human rights commitments through stable mechanisms of popular political participation;⁹ progressive governments with historically notable commitments to non-discrimination; civilian governments that eschew harsher military standards of justice; and regimes whose social and political values provided the generative text that gave rise to the core treaties in the first place should be expected to be among their earliest and most enthusiastic supporters.

Governments resist ratification, on the other hand, when the calculation of costs outweighs the benefits. These calculations are made on two levels: domestically and internationally. Domestically, governments that systematically abuse rights are likely to resist commitment. Some governments have preferences sufficiently close to the treaty content that they are swayed at the margins by ratifications of other governments. But even governments basically respectful of human rights will resist if the treaty is costly to incorporate into their domestic legal system. The following section provides a theory of treaty commitment that considers these calculations in turn.

II. A Theory of Legal Commitment

When governments commit themselves to international human rights treaties, they are making a statement to both a national audience and to the international community. Such commitments therefore reflect external pressures or expectations as well as domestic demands preferences, and constraints. International legal commitments differ from other forms of international policy position taking: they have the status of law. Domestically this may be relevant to the ability to enforce such agreements in national courts. Domestically *and* internationally, it raises expectations that the government's commitment is a solemn one by which it will make efforts to abide. *This is why we must theorize the commitment decision as anticipating the compliance problem.* The answer to Nigel Rodley's question, therefore, is that most governments do not expect that they will become

⁸ These methodological issues will be discussed in greater detail in Chapters 7-9.

⁹ Note however, that while governments holding power in democratic regimes are likely to find individual human rights fall less threatening than are authoritarian governments, democracy itself does not guarantee such rights. See for example (Medina)

the object of flagellation; they largely expect that they will be able to comply, sufficiently at least to avoid the flagellation to which Rodley alludes. The key, then, is to ask, (1) What makes a government willing to comply? (2) What factors ramp up the costs of remaining outside the regime? And (3) what institutions put countries on a faster track with respect to domestic legal integration of the commitment?

Domestic preferences and practices

It may be obvious, but is worth making explicit: one of the primary reasons governments commit themselves and their state institutions to international human rights treaties is because they support the content of those treaties. After all, governments are the principals that participate in the treaty-making process itself. They are likely to create legal institutions that they can, in the end, accept. To a certain extent, preferences over treaty contents may even be endogenous: certain scholars have stressed the role that persuasion plays in the treaty negotiating process, arguing that “jawboning” in the early phases of treaty development can have a positive impact on creating a consensus on the contents of the accord (Chayes and Chayes 1993; Chayes and Chayes 1995). In the end, however, a single text is open for signature, despite any remaining differences over its contents. In the end, governments have to decide whether they have in fact been persuaded to accept this text, and to not only sign, but to put their political capital on the line by seeking national ratification.

The willingness to do so will largely reflect the values and practices of each individual government.¹⁰ Treaty content will be quite close to the preferences of some governments (and the polities they govern), and threatening to others. It therefore should not be surprising that many states ratify fairly readily: they participated in the negotiation process and on the whole favor the treaty’s contents. Our theoretical point of departure should be that treaty commitments are not completely disingenuous: *most* governments ratify treaties because *most* support them, and anticipate they will be able and willing to comply with them under most circumstances. We should also expect that governments whose preferences closely match those of the treaty should be more enthusiastic to sign. They should ratify sooner, and accept optional obligations much more readily than governments who oppose the contents of the treaty. To use the language of spatial models, *the nearer the treaty is to a government’s ideal point, the more likely that government is to sign on.*

¹⁰ Cortell and Davis refer to the “domestic salience” of a particular norm as explaining its acceptance (Cortell and Davis 1996).

Since ratification anticipates compliance, some very simple expectations follow. Other factors being equal, we would expect governments with a deep, historic commitment to democratic governance to be among the earliest ratifiers of human rights agreements. After all, these treaties to a very large extent reflect the values of civil and political liberties, equality of opportunity, and individual rights upon which these systems are largely based. We might also expect that governments heading newly democratized systems would have a strong preference for international human rights treaties as a possible way to complement the domestic rule of law and “lock in” democratic gains, individual rights, and limited government. Indeed, some scholars have suggested that the dynamic concerns in newly transitioned democracies – the desire to constrain the behavior of future governments – should make them even more likely to commit to external human rights obligations than more established democratic regimes (Moravcsik 2000). For our purposes, whether historically established or newly transitioned, the clear expectation is that democratic governments will be at the forefront of support for the international human rights regime.¹¹ Ratification will be resisted by authoritarian regimes who oppose the contents of the treaties.

Some of the strongest influences on a government’s ideal conception of human rights and their place in modern society are cultural. The willingness to use law as a means to empower the individual vis-à-vis the government or society has roots in the Western European Enlightenment, and resonates most clearly and deeply within that cultural context. Modern international law itself has its root in regulating rulers united by Christendom; moreover, according to Kung and Moltman, while the values contained in human rights treaties “are not exclusively Christian or European... it was during the era of the Western Enlightenment that the formulations of human rights made their way into North American and European Constitutions, and it is through these constitutions that human rights have acquired world-wide recognition today.” (p. 120). If any governments find international human rights treaties palatable restrictions on their sovereignty, one would expect it to be those closely characterized by or link to western cultural mores and practices.

The point can perhaps best be made in its complementary form. From a range of non-western perspectives, human rights may have different meanings and international law as a regulatory form is presumptively hegemonic. One of the central debates in the philosophical literature on rights problematizes their content,¹² and offers alternative cultural conceptions on the relative balance of

¹¹ While this is a general expectation, it is easy to think of exceptions, such as the human rights practices of democratically elected Alberto Fujimori in Peru. See (Halperin 2000)

¹² There is a huge literature centered on the universality versus the cultural specificity of human rights. For arguments sympathetic to universality see (Booth and Trood 1999; Weston 1999) . For arguments sympathetic

rights and responsibilities, public and private spheres, and social versus individual perspectives. The critique of human rights treaties has come from many cultural quarters. Individual rights have never resonated in many Asian cultures as they have in the west (Cook 1993). Scholars of Confucianism emphasize equitable social relations over individual rights,¹³ Hindu scholars emphasize that rights exists in a context of duty which structures daily social interchanges;¹⁴ Buddhist scholars describe a philosophy of egoless “self-emptying” that is at odds in some ways with western rights conceptions.¹⁵ There is a large literature devoted to the distinctiveness of Islamic conceptions of human rights based on religious law (Sharia).¹⁶ Most broadly, some scholars argue that international human rights law reflects western biases that are rightfully resisted in much of the non-western world (Mutua 2000).

My point is not to stake a position on the general status of international human rights as “universal” but rather to posit that varying degrees of commitment to universality may give rise to treaty resistance. Cultural propinquity to the values expressed in these treaties is a strong reason for their ready acceptance. The closer the contents of the treaty to the ideals of the country in question, the easier it is to for a political coalition to form and to persuade the government to ratify.

External politics

The primary driver of the willingness to accept international human rights treaty commitments is likely to be the preferences and practices of the country in question. Nonetheless, treaty commitments are obligations states make to hold one another accountable for their actions. The international context in which these commitments are considered is also relevant to the decision to take on an obligation that compromises internal sovereignty as do these human rights accords. Governments tend to face something of a dilemma in this regard: on the one hand, most want to avoid the criticism of remaining outside of these arrangements. On the other hand, if they do join, they would like to have some influence over the interpretation of the obligations and expectations as to performance. Governments therefore have incentives to make treaty commitments conditional on

to cultural sensitivity see (Ibhawoh 2000; Renteln 1990). For a moderate view see the discussion in (Donnelly 1998).

¹³ See separate essays by Rosemont, DeBary, and Ames in (Rouner 1988)

¹⁴ See the essay by Carmen in (Rouner 1988).

¹⁵ See the essay by Unno in (Rouner 1988).

¹⁶ (Tibi 1994; Yamani 2000)

other governments doing so. To avoid criticism, governments tend passively to blend in with the policies of other comparable countries. To exert some influence over expectations, they have incentives actively to coordinate their commitments with like-minded governments. These two strategies – social camouflage and strategic coordination – are discussed below.

1. Social camouflage.

I have argued above that governments are primarily motivated to make international treaty commitments based on their willingness to comply with the obligations contained in those treaties. Governments for whom the obligations are straightforwardly consistent with their internally generated preferences are likely to be among the first movers in the move to ratify. Yet at the margins, their decisions influence the international context in which other governments decide to ratify a given agreement. After all, the international human rights issue area is ineluctably normative in its orientation. It is possible, as the scholarship noted above shows, to differ over the precise contents of these rights, and it is possible for a government to claim international enforcement of these rights compromises state sovereignty, but the idea that governments are required to respect a body of rules meant to guard and protect basic human dignity is difficult to view as anything other than good. The example of a few highly salient countries can have some impact on the policies of other governments who face the ratification decision.

The normative nature of human rights creates not only the opportunity for socialization, as much of the research to date has emphasized, but also incentives for governments to outwardly adopt policies that have been adopted by a relevant social group. In this highly normative context, governments first and foremost want to avoid criticism and political isolation. The best way to do this is to select policies that do not differ significantly from those of surrounding neighbors. Local ratification trends are important because the fewer the holdouts the more non-ratification is interpreted as resistance to the substance of the treaty in question. Local ratification density is also important because the fewer the holdouts, the more focused the pressure campaign to ratify is on the remaining few. On the other hand, non-ratification by a large number of countries creates only very diffuse pressure to ratify. Indeed, the expectation of public adherence may be so diffuse as to constitute no social or political pressure at all.

Social camouflage is a rational response to perceived social pressure in a normatively charged situation. It is rational because for governments who are nearly indifferent with respect to treaty ratification, it can lower the expected costs associated with social criticism. This is not because the

signing “fools” anyone about behavior. Rather it is because moving with the crowd reduces the increment of criticism that can be directed at any particular country.¹⁷ If NGOs have fixed resources and if peer governments are willing to expend a fixed amount of diplomatic effort to influence rights commitments, it is much better to be one of 50 countries that have not ratified a treaty rather than one of 5. In most cases, the benefits of socially-motivated ratification will not be great enough overcome domestically generated preferences, but at the margins it should play a positive role. The more some crucial reference group ratifies a particular treaty, the greater the pressure for any individual government to do so.¹⁸

Exactly what constitutes a “crucial reference group” is open to much debate.¹⁹ In the human rights area, I would argue that the region in which a country is situated is theoretically most relevant to the decision to make a treaty commitment. For one thing, conditions at the regional level foster the kind of cooperation that helps to keep group members in step with one another. Regional organizations – the European Union, the Organization of American States, for example – create the structures in which governments have repeat transactions over economic issues, security issues, and social issues. In some regions, dense and long-term interactions are encouraged through a multiplicity of overlapping regional associations of various kinds. These structures facilitate intensely shared common knowledge, which further improves the ability of states in the region to coordinate. In addition, the majority of non-governmental organizations are either regionally focused (Skjelsbaek 1971), or if they are global, have regional “desks” or “watches.”²⁰ If the social pressure is regionally organized, as it tends to be in the human rights area, regional camouflage is rational governmental behavior.

¹⁷ One possible analogy in the natural world is the phenomenon of fish traveling in schools. This is a highly successful strategy for protection from predators. Swimming in schools makes it difficult for a predator to concentrate on catching any particular fish; the predator’s effort is dissipated and the schooling fish have improved their chances of survival.

¹⁸ Research in sociology suggests that conformity-seeking behavior is strongest among middle status actors. See for example (Phillips and Zuckerman 2001) relating to practices of Silicon Valley firms.

¹⁹ See for example the discussion in (Simmons and Elkins 2004).

²⁰ Human Rights Watch is a quintessential example. See <http://www.hrw.org/>. The examples of course extend beyond the human rights area. For example, the International Campaign to Ban Landmines (ICBL) targets particular regions in their campaign for ratification of the landmine Treaty of 1997. In 2000, the focus was on Africa. See “Ratification Campaign: Urge African Countries to Ratify the Landmines Treaty by 1 March 2000!!!!” <http://www.icbl.org/action/africa1m2000.html> (accessed 23 December 2003). The Persian Gulf states as a group were targeted by their campaign for ratification in 2003. See, ‘Gulf States Urged to do more to Eradicate Landmines,’ Sharjah, 8 December 2003, ICBL website, <http://www.icbl.org/> (accessed 23 December 2003).

2. Strategic manipulation.

When a government does participate in a legal regime, it is reasonable to make every effort to influence the nature and expectations generated by the regime itself. Most of this effort can be expected to be put forth at the negotiating stage. But coming up with a legal document does not put an end to politicking over treaties' social meaning. The nature of international compromise sometimes necessitates signing a document that is far from a government's preferences in some areas. Incentives exist continually to exert influence on what the treaty means, and, most crucially, expectations of the international community about what it means to participate in and comply with the treaty regime.

Some insights into this problem can be drawn from principal-agent theory. Imagine in this case a situation in which many formally independent principals – individual nation states – cooperate to form a set of rules and in addition create an “agent”- for example, an oversight body such as those created by each one of the treaties we are concerned with here – to implement the system of rules they have created. To do so, the principals may delegate many sensitive tasks. For example, the oversight committee may need to collect information on activities of the individual principals on their collective behalf. It may indeed go further, and frame a collective response of some kind to the information it has collected. In many cases, the “agent” will be the only collective mechanism to interpret the nature of the rules the principals themselves have created, and may be a central focal point in developing more subjective expectations and understandings about what constitutes appropriate behavior under the obligations of the regime.

Thus, while the principals may be firmly in control of negotiating a contract among themselves, it is difficult to avoid delegating important aspects of regime development, interpretation, and administration to a collective agent. The problem faced by the individual principals is then how to control their collective agent. The problem is compounded by the fact that *multiple principals* have delegated interpretive and others powers to a *collective agent*. What can any single government do to influence the activities of the collective agent? After all, there is no reason to assume that all principals have precisely the same interests in the regime they have created or the same understanding of what its rules require. Yet individually, it will be difficult for any given government, except perhaps the very large and most influential, to exercise any control over the activities of the agent.

One strategy to increase the possibility of retaining some influence when multiple principals have delegated to a common collective agent is to coordinate control efforts among like-minded

principals. Whenever a principal (or a potential principal) takes a regime-relevant action, there are incentives to coordinate that activity with like-minded governments to strengthen the signal that activity sends to the agent and to other principals as well. Ratification is one such action. Ratification itself shapes expectations about what the treaty requires. This is accomplished explicitly through reservation-making. But it is also accomplished implicitly through the act of joining itself: ratification may mean not only that a government intends to be held to the rules, but that the rules themselves must be understood in the context of the practices of the ratifying country. Ratification announces, "I consider myself regime worthy," which in turn can have an impact on social expectations of what, in fact, the regime requires. The social impact is of course miniscule when an individual government takes such action alone. It is amplified to some extent when like-minded governments coordinate their regime acceptance. Ratifying independently, a government can have practically speaking no hope of influencing the interpretations and activities of the agent. The only hope for doing so will be in coordination with similar governments. Such coordination could also extend to other regime relevant activities, such as reservation making and reporting. Reservations will be viewed as "acceptable", even authoritative limitations on the contents of the treaty to the extent that a broader range of principals asserts a particular reserving right.²¹ Coordination on reporting schedules could also influence expectations about how often and how thoroughly a principal should be expected to check-in with the collective agent.

There are many instances in which governments have coordinated their diplomatic stance to influence understandings of international human rights treaties. Several Islamic countries have attempted to act collectively in an effort to legitimate alternative interpretations of their human rights obligations. The Cairo Declaration on Human Rights in Islam (1990) is one such example, making explicit the subordination of all human rights to Islamic Shari'a.²² Several Asian governments who wanted to make explicit their dissent from the dominant western interpretation of the International Covenant on Civil and Political Rights adopted the Asia-Pacific Declaration of Human Rights

²¹ Of course governments who oppose the reservation have an incentive and a legal right to object, as many (especially Western European) countries have done.

²² The Cairo Declaration on Human Rights in Islam, 5 August 1990; The Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), held in Cairo, Arab Republic of Egypt, from 9-14 Muharram 1411H (31 July to 5 August 1990). Location: http://www.humanrights.harvard.edu/documents/regionaldocs/cairo_dec.htm. Accessed 7 January 2004. For a skeptical and critical view of this declaration see (Mayer 1999).

(1993),²³ which implied that "particularities" may have to prevail over universality in interpreting obligations under international treaties (Muntarbhorn 1998).²⁴

The larger point is that most individual governments have practically no hope of influencing the international human rights regime individually. They have *marginally* more influence in concert with like-minded governments that share their values and aspirations. It is useful therefore to keep in mind the value there may be in coordinating a commitment to, reservations toward, and interaction with these treaty regimes as a way to influence, on the margins, the way the rules will be interpreted and subsequent behavioral expectations.

Domestic Institutions and the Commitment Decision

The discussion above focused on the motives governments may have to commit their state to international human rights agreements. I have argued that domestic preferences are important; that commitment can largely be understood as a willingness to be bound by the obligations contained in the treaty in question. I have also argued that there are motives that stem from external politics and pressures: the rational desire not to lag too far behind the practices of a social reference group and the effort to enhance one's regime influence by acting in concert with like-minded governments. These considerations provide the primary motives for making human rights treaty commitments.

Having a motive is not a sufficient condition for making a treaty commitment, however. It bears emphasizing that international treaties are *laws*. They have not only to be signed by diplomatic agents of the governments, but passed by whatever domestic ratification procedures are in place. Even more importantly, since they may become part of the domestic legal system, the judiciary may become an important player in the ultimate meaning of these treaty arrangements in the domestic context. Thus, even if a government were to want to enter into a treaty agreement with its peers internationally, the domestic legal integration costs of doing so have to be systematically considered.

²³ Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights; The Ministers and representatives of Asian States, meeting at Bangkok from 29 March to 2 April 1993, pursuant to General Assembly resolution 46/116 of 17 December 1991 in the context of preparations for the World Conference on Human Rights, (Bangkok Declaration). Location: <http://www.unhcr.ch/html/menu5/wcbangk.htm>. Accessed 6 January 2004.

²⁴ Paragraph 8 reads: “[the governments] Recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds;...”

In this section, I consider two kinds of legal integration costs: those stemming from executive-legislative relations, and those stemming from the power and independence of the judiciary.

1. Ratification hurdles: legislative veto players

The main domestic reason for making a treaty commitment is the expectation that it will be possible to comply at reasonable cost. But preferences at the level of general values are not the entire story. Governments take political risks whenever they face integrating an external treaty arrangement – especially one that potentially empowers their citizens against the state – into the domestic legal system. One of the problems governments face as they consider the ratification problem is the nature of the political risk and opposition they will face in making an external commitment that has implications for the *national* system of rules, customs, judicial decisions and statutes. Unlike international agreements that are non-binding, treaties may eventually be relevant to judicial outcomes in the countries that formally accept them. Admittedly, this is only likely to be true in countries in which the rule of law is generally taken seriously; nonetheless for a large number of countries it is essential to think through the implications of an international legal obligation on domestic law.

The first risk the government takes is the political one of domestic ratification. Treaties are neither binding internationally²⁵ nor are they a justiciable part of domestic law until they are ratified through whatever processes are locally legal and legitimate. These processes are a part of national law or custom,²⁶ and they vary in their stringency across countries. Ratification hurdles can be thought of as lying along a spectrum from the least to the most onerous. Governments face the fewest political risks when they closely control the ratification process. At the extreme, for example, ratification may be an executive prerogative, in which the government or head of state has the sole right to negotiate and to ratify any treaty arrangement. Such a procedure provides of course practically no check on the executive; ratification follows virtually automatically from the signing of the text. Somewhat more constraining on the executive are rules (sometimes customs) that provide

²⁵ However, according to the Vienna Convention on treaties, “A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty;...” (Article 18(a)). <http://fletcher.tufts.edu/multi/texts/BH538.txt>.

²⁶ Ratification processes are usually spelled out in a country’s constitution. In some cases, customs surrounding the ratification processes have developed outside of the constitutional context. The “Ponsonby Rules” practiced in several Westminster systems are an example. See Appendix 2. Note also that ratification is not a sufficient condition for domestic enforceability, as the discussion of monist and dualist systems below indicates.

for parliamentary debate, but no formal vote on the part of the legislative body. More constraining, and by far the most typical arrangement is the need for a simple majority vote in a unicameral legislature. Bicameral approval and supermajorities are higher hurdles still.

The nature of the domestic ratification rules should impact the celerity and intensity of treaty commitment. Higher hurdles pose the problem of more legislative veto players, which in turn raise the possibility that the government's externally negotiated agreement runs into domestic opposition. More significant legislative veto players may draw out the process of domestic persuasion; their anticipated opposition can deter a government from submitting a treaty to ratification at all. Certainly multiple veto players, as in the case of supermajorities or bicameral majority approval, can narrow the set of proposals that can be domestically ratified. Divided governments in presidential systems may have the same effect. In a bilateral negotiation, high domestic hurdles might strengthen the more constrained negotiator's hand in bargaining, but in a multilateral setting, even the largest players will have difficulty wielding the threat of a ratification veto to much effect. Thus, we would expect that the higher the ratification hurdle, the less likely a government will be to ratify an international human rights agreement.

2. Ex post legal integration costs: judicial players

Once ratified, the question remains of just where and how international rules fit into national legal systems.²⁷ There are a number of approaches to this issue. At the crudest level, there is a "monist" solution and a "dualist" one. The former views the international and domestic system as essentially one and the same. Monist systems are much more likely to give international law direct effect, without the need for parallel implementing legislation. Dualist systems, on the other hand, conceptualize the international and the domestic systems as essentially distinct and in need of some form of reconciliation before international obligations can be enforced in domestic courts. Thus, dualist systems are ones in which implementing legislation is typically required before a treaty can be enforced domestically.²⁸ Monist systems reflect a preference for the easy enforceability of externally negotiated rules into the domestic system. Dualist systems reflect a preference for a presumption against incorporation, unless and until the external obligation can be made consistent with local law.

²⁷ See generally (Jackson 1992)

²⁸ See the discussion in (Glendon, Osakwe, and Gordon 1982). These authors note that Britain's monist system has "...raised similar issues touching upon the sensitive question of English parliamentary sovereignty, including England's participation in GATT, the United Nations, and the European Convention on Human Rights." For a discussion of British dualism in the context of European law see (Kinley 1993)

This distinction between monist and dualist approaches roughly parallels another central divide between national legal systems; that between common law and civil law systems.²⁹ Common law countries are much more likely to attribute dualism to the international and domestic legal spheres. In Britain, for example, a treaty does not by accession or ratification alone become the law of the United Kingdom (Glendon, Osakwe, and Gordon 1982). Civil law systems are more likely to view these systems holistically. There are good reasons for these two broad “families” of legal systems to take a distinct approach to the international law.³⁰ Common law countries are distinctive in the central role they give to precedent, judge made law, and evolutionary legal change. The device of dualism is a way to protect the integrity of the common law system. We should therefore fully expect to observe a difference between common law and civil law systems in their willingness to ratify treaties, with the governments of common law systems behaving far more conservatively in this regard.

Common law systems provide clear incentives for governments to go slow when it comes to the problem of treaty ratification, especially when the substance of the treaty potentially alters the rights of individuals vis-à-vis their own government. Moreover, attempts to integrate international legal obligations that address this relationship give rise to opposing interests and risks that are not as likely to emerge in a civil law system. Common law systems involve higher adjustment costs (and potentially political opposition from those who will have to pay these costs), irreversibility costs, and uncertainty costs when international human rights treaties are integrated into the domestic legal system. The existence of these costs is one reason the dualist theory – calling for specific implementing legislation – was developed largely in the common law setting.

Adjustment costs. The first reason common law systems tend to be dualist – and to take a cautious approach to international legal obligations – is that treaties involve greater adjustment costs than is the case in civil law systems. One of the hallmarks of common law systems is the role they give to judge-made law in the form of precedent (Cappalli 1997). Every primer in comparative law

²⁹ A legal tradition refers less to the set of substantive rules and more to “a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected, and taught.” (David and Brierley 1978; Merryman 1969; Tetley 1999/2000). There is also a literature that largely dismisses the distinction between common and civil law systems. See for example (Mattei and Pardolesi 1991)

³⁰ Christensen notes the importance of the cultural orientation between common law and civil law countries in his study of the International Criminal Court: “between [those] two systems, cultural, economic, and political ‘factors have created individuals with diverse attitudes and very distinct points of view about the legal norms that should regulate our conduct.’ (Christensen 2001/2002) p. 394.

highlights this distinction between civil versus common law systems, though there is disagreement over its significance.³¹ Some scholars trace the distinction to differences in the two systems between the role of the judge and of the legislature; in civil law systems, they argue, there is a strong assumption that the legislative body makes the law and the judges apply it (Tetley 1999/2000). Some scholars have argued that the distinction between these legal systems has eroded over time, but this argument may apply more to Britain itself than to its former colonies.³²

There are reasons to expect that both the bench and the bar may resist the imposition of external treaties, the interpretation of which will at least partially depend on external decisions. Common law judges and lawyers, relative to their civil law counterparts, have developed very specific assets in the interpretation of their common law precedents (Cappalli 1998). The civil law, on the other hand, tends to be more transparent, easy to research, and more accessible than the more complicated system of precedents built up under a common law system (Adriaansen 1998; David and Brierley 1978). Glendon claims that "The *Code civil des francais* was meant to be read and understood by the citizen" (Glendon, Osakwe, and Gordon 1982). The consequence, some scholars have noted, is that civil law jurists and lawyers are much more likely to be generalists, while their common law counterparts are more likely to be specialists. Actors with highly specific legal skills grounded in extant precedent are likely to resist the imposition of externally formulated rules into the local system of rules.

Common law jurists are much more likely to find that importing an externally negotiated rule, especially one that derives from external political compromise rather than internal judicial evolution, is costly. Adjustment costs are especially high for a common law system because it is not clear a priori how the imported rule will impact the organically grown system of local precedent. On the one hand, according to a major comparative law scholar, "The laws of the Romano-Germanic [civil law] family are still founded on principles...they have the advantage of simplicity and clarity..." On the other, "In [common law] countries where the law is judicially created, there is sometimes hesitation about abolishing or changing a rule because the consequences in relation to the whole of the law are not clear. In countries of the Romano-Germanic system, such reforms are more easily

³¹ Glendon et. al., for example, note that civil law countries use precedent, too; it is a matter of emphasis (Glendon, Osakwe, and Gordon 1982)

³² Tetley (1999/2000) notes that: "Since most legal systems duplicated the law administered in another jurisdiction (e.g. former British colonies duplicated British law), major legal traditions tend to be associated with the original legal system as it then existed rather than as it exists today."

accepted because it is more evident which rules will be affected and which unchanged." (David and Brierley 1978).

These adjustment costs will be born disproportionately by the bar and the bench in common law systems. Empirical studies of treaty incorporation have witnessed these adjustment costs at work: they have found that common law countries are much more likely than are civil law countries to undergo extensive compatibility studies to ascertain the degree of concordance between the treaty obligation and the local body of (largely case-based) law (Heyns and Viljoen 2001) p. 497. In the European context, there is some evidence that Britain has been more affected by decisions coming out of Strasbourg than any other country (Drinan 2001) p. 108). Because of the much greater difficulty in reconciling local precedent with externally negotiated rules, we would expect judges and lawyers to be a source of resistance to international human rights treaties to a greater extent in common law than in civil law countries.

Uncertainty Costs. From a government's point of view, incorporating a treaty into the domestic system of individual rights vis-à-vis public authority creates more uncertainty than is the case in the civil law system. The greater certainty in the civil law system flows from the more constrained role of the judiciary in rule interpretation,³³ the relative independence and power of judges in the common law setting is accompanied by a much broader interpretive role. As a result, the government in a common law setting faces a wider range of possible treaty effects; a greater range of interpretative possibilities from a highly independent judiciary makes it more difficult to know in advance how the treaty will be interpreted. True, common law judges are bound by precedent, but importing an external obligation raises questions of interpretation that a government can less easily predict. Add to this the greater independence and prestige of the judiciary in a common law system, and it is clearly possible that governments may balk at committing to new rights obligations the consequences of which are less predictable.

The uncertainty costs described here arise largely from the distinctive roles of judges in the common and civil law traditions. In the civil law tradition, the legislated code controls judicial action, which was initially conceived as mechanistic application of law to fact (Tunc 1976). The French Civil Code is explicit that judges are forbidden to lay down general and regulatory rules, and with only a few exceptions it has its equivalent in all the law of the Romano-Germanic family (David and Brierley 1978). Continental civil law systems hold in common the underlying principle that the

³³ Mirow argues for example that civil law has historically been used to centralize in Latin America, creating greater governmental judicial dependence (Mirow 2000).

judge should not play the role of legislator. This narrow conception of the judge's role is especially strong in France (Glendon, Osakwe, and Gordon 1982), but is broadly characteristic of a civil law approach (David and Brierley 1978). Judges in civil law systems tend to be educated in government civil service institutions, reinforcing their narrow legal discretion and reducing their independence from executive influence.³⁴ In the civil law system the judge is a (relatively) low status civil servant without independent authority to create legal rules (Mahoney 2001).

The contrast with practices in English common law systems is informative. First, it is evident that judges in a common law system are much more systematically involved in lawmaking through their much broader powers of interpretation.³⁵ Furthermore, the relative prestige and independence of the judiciary in the common law system removes any obvious means of disciplining judicial decision-making. The result is a broader range of possible interpretations of a particular rule, at least until litigation and the development of precedent encourage rulings to converge. From the point of view of a government deciding whether to push for treaty ratification, the uncertainty over treaty interpretation is much greater in a common law system. The independence and interpretive powers of the judiciary are much more likely to make that institution a relevant player in deciding exactly the legal meaning of the treaty in the local context. In effect, a common law government faces a much greater *ex ante* dispersion of possible treaty interpretations in a common law system; by comparison the dispersion of possible interpretations will be more "spiked", or closely clustered in a civil law system. The power of the judiciary to interpret the nature of the rights obligation generates uncertainty for common law governments and may create incentives to resist or delay treaty ratification.

Irreversibility Costs. The final kind of costs that tends to differ systematically between civil and common law systems have to do with rule irreversibility and enforceability. Several structural features of the common law system tend to make it more difficult than in a civil law system for the government to escape the obligations in domestic law that the treaty envisions. First is the greater structural independence of the judiciary in most common law systems, where judges tend to be independent policymakers occupying a high-status office. Second is the competence of courts to

³⁴ This tradition of a judiciary narrowly focused on law application is reinforced by the way judges are trained and appointed in most civil law systems (David and Brierley 1978).

³⁵ The presence of interest groups that attempt to influence judicial decision making are arguably endogenous consequences of judicial independence. See (Landes and Posner 1975).

review administrative actions, and to hold governments accountable for their infractions of constitutional or treaty based human rights.

Compared to common law systems, courts in civil law systems are much less able systematically to check government actions and policies. Mahoney writes that "The fundamental structural distinction between the common law and civil law lies in the judiciary's greater power to act as a check on executive and legislative action in a common-law system" (Mahoney 2001). In some civil law systems, ordinary courts typically have no power to review government action. France's administrative courts do have this power, but these courts are closely supervised by the executive branch of government. Mahoney notes that administrative court judges "are trained at the administrative schools alongside the future civil servants whose decisions they will oversee." (Mahoney 2001:512). In practice, he notes that "in a civil-law system...the courts intrude as little as possible in the administration's pursuit of the public interest" (Mahoney 2001:512). Other scholars note the relatively weak ability of courts in civil law systems to review the constitutionality of policies taken by their governments (Glendon, Osakwe, and Gordon 1982:59).³⁶

The structural ability of judges to provide a stronger check on government power is manifest in other ways as well. Studies have demonstrated that in civil law countries Supreme Court judge tenure is significantly shorter than in common law countries. One study found that all countries of English legal origin had life-long tenure for supreme court judges, while fewer than three-quarter of those of French legal origin had (La Porta et al. 2002:14). The importance of precedents in the common law system is also a way for judges to guard their independence from government interference.³⁷ Indeed, were a common law government to want to void its obligations under a particular interpretation of a human rights treaty simply by terminating its adherence, to the extent that it has left its footprint in domestic legal precedent, it may be difficult to do so.

The upshot of these structural differences in the ability of courts to check central government actions is that the contents of a human rights treaty is much more likely to be enforced vis-à-vis the government in a common law than in a civil law country. Independent and powerful judiciaries are

³⁶ "...in France...courts are not competent to sanction violations of individual constitutional rights..." [which is not true in Germany]. "Despite the independence and prestige of the Council of State, some French observers have expressed concern that a court which is, at least theoretically, part of the executive branch has the exclusive power to review the legality or constitutionality of the acts of the executive." (Glendon, Osakwe, and Gordon 1982:62)

³⁷ (La Porta et al. 2002:9) "Because the power of precedent restricts the ability of the government to influence judges, it too, serves as a useful measure of judicial independence." (p. 9). "However, judges in civil law countries do pay attention to precedent (Glendon et al 1982, p. 132-134; Damaska 1986 p. 33)." (p. 9).

important players in the domestic realization of human rights. To the extent that governments can neither predict nor easily avoid enforcement of judicial determinations of their obligations under treaty law, they will be especially hesitant to ratify an international human rights treaty.³⁸

III. Conclusions

This chapter has presented two sets of motives for committing to international human rights treaties. The primary motive is sympathy with the treaties' content. Those who sign for the most part expect they will be able to comply with at least some of the important obligations contained in a treaty to which they have committed their country. I have argued that government commit to these treaties anticipating the issues they will encounter in complying with them. Given the growth in accountability structures discussed in Chapter 2, this is the only theoretically satisfying starting point for a theory of legal commitment. There are few benefits to be had from signing a treaty with which intends systematically to abrogate, and they are largely ephemeral. Furthermore, decades of experience should prevent a systematic miscalculation of what kinds of political and legal forces are likely to be unleashed that a theory based on unintended consequences hardly rings true as a general approach to treaty commitment. We should expect governments that respect a broad range of rights to be the earliest and most enthusiastic supporters of human rights treaties. Liberal regimes close to the cultural heart of these treaties are expected to lead the way in their ratification.

A few governments may be nudged toward ratification by external social or political pressures, but only at the margins of their decision making. There may be cases in which the "distance" between a government's ideal point and the treaty content is sufficiently close that the momentum of ratification among near neighbors has an effect on a government's willingness to commit itself. I provided two reasons for thinking neighborhood effects might be in play in the human rights area. The first is the social camouflage provided by staying with the pack in the absence of strong anti-treaty preferences. This strategy allows a government to retain flexibility by staying outside the regime as long as criticism for doing so is likely to be highly dispersed, but allows the government to avoid the more focused criticism heaped upon laggards. Under some preference

³⁸ Some research suggests that – analogous to the case of making investment decisions – there is value to delaying law adoption, especially when there is a high degree of uncertainty and problems associated with irreversibility (Parisi, Fon, and Ghei 2001)

configurations, then, conditional ratification is the most rational strategy available. The second reason for neighbor influences flows from active coordination efforts. The best way to influence expectations regarding the human rights regime is to coordinate behavior with other like-minded governments. Treaty ratification, reservation making, and various participatory moves will send a clearer signal to the international community about how the treaty should be understood if they are taken cooperatively with like-minded governments.

But even if a government is motivated to commit, the fact that we are talking about a legal instrument creates domestic constraints on the swift ability to do so. Ratification sometimes involves legislative approval, over which executives in different countries have varying degrees of control. Furthermore, for the government, the most immediate problem is not how the international community will enforce the agreement, but how it may play out within the domestic legal system. In common law systems, I have argued legal integration of treaties involves greater adjustment costs, uncertainty over interpretation, and the possibility of more stringent enforcement than in civil law systems. Judicial players typically cannot block ratification, but they may have a significant impact on a government's willingness to translate its signature into a truly binding obligation. For a government in a common law system, ratifying an international human rights treaty is anything but a costless symbolic act. The following chapter provides some evidence in support of these theoretical claims.

Appendix 3.1: Kaplan-Meier Survival Curves Ratification of Six Core Human Rights Treaties

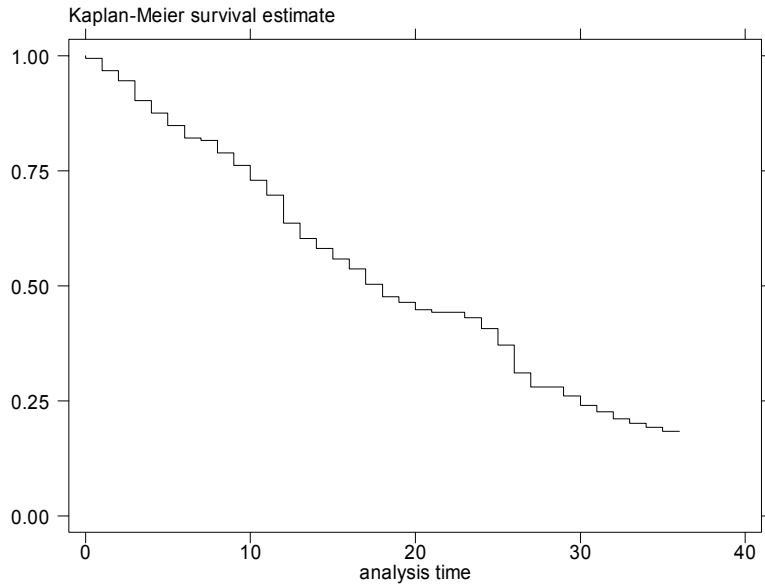
The figures below sketch out the “baseline rate” at which governments have ratified the six core treaties. The baseline rate (also known as the Kaplan Meier function) refers to the probability that any government will decide to ratify the convention, given that it has not already done so. The two international covenants have clearly taken decades to glean significant international commitment. Figure 3.1a indicates that there is about a 25 per cent chance of ratifying these treaties in the first 9-10 years from the date they were opened for signature,³⁹ a 50 per cent chance within 17-18 years, and about a 75 per cent chance after about 40 years. Clearly, for many countries, there has been no rush to make a legal commitment to the two original covenants. The other four core conventions provide interesting contrasts.

The racial convention attracted swift and early support (there was an estimated baseline rate of commitment off 25% in its first four years), but ratifications tapered off once colonial rule was replaced by black rule in the new African states (to achieve a baseline ratification rate of 75% took an estimated 27 years). The torture convention has had the most difficult time attracting adherents. While it has been open for signature and ratification since 1984, the gentle slope of the curve indicates a reluctance to commit, and to this day there is still not an estimated ratification rate of 75%. On the other hand, the rights of women and especially children have been quickly accepted by a large number of states. In the case of the CRC, within a year the estimated “risk” ratification was already 25%, and within four short years, it had reached 75%.⁴⁰ These differences in acceptance rates may have to do with the content of the treaties themselves, or they may have to do with the varying points in “world time” in which they were introduced. With the exception of the CAT, treaties introduced later in time have gleaned adherents much more rapidly.

³⁹ Or from the independence of the country in question, if this occurred after 1966.

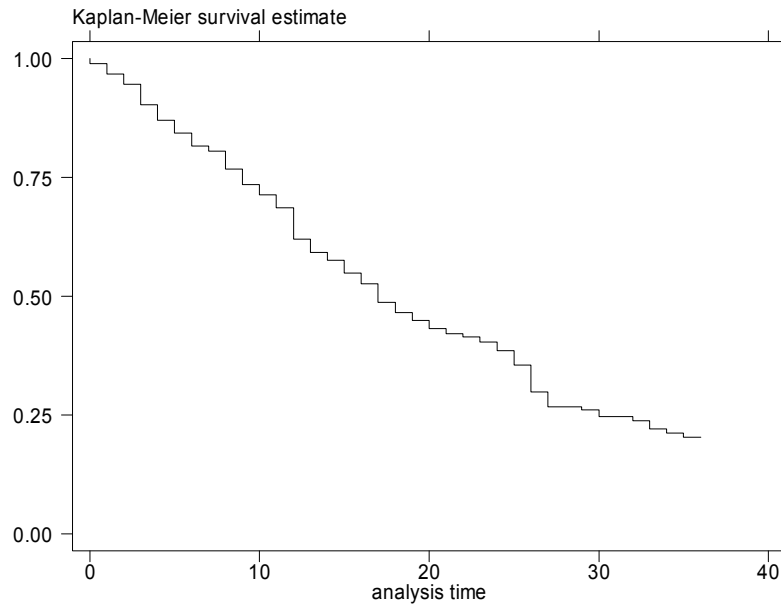
⁴⁰ Despite rapid ratification, many countries entered significant reservations to the CRC. (Schabas 1996)

a. ICCPR:



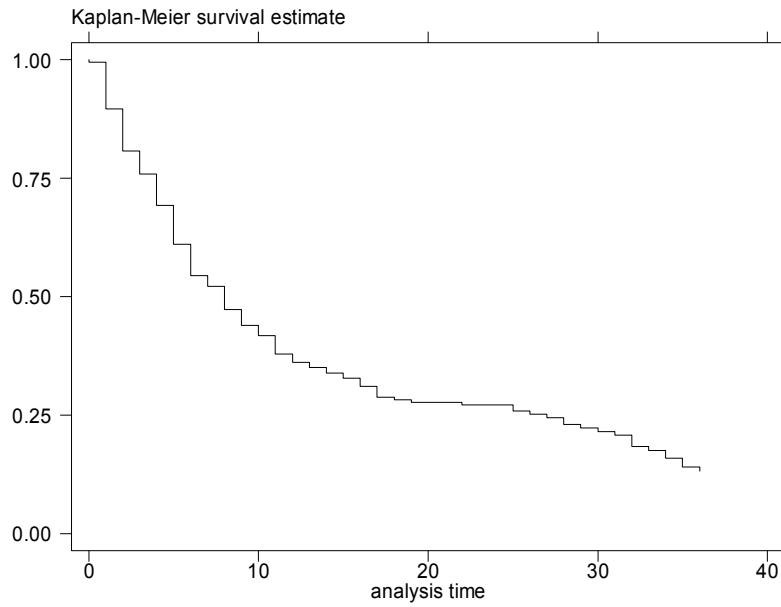
Time at risk:	Incidence rate:	Number of countries:	Survival time:		
			25%	50%	75%
3425.01	.041	185	10	18	30

b. ICESCR:



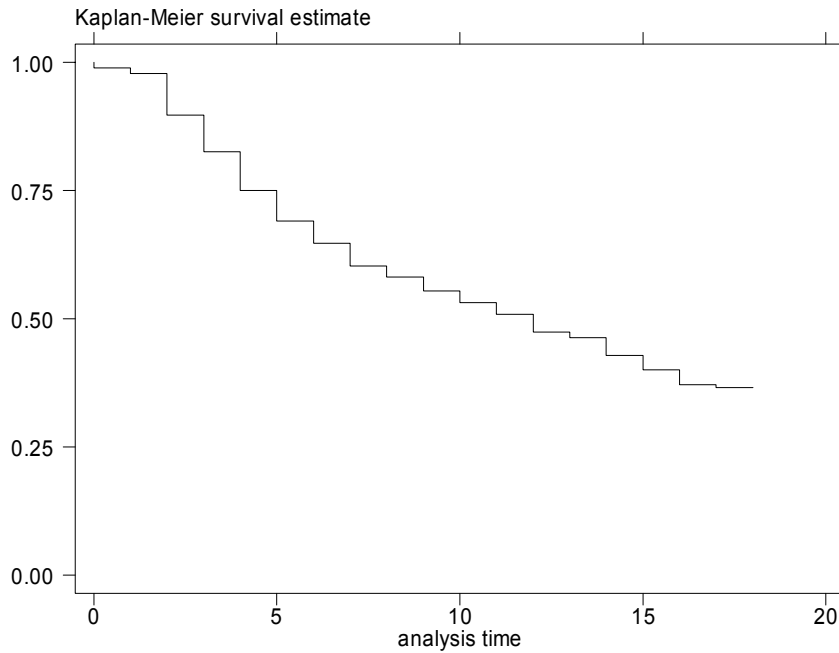
Time at risk:	Incidence rate:	Number of countries:	Survival time:		
			25%	50%	75%
3357.02	.041	185	9	17	30

c. CERD:



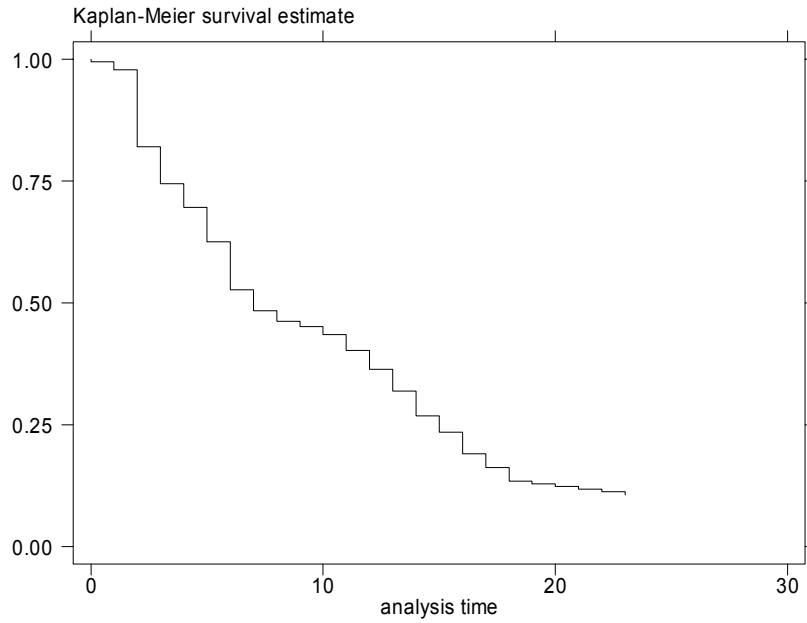
Time at risk:	Incidence rate:	Number of countries:	Survival time:		
			25%	50%	75%
2341.01	.064	182	4	8	27

d. CAT:



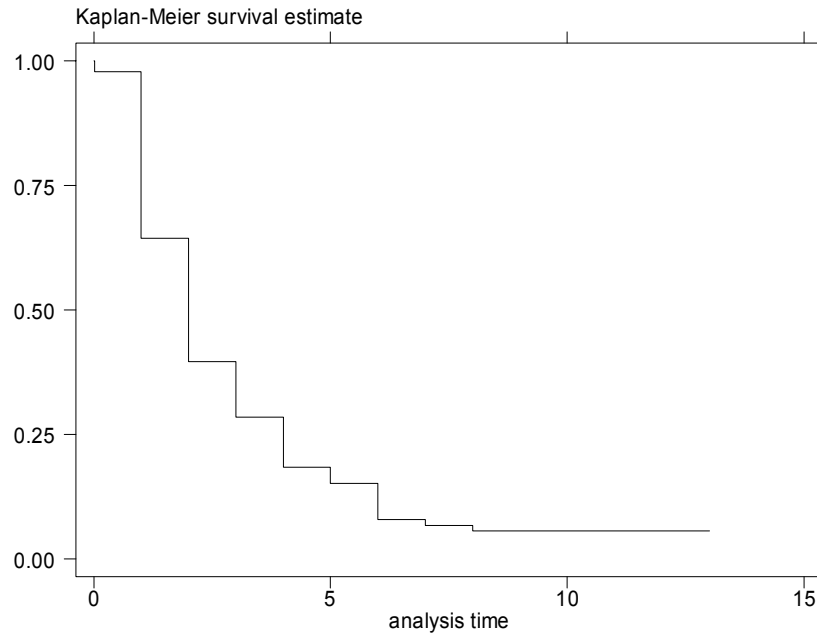
Time at risk:	Incidence rate:	Number of countries:	Survival time:		
			25%	50%	75%
1995.02	.058	185	5	12	.

e. CEDAW:



Time at risk:	Incidence rate:	Number of countries:	Survival time:		
			25%	50%	75%
1785.01	.091316	184	3	7	15

f. CRC:



Time at risk:	Incidence rate:	Number of countries:	Survival time:		
			25%	50%	75%
556.05	.309	186	1	2	4

Figure 3.1:

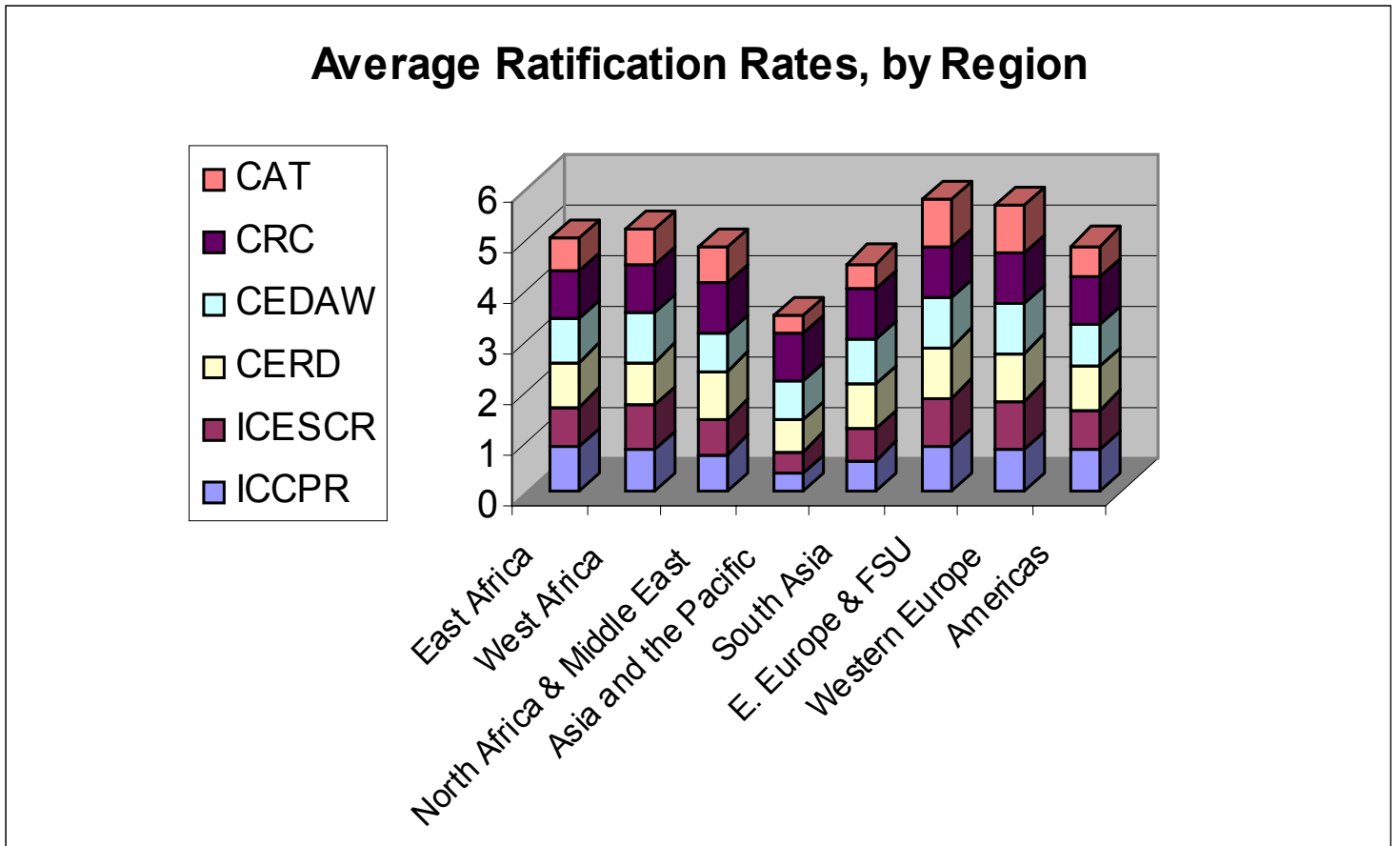
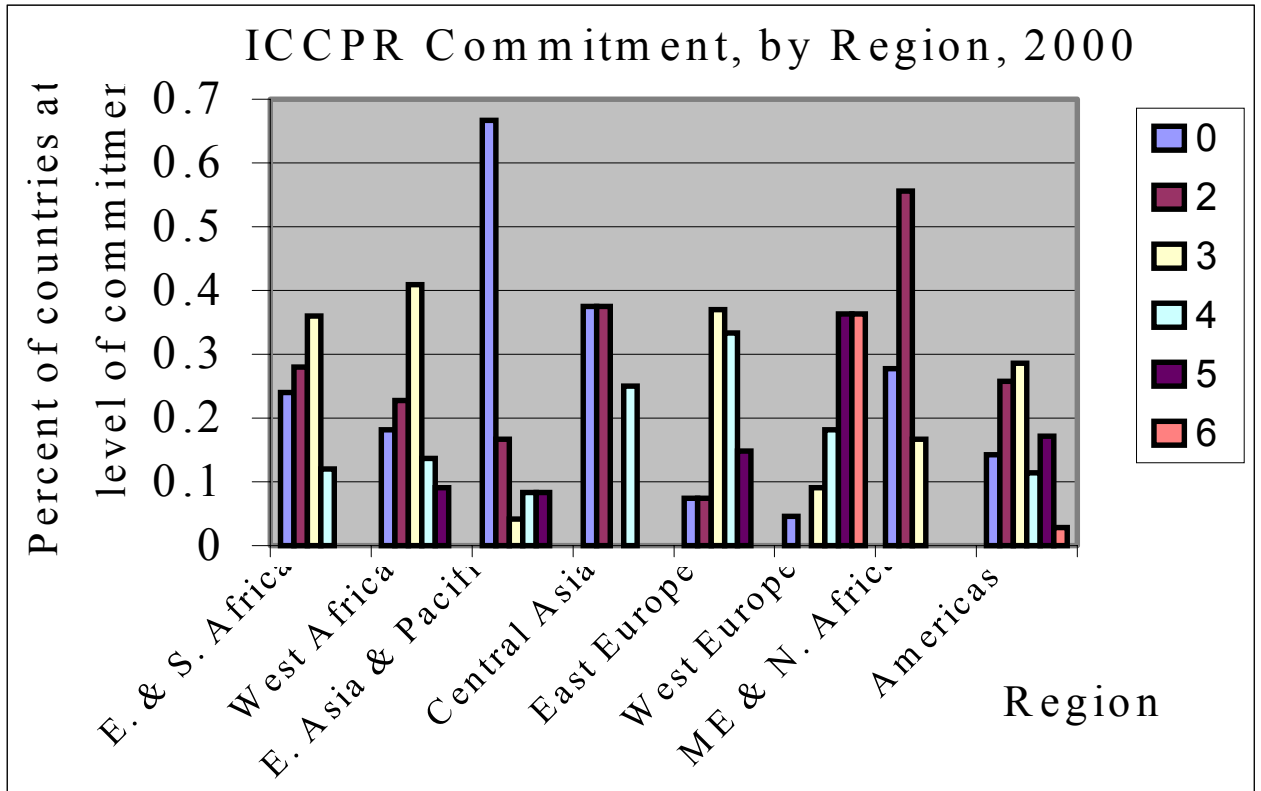


Figure 3.2:



ICCPR (International Covenant on Civil and Political Rights. United Nations General Assembly Resolution 2200A [XXI]. 16 December 1966.)

0 = no action taken

1 = signature only

2 = ratification or accession only

with additional points added for:

- signature on Optional Protocol I, recognizing “the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol....”
- ratification of Optional Protocol I
- ratification of Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (Adopted by General Assembly resolution 44/128 of 15 Dec. 1989.)
- Article 41 declaration recognizing “the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration....”

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International Human Rights: Law, Politics, and Accountability
(tentative title)

Chapter 10:

Women's Equality: Education, Work and Reproduction

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Please note: This paper is a chapter in a broader project on commitment to and compliance with international human rights treaties. The first half of the project theorizes and explores empirically the question of why governments commit themselves to such treaties. It focuses on ratification, reservations, and reporting as indicators of commitment to a treaty regime. The second half of the project explores whether these treaties influence governmental behavior. It discusses civil rights, torture and detention, women's rights, and the issue of child soldiers.

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Chapter 10: Women's Equality: Education, Work and Reproduction

The previous chapters have shown that international legal commitments can have an important effect on the propensity of governments to keep their promises with respect to two very sensitive political and civil rights issues: the use of torture and the provision of a fair trial. This chapter turns to a problem that is often rooted quite deeply in the local culture: the non-discriminatory treatment of women citizens. Attitudes toward women often frustrate the efforts of the most sincere governments to improve significantly their rights chances. But as we shall see, in the context of growing accountability, an international legal commitment plays an important role in helping to change these attitudes sufficiently for women's prospects to improve. When governments publicly announce that they are bound by the contents of treaty arrangements, this enhances the effects of the accountability mechanisms that are in place. Treaties have the effect of focusing expectations of both domestic and transnational constituencies. That governments have committed themselves to protect the rights of women is much to the good.

This chapter proceeds as follows. The first section discusses the situation of women in recent decades. Severe inequalities have traditionally existed and continue to exist in much of the world between women and men. Differences in legal rights, family rights, nationality rights, and access to the means of self-betterment, employment, health care, and education, have plagued the prospects for women around the world. The Convention for the Elimination of Discrimination Against Women (CEDAW) is the world's premiere legal response to these inequalities. Enforcement of this agreement has been highly decentralized, through international nongovernmental women's advocacy groups and domestic audiences who demand that their government take their treaty commitment seriously. The second section discusses the data and methods I will use to demonstrate this point. The third section provides evidence that international commitments improve the treatment of women in three fundamental ways: it tends to improve their access to literacy training and to employment opportunities. The findings are remarkably robust: international legal commitments improve the power of accountability mechanisms to demand and elicit social change. Once again, international law plays a crucial supporting role for those who would hold government to their word.

I. Women's Rights and International Law

By almost any measure, women's rights globally have largely been subordinated to those of men. Back in 1979, the year that the CEDAW was open for signature, a Report on the State of the World's Women found that, "Women and girls constitute one-half of the world's population, one-third of its labor force. They perform two-thirds of the world's work hours. They earn, by estimate, only one-tenth of the world's income. They own less than one-hundredth of the world's property. World-wide, women attend school half as often as men. Two out of every three illiterates are female" (Langley 1988). By the turn of the millennium, women were still largely in dire straits compared to men. According to the World Health Organization, 70% of the 1.2 billion people living in poverty are female. There are twice as many women as men among the world's 900 million illiterates, and the growth in female illiteracy seems to be outstripping that of men. Millions of women world wide lack protection against unwanted pregnancies: taking into account unmarried women and women living in the former Soviet Union, 122.7 million women have an "unmet need" for contraception (Ross and Winfrey 2002). Economically, women continue to face a clear gender disadvantage: on average, women are paid 30-40% less than men for comparable work. In a number of ways, then, women face important disadvantages globally.⁴¹

The role of international law

Attempts have been made to address these inequalities multilateral legal instruments. The rights outlined in the founding human rights agreements were explicitly intended to apply equally to men and women.⁴² For a number of reasons that have been the subject of much feminist analysis,⁴³ women's rights had for many years not been seen as central to the main body of human rights broadly understood. The CEDAW⁴⁴ was the first broad-based legal response, and in its wake, interest in women's rights picked up over the course of the 1990s. Women's rights were on the agenda of the United Nations World Conference on Human Rights held in Vienna in 1993, and were mentioned

⁴¹ World Health Organization, Fact Sheet No. 251, June 2000. <http://www.who.int/inf-fs/en/fact251.html> (accessed 8 July 2003)

⁴² A general right of non-discrimination on the basis of sex is guaranteed in the UNDHR in Article 2, in Article 1(3) of the UN Charter, Article 2(1) of the ICCPR, and Article 2(2) of the ICESCR.

⁴³ See for example (Charlesworth, Chinkin, and Wright 1991)

⁴⁴ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979; entry into force 3 September 1981.

fairly prominently in the “Declaration and Programme of Action” adopted at that conference.⁴⁵ In 1994, a Special Rapporteur on Violence Against Women was appointed by the UN Commission on Human Rights,⁴⁶ belatedly taking a place alongside similar machinery to address such problems as disappearances freedom of religion.⁴⁷ That year, the United Nations General Assembly passed the Declaration on the Elimination of Violence against Women.⁴⁸ World attention on women’s issues reached its apex at the 1995 World Conference on Women, sponsored by the United Nations, and held in Beijing.⁴⁹

Still, resistance to explicit international legal machinery to support women’s rights is fairly widespread. Despite its swift entry into force (the CEDAW was opened for signature in 1979 and entered into force two years later), reservations have been broad and widespread. The most common subject of reservation has been against jurisdiction by the International Court of Justice, but a number of parties – particularly Islamic countries – have placed exceptionally broad reservations on their acceptance of CEDAW obligations (Clark 1991). The Women’s Convention came into force with a comparatively weak monitoring committee. The stature and powers of the committee were addressed in 1999 by the adoption by the UN Commission on the Status of Women of a no-reservations-allowed Optional Protocol giving individuals and groups of individuals a right to complain about their government’s violation of the treaty provisions.⁵⁰ The Optional Protocol entered into force in December 2000.

⁴⁵ The Declaration and Programme of Action (1993) can be accessed at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument) (accessed 8 July 2003). See especially Part A, sections 18, 28-30; Part B, sections 36-44, and Part D section 81.

⁴⁶ 1994/45. Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women, 56th meeting, 4 March 1994; See paragraph 6. Resolution creating the Special Rapporteur for Violence Against Women can be access at: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/2848af408d01ec0ac1256609004e770b/34a30d007de68b3d8025672e005b0410?OpenDocument#45> (Accessed 8 Jul 2003).

⁴⁷ For a recent list of special rapporteurs on human rights set up under the United Nations Human Rights Commission, see <http://www.unhchr.ch/html/menu2/7/b/tm.htm>. (Accessed 29 July 2003)

⁴⁸ General Assembly resolution 48/104 of 20 December 1993, A/RES/48/104, 23 February 1994. The Declaration can be accessed at: [http://193.194.138.190/huridocda/huridoca.nsf/\(Symbol\)/A.RES.48.104.En?Opendocument](http://193.194.138.190/huridocda/huridoca.nsf/(Symbol)/A.RES.48.104.En?Opendocument) (accessed 8 July 2003).

⁴⁹ Documents related to the 1995 Women’s conference can be accessed at <http://www.un.org/womenwatch/confer/beijing/reports/plateng.htm> (accessed 8 July 2003).

⁵⁰ CEDAW, Optional Protocol, Article 17. The Optional protocol to the CEDAW can be accessed at http://www.bayefsky.com/treaties/cedaw_opt.php

The Women's convention is widely viewed as "the starting point for delivery of justice for women" (p. 124).(Freeman and Fraser 1994). It is quite an ambitious convention. Not only does it purport to provide women with equal political and civil rights; it was apparently intended to eliminate *all forms* of discrimination against women. Article 1 is quite sweeping. It defines discrimination as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."⁵¹ All measures that have the effect of discriminating against women are forbidden – even if governments did not intend them to be.⁵² The treaty even obligates governments 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 stereotyped roles for men and women;...”⁵³

For all of the legal machinery that has been developed over the past two decades to address women’s issues, we know very little about their effects on the actual realization of women’s rights. The research has been limited. Dorothy Stetson has attempted to try and explain governments’ policies toward women using scores on a “feminist policy scale” that addresses laws relating to abortion, woman battery, rape, and prostitution (Stetson 1995). She found in bivariate tests for a cross-section of 23 European countries (plus the United States) in the 1980s that acceptance of human rights documents was one of only four predictors to be correlated with higher scores on the scale.⁵⁴ Appropriately, nowhere does she claim a *causal* interpretation running from legal commitments to feminist policies; indeed, the causal relationship could just as easily run in the opposite direction. In a more elaborately controlled study that looked specifically at changes over time, Oona Hathaway found no statistically significant relationship between ratification of the Women’s Political Rights Convention (1954)⁵⁵ and the proportion of males in national legislatures (Hathaway 2002). Once

⁵¹ CEDAW, Article 1.

⁵² CEDAW Article 2.

⁵³ CEDAW, Article 5(a).

⁵⁴ Acceptance of human rights documents coded for ratification of the ICCPR, the ICCPR’s Optional Protocol I, ICESCR, and acceptance of jurisdiction of the International Court of Justice.

⁵⁵ Convention on the Political Rights of Women, opened for signature March 1953, 27 U.S.T. 1909, 193 U.N.T.S. 135 (entered into force July 1987).

again, the scant literature has barely addressed the nexus between international legal obligation and rights outcomes.⁵⁶ The studies that have been done to date remain inconclusive.

What rights? Education, Reproductive Health, and Employment

No study to date has looked at the effects of the global legal centerpiece for guaranteeing women's rights, the CEDAW itself. A central difficulty is that the CEDAW contains broad obligations that are difficult precisely to define and even more difficult for governments effectively to guarantee. My strategy is to choose some of the most basic of rights, which are mentioned in a most explicit form, and to test the proposition that governments who have committed themselves to the CEDAW will make an effort to design policies to address the exercise of these rights. The rights examined in this chapter relate to government policies with respect to girls' education, policies to enhance reproductive autonomy, and policies to enhance women's participation in the work place. The evidence suggests that in at least two cases, committing to the CEDAW has had some effect on spurring governments to take women's rights seriously.

II. Educational opportunity

Education is fundamental to a whole range of other rights that the CEDAW envisions women should equitably enjoy. Access to education influences the exercise of a broad range of social and political rights, and is one of the primary determinants of the gender gap more generally (Wils and Goujon 1998).⁵⁷ The level of education of a mother can have severe consequences her own and for the well-being of her family. In 20 developing countries, under-five mortality was found to be

⁵⁶ There is more literature that tries to explain the provision of women's rights, without considering treaty effects. Steven Poe, Karl Ho, and Dierdre Wendel-Blunt used a 1994 cross-section of scores on women's political and economic rights around the world based on US State Department reports to show, using bivariate tests, that the more economically advanced countries (measured by GDP per capita) tended to have a better record on women's rights than less economically developed countries (Poe, Wendel-Blunt, and Ho 1997). Clair Apodaca has demonstrated that an index which she terms the Women's Economic and Social Human Rights (WESHHR) – an amalgam of indicators meant to capture the right to work, the right to an adequate standard of living, the right to health and well-being, and the right to an education – is positively associated with per capita gross national product (Apodaca 1998).⁵⁶

⁵⁷ Decades of recent research has confirmed that educating girls, especially at the primary through secondary school levels, has a large positive impact on women's earnings (relative to that of men) See for example (Knowles, Lorgelly, and Owen 2002). For a review of the research on the greater return to female than to male education, see (Psacharopoulos 1994). For household survey-based research that reaches similar conclusions in Taiwan see (Spohr 2003) and in India see (Duraismy 2002)

significantly related to a lack of maternal education.⁵⁸ Education is one of the important factors found to influence contraceptive use (Ainsworth, Beegle, and Nyamete 1996; Sai 1993), which, as will be discussed below, contributes to a reduction in female and child mortality and morbidity.

The CEDAW addresses educational equality head-on. Article 10 requires that “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...” Governments are also required to provide a comparable quality of education for girls and boys in all types of schools, in rural as well as in urban areas, in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training.⁵⁹ Moreover, girls are to have a right to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality.⁶⁰ They are to have equal access to scholarships and educational grants.⁶¹ Governments who become party to the CEDAW are required to address the literacy gap between men and women, and put programs in place to address the problem of female retention.⁶²

If governments have moved to implement the educational guarantees of the CEDAW, we should be able to observe change from year to year in the ratio of girls to boys attending elementary and secondary schools.⁶³ As this ratio rises, it is possible to infer a much greater government effort to provide a free and widely available opportunity for families to send their daughters to school. Obviously, this ratio alone does not capture all of the detailed requirements of the subparagraphs of Article 10,⁶⁴ but it is a good start for examining governments’ commitment to the crucial first step: getting girls out of the house or the field or the factory and into the classroom. Figure 9.1 graphs the raw ratio over time. Clearly, on a global scale girls’ educational opportunities have by this measure have improved over the past two decades. Indeed, the data suggest that the upward trend began prior to the year in which the CEDAW was open for signature. The question we need to answer, however, is whether the public commitment to CEDAW has contributed anything to this upward trend.

⁵⁸ World Health Organization, Fact Sheet No. 251, June 2000. <http://www.who.int/inf-fs/en/fact251.html>

⁵⁹ CEDAW, Art. 10(a).

⁶⁰ CEDAW, Art. 10(b).

⁶¹ CEDAW, Art. 10(d).

⁶² CEDAW, Art. 10(e and f).

⁶³ World Bank, World Development Indicators.

⁶⁴ Admittedly, equal numbers in school need not mean equal education. A poignant example is given by Mai Yamani: “[in Saudi Arabia] the first school opened in 1903 was named Falah (‘success’). This school was only for men. The first school of an equivalent nature opened in Jeddah only at the beginning of the 1960s, with the name Dar al-Hanan (‘house of tenderness’). The objective of dar al-Hanan was to produce better mothers and homemakers through Islamically guided instruction.” (Yamani 2000).

[FIGURE 9.1 ABOUT HERE]

If signing the CEDAW treaty encourages governments to do more to ensure girls' equal access to education, then we should observe a positive correlation between the ratio of girls to boys in school and the making of a CEDAW commitment, other contributing factors held constant. But in order to draw firm inferences about potential causal impacts, it is crucial to develop a stringent model that makes it less plausible that the treaty commitment is coincidental with broader trends that could as well explain the improvements. First, it is clear especially in the case of equal access to education that there has been an improvement over time, and that this improvement began prior to the signing (indeed the existence) of the CEDAW. It is essential therefore to control for the effects of time alone. In all of the models explaining gender ratios in schools, a "year" variable is included in order to eliminate any explanation that might be linked to "natural" improvements over time. And in order to minimize the confusion of cause and effect, all explanatory variables – including the CEDAW commitment – are lagged three periods. This specification recognizes that it takes time – bureaucratically, politically, logistically – for the influences discussed here to have effects on the outcomes in which we are interested. Furthermore, it is clear that there are many other explanations at the national level that could explain the outcomes with which we are concerned.⁶⁵ I therefore use country fixed effects models to reduce the possibility that some unobserved effect that existed prior to the treaty commitment made the country a "natural candidate" for improvement in girls' education. Finally, all models include a lagged dependent variable, or a "baseline" from which to measure improvements. In the case of education, I use the absolute ratio in the period three years prior to the observed period. Every model reported, therefore, includes a time trend, fixed effects, and models change from a baseline. These specifications alone greatly reduce the probability that CEDAW effects are being attributed where "unobserved" effects are actually at work.

A battery of control variables are included to isolate the impact of making a treaty commitment. The clearest alternative explanation is that educating girls follows from the availability of resources associated with higher levels of development. The tests that follow control for development level by including at least some specifications that include GDP per capita and share of GDP value-added accounted for by agriculture. I also control for child labor practices, which could certainly have an effect on gender ratios in school, if there is a gender disparity in the tendency to enter the work force at a young age. Child labor practices also provide additional information related

⁶⁵ See for example with respect to population policies (Lush et al. 2000).

to economic development generally. The tests that follow also control for political conditions that may have an independent effect on policies. One might hypothesize that democratic polities are much more likely to demand gender equality and female empowerment; after all, countries that empower women to vote generally receive a higher polity score than regimes that systematically exclude women. I also control for the effects of military conflict. Civil wars can be expected to draw boys out of the classroom and into battle; this may have a positive effect on the ratios we are examining, though it is hardly an acceptable solution to girls' educational rights.

These tests also control for the pervasiveness of women's international nongovernmental organizations operating within each country over time. One of the central findings in much of the case study research in the area of women's rights has been the crucial role of women's international non-governmental organizations as a moving force not only for construction and interpretation of international law, but also compliance pressures. Margaret Keck and Kathryn Sikkink found that the transnationally organized women's movement was important to the spread of suffrage and the crystallization of women's rights over the course of the past century (Keck and Sikkink 1998). A host of authors have noted that women's advocacy groups have been central to the formation as well as the enforcement of the CEDAW.⁶⁶ These tests will help to determine whether they have been influential in changing government practices as well.

Finally, all of these tests control for the average ratios of other countries in the region. Other studies have found regional dummies to have substantial impacts on women's rights (Apodaca 1998). Inserting a regional measure is likely to absorb developmental and cultural factors common to a particular region. But unlike a dummy variable, the regional measure – which changes from year to year as neighboring governments change their practices – also captures mounting pressure within the region to behave in ways that are consistent with comparable nearby countries. We have found in earlier chapters that there are exceptionally strong regional effects both when governments commit to treaties and in their compliance patterns. We should control for any such influences if we want to isolate the specific influence of making a legal commitment to the CEDAW treaty.

[TABLE 9.1 ABOUT HERE]

⁶⁶ (Freeman and Fraser 1994). Christine Chinkin writes that the international women's movement has engaged the human rights movement "to create networks that confront the global subordination of women... This has challenged the boundaries, concepts, and structures of human rights law, and forced changes in the international legal regime" (Chinkin 2000)(p. 133). On the importance of women's organization on framing the issues in a rights perspective, see (Coomaraswamy 1996; Joachim 2003) On the importance of objective data from NGOs see (Cook 1993b).

Table 9.1 provides the results of the analysis for factors contributing to an improvement in the ratio of girls to boys in primary and secondary education. The central finding is that, net of many other influences, ratification of the Convention on the Elimination of Discrimination against Women has a consistently positive and statistically significant effect, ranging between a 90-95% confidence interval. The effect of the CEDAW treaty is detectable despite the fact that the model includes a time trend (which is always statistically significant, though in the negative direction, given this battery of controls), and despite the inclusion of country dummies that should help to account for any “natural” country-specific tendency to improve girls’ education over time.⁶⁷ Furthermore, the lagged dependent variable (the absolute level of the ratio) controls for baseline effects. According to these results we can be quite sure that countries that had high female to male enrollment ratios in the previous three years were much less likely to see dramatic changes in the ratio in the future. The worst offenders have (naturally) scored the greatest improvements on average.

The presence of international women’s non-governmental organizations had a consistently positive impact on getting girls in school. Despite controlling for the time trend and including country fixed effects, the presence of active international women’s organizations was associated with a growth in the girl to boy enrollment ratio in the next three years. While the country dummies capture national level conditions, average regional enrollment ratios are included in order to pick up the regional context of policy change. In all except Model 5, average regional ratios were significant in predicting ratio changes. Surprisingly, these regional effects tell a more consistent and statistically significant story than the national level developmental indicators. Neither GDP per capita nor the prevalence of agriculture in GDP appears to make a significant impact on change in the ratio of girls to boys in school. Their direction, however, indicate that less developed countries are making greater improvements in these ratios, which is understandable since their baseline ratios were likely to be much lower to begin with. Child labor and civil war had no statistically significant effects.

III. Reproductive Health

Reproductive health is another fundamental right that is central not only to basic autonomy, but also to the enjoyment of other rights as well. The growing (though imperfect) consensus of the

⁶⁷ Country dummies are included but not reported here. Complete results are available from the author on request.

international community is reflected in the words of the UN, which concluded almost three decades ago that, "the ability to regulate the timing and number of births is one central means of freeing women to exercise the full range of human rights to which they are entitled."⁶⁸ In 1994, the United Nations International Conference on Population and Development reiterated and solidified a rights-based approach to reproductive health,⁶⁹ marking a shift from emphasis on population control to women's empowerment more generally (Lane 1994).⁷⁰ Reproductive health has increasingly been cast as an issue of fundamental human rights. As such, it refers to the ability to reproduce, to regulate fertility, and to carry reproduction to a successful and healthy outcome. Services to promote reproductive health include providing appropriate sex education counseling, the means to prevent unwanted pregnancies, and to prevent and treat sexually transmitted diseases and infertility (Cook 1993a).⁷¹

Central to reproductive well-being is the ability to control one's fertility. When women are denied the means to do this, study after study shows that their health – and that of their developing family – are at risk (Winikoff and Sullivan 1987). Conversely, when contraceptives are available, maternal and infant health improve significantly (Diaz 1998; Miller and Rosenfield 1996; Schenker and Eisenberg 1997). The effects of uncontrolled fertility are compounded in conditions of poverty. Poor families tend to be larger than richer ones, and adolescent pregnancy much more common, which increases the reproductive and caring burden on women.⁷² Overall, epidemiological data demonstrate life and health risks from pregnancies that come too early, too late, too often, or too close together in a woman's reproductive years (Royston and Armstrong 1989). Since the alternative to contraception in much of the world is unsafe abortion, some scholars have argued for access to preventive and emergency birth control on the basis of a right to life itself (Cook and Dickens 2003; Teklehaimanot 2002).

The CEDAW provides the legal basis for a women's right of access to the means to control her own reproduction (Cook 1993a). Article 10 (h) provides for "access to specific educational

⁶⁸ *Status of Women and Family Planning*, 1975, UN Doc. E/CN.6/575/Rev.1

⁶⁹ Documents relating to this conference can be accessed at <http://www.iisd.ca/linkages/cairo.html> (accessed 9 July 2003).

⁷⁰ Follow up the to Cairo meeting included a Special Session of the United Nations General Assembly that met at UN headquarters in New York, 30 June-2 July 1999. Statements from this meeting reproduced in ([Anon] 1999b). Progress on implementation of the Cairo agreement was followed up at an intergovernmental Forum convened by the United Nations Population Fund in The Hague, 8-12 February 1999. The Hague Forum was preceded by related meetings of nongovernmental organizations, representatives of youth groups, and of parliamentarians. See ([Anon] 1999a).

⁷¹ On the concept and measure of reproductive health, see (Sadana 2002)

⁷² World Health Organization, Fact Sheet No. 251, June 2000. <http://www.who.int/inf-fs/en/fact251.html>

information to help to ensure the health and well-being of families, including information and advice on family planning.” Article 12(1) obligates governments “...to eliminate discrimination against women in the field of health services, including those related to family planning.” Art. 16(1)(e) of the CEDAW stipulates a right “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.” According to one scholar of reproductive rights, “The goal [of these CEDAW provisions] is the reduction of maternal mortality and morbidity and enhancement of the dignity of women and their reproductive self-determination” (Cook 1993a)(p. 75).

The indicator of compliance with the right of women to make basic choices about their reproductive future is the extent to which government policy facilitates general access to contraception. Since 1976, the United Nations Population Division’s Department of Economic and Social Affairs has periodically surveyed governments to ascertain their practices with respect to access to family planning. Governments’ responses fall into one of four categories: a policy of limiting access; a policy of providing no support for access; a policy of providing indirect support; and finally a policy of providing direct family planning support (see Figure 9.2).⁷³

[FIGURE 9.2 ABOUT HERE]

Governments that provide direct support for family planning, other things being equal, are doing much more to give women the right to make their own reproductive choices.⁷⁴ Note that the focus here is on *government policy*; it is not on contraceptive uptake. A woman might still feel a good deal of personal or social pressure to have children based on the desires of her partner, the demands of her farm, the practices in her village, or the mores of her religion (Sai 1993).

In short, a right to access to modern forms of contraception is central to a women’s exercise of autonomy. Governments are in a position to enhance a woman’s control over her reproduction –

⁷³ Surveys relate to 1976, 1986, 1996, and 2001. United Nations Population Division, Department of Economic and Social Affairs, <http://www.un.org/esa/population/publications/npp2001/doc/nppdownload.htm> (Accessed 5 July 2003). Note that these data do not indicate what kinds of family planning measures have been implemented. A study by Rebecca Cook et al suggests there has been some liberalization toward legal abortions during this period (Cook, Dickens, and Bliss 1999). For a broad and historical account of family planning practices over the course of the past half-century see (Caldwell, Phillips, and Barkat-e-Khuda 2002).

⁷⁴ For a critique of the extent to which these programs are really empowering, or even voluntary for women (at least in the case of India in the mid 1970s), see (Nair 1992). For a broader critique of narrow “family planning” programs see Claudia Garcia-Moreno and Amparo Claro, “Challenges from the Women’s Health Movement: Women’s Rights Versus Population Control.” <http://www.hsph.harvard.edu/rt21/globalism/CLARO.html>

and hence a significant aspect of her future – by providing free and widely available access to modern forms of contraception. I am interested in analyzing *government policies* with respect to these issues, which brings us closest to the compliance question.

The model used to assess the impact of CEDAW on women's reproductive rights is similar to the model presented on education above. Because the dependent variable is an ordered category, an ordered logit model is used. However, it is not possible to use country dummies using this estimation technique, given the much smaller number of observations (1976, 1986, 1996, and 2001).⁷⁵ In this case, I use dummies for the primary religion practiced within the country.⁷⁶ This seems like a good alternative, since religion can in theory have a tremendous impact on population practices within a society.⁷⁷ As above, I control for previous policies; in the case of access to contraception, I use the "initial policy" reported by the government in 1976. Any potential time trend is also controlled by including year in the specifications.

Several of the control variables discussed above are included here (regional policies, women's advocacy groups, democracy, GDP per capita, the pervasiveness of child labor). In addition, it is important to control for some variables that may influence policies for family planning access more specifically. Most importantly, there is an obvious need to control for population policies. State policies of access to contraception has traditionally been aimed at controlling aggregate population growth, though there is some evidence that justifications are shifting in many countries to broaden the rationale to encompass women's empowerment (Ollila, Koivusalo, and Hemminki 2000).⁷⁸ But if we are to interpret access to birth control as a woman's right, we should see a CEDAW effect above and beyond whatever general goals the government has with respect to population growth. All of the specifications control for governments' stated population policies:

⁷⁵ The technical problem is that when I attempt to estimate an ordered logit model using country dummies, the model fails to converge and standard errors cannot be estimated.

⁷⁶ The inventory of religions includes: Sunni Muslim, Shi'a Muslim, Ibadhi Muslim, Judaism, Ukrainian Greek Catholicism, Roman Catholic, Hinduism, Mahayana Buddhism, Theravada Buddhism, Tibetan Buddhist, Lamaism, Shinto, Confucianism, Taoist, Alawis, HaoHao, CaoDai, Native/traditional/indigenous/local, Protestant, Wesleyan, Anglican, Church of England, Baptist, Evangelical Protestant, Lutheran, Presbyterian, Evangelical Lutheran, Church of Ireland, Calvinist, Methodist, Orthodox, Eastern Orthodoxy, Russian Orthodox, Greek Orthodox, Armenian Orthodox, Bulgarian Orthodox, Georgian Orthodox, Ukrainian Orthodoxy, Ethiopian Orthodox Christian, Animist and other.

⁷⁷ For a discussion of the tensions between religious beliefs and internationally encouraged standards of reproductive health that emerged over the course of the 1990s, see (Freedman and Isaacs 1993).

⁷⁸ The 1994 International Conference on Population and Development held in Cairo was especially important in this regard. A "new paradigm" in population policy emerged from the conference which shifted emphasis from a macro concern with rapid population growth to individual rights in sexuality and reproduction (DeJong 2000). For case studies on the generally successful implementation of a more rights-based approach to family planning in Latin American and the Caribbean region see (Helzner 2002).

whether they favor an increase or a decrease (the excluded category is non-interference). Additionally, I control for important demographic conditions by including a measure of the youthfulness of the population (the share of the total population under fourteen years of age). Especially young demographic structures could certainly encourage governments to support direct access to contraceptives as a matter of national policy.

Finally, all models of access to family planning control for overseas development assistance as a proportion of GDP. Many studies emphasize the extent to which international aid donors, such as the World Bank, have influenced governments to put population control programs into place (Luke and Watkins 2002; Nair 1992). It is important to distinguish these incentives from the treaty commitment itself.

[TABLE 9.2 ABOUT HERE]

With a few interesting twists, the results of my analysis of government contraceptive policies tell a highly consistent story. Table 9.2 demonstrates that once again, under highly stringent specifications, making a CEDAW commitment makes it much more likely that a government will support access to modern methods of contraception. Every model suggests that we can be at least 90% confident that CEDAW ratification has had an effect on such access. Note, however, that this model includes fixed effects based on religion of the majority of the population, rather than country. These results should therefore be interpreted as net of any influences that might flow from widely held religious beliefs. This time, there is no detectable time trend, although the direction of the effect is the same as in the case of education. There is, however, a highly significant baseline effect: governments that had policies of high accessibility in 1976 were likely also to have highly accessible policies in succeeding years. In effect, then, we should interpret all coefficients – including the CEDAW commitment – as the *additional* probability of supportive access policies above and beyond those in place at the beginning of the observation period.

Three other variables have a consistent effect on access policies. Highly significant (not surprisingly) is the government's general desire to reduce the rate of population growth. The general desire to *increase* the rate of population growth (or in some cases halt decline) was signed in the expected direction, away from encouraging broad access, and was marginally significant in most models. The inclusion of these controls facilitates an interpretation of the CEDAW commitment as a principled, rights-based policy, rather than simply a pragmatic response to population pressures.

As in the case of education, there is an undeniably strong regional influence on contraception policies. Some of this result may be due to similar developmental conditions or cultural influences, although the inclusion of the battery of developmental indicators and the fixed effects based on religion makes such an explanation less likely. These regional effects could have much more to do with localized learning or regional socialization than with developmental factors alone. For our purposes, however, it is important to note that treaty commitments survive the inclusion of regional context, though admittedly the latter is much more statistically significant.

These findings also confirm what numerous observers have long suspected and the donor community has often explicitly intended: a high dependence on overseas development assistance has a strong positive effect on a government's contraceptive accessibility policy. In every model, overseas development assistance as a proportion of GDP had a highly statistically significant impact on government policy.

Demographic and developmental factors had a much more consistent set of effects in influencing government policies on contraception than on education. The youthfulness of the population correlated with a reduced probability that the government would improve access, controlling as we have done, for the general policy orientation with respect to population growth. The incidence of child labor had no significant effects. Wealthier countries were significantly less likely to provide direct government support for contraception; presumably they assume that such direct support is unnecessary in the face of declining populations and ample private resources.

What of the oversight of domestic and transnational audiences? As in the case of education, there is no strong evidence that democracy alone improves access to family planning methods. In contrast with our findings with respect to education, this time we could find no statistical evidence that women's international NGOs contributed to a policy of greater access.

IV. Employment

By many criteria, women face daunting discrimination in entering the work place and holding a job compared to their male counterparts. Women's share of paid employment in industry and services has increased in most regions of the world, with the exception of parts of Eastern Europe. The gap between men and women entering the labor market is still very high in many regions,

although it has started to diminish in the 1990s.⁷⁹ Still, there are only eleven countries in the world where women are roughly equal with respect to paid employment in industry and services.⁸⁰ Globally, women earn 20-30 per cent less than men. More and more women are entering paid work but more jobs have often not meant *better* jobs. Half of the world's labor is in sex-stereotyped occupations, with women dominating those occupations which are lowest paying and least protected.⁸¹ Part-time work and work in the informal sector remain the norm. It is estimated that, were value of the unpaid, invisible work done by women - approximately US\$11 trillion per annum - to be included in the total, global output would be almost 50 per cent greater. Those women who do find paying jobs face a much higher risk than men of a drastic drop in living standards when they retire.⁸²

The CEDAW protects women's right to non-discrimination in the workplace explicitly in 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..." Governments are bound by the terms of the treaty to ensure that women have the right to the same employment opportunities,⁸³ the right to free choice of profession and employment, the right to promotion, training, job security and benefits,⁸⁴ equal pay for equal work,⁸⁵ equal access to unemployment, retirement, and sick pay benefits,⁸⁶ and a right to a safe working environment.⁸⁷

Has the CEDAW improved the lot of women with respect to equal employment opportunities? In answering this question, we face the same difficulties as we did above in testing for the impact of CEDAW on educational opportunities. Governments are responsible for providing a range of guarantees, and employment figures alone cannot attest to the true quality of opportunity

⁷⁹ This is the case for example in Latin America, where on average women receive 50% of the salary earned by a man in the same position. Source: Julieta Lemaitre, Luisa Cabal y Mónica Roa, *Cuerpo y Derecho: legislación y jurisprudencia en América Latina*, Editorial Temis, Colombia, 2001, <http://www.whrnet.org/docs/issue-sexualrights.html>

⁸⁰ Source: United Nations Development Fund for Women (UNIFEM), June 1, 2000, http://www.unifem.undp.org/progressww/pr_progress1.html

⁸¹ A study by the ILO notes that the information, communications, and technology revolution has only very partially addressed these disparities. There remains a "digital gender gap" within many countries, as women often find themselves occupying lower-level ICT jobs while men rise to higher paying, more responsible positions. International Labor Organization, Press Release, "ILO's World Employment Report 2001: Despite Improved Employment Outlook, Digital Divide Looms Large" 24 January 2001 (*ILO/01/03*) <http://www.ilo.org/public/english/bureau/inf/pr/2001/03.htm>. (Accessed 30 July 2003).

⁸² International Labor Organization, GENPROM. <http://www.ilo.org/public/english/employment/gems/about/> (Accessed 30 July 2003).

⁸³ CEDAW, Art. 11(1)(b).

⁸⁴ CEDAW, Art. 11(1)(c).

⁸⁵ CEDAW Art. 11(1)(d).

⁸⁶ CEDAW, Art. 11(1)(e).

⁸⁷ CEDAW, Art. 11(1)(f).

afforded women in the work place. Moreover, the government is not directly responsible for the exact terms of employment in the private sector, though they are of course responsible for enforcing the laws on the books, including relevant international legal commitments. However, there is a way to see if governments are making a good faith effort to reduce job discrimination: by examining employment patterns in the public sector. The public sector provides the most direct indicator that governments are meeting their obligations under international law to equitably employ women. Furthermore, public sector jobs often provide the best benefits (job security, sick pay, pensions), to which the sub-clauses of Article 11 say women are equally entitled. The indicator of compliance with Article 11 of the CEDAW is therefore the share of women employed in the public sector. If the treaty has any effect on government policies with respect to non-discriminatory employment, it should show up in this share.

[FIGURE 9.3 ABOUT HERE]

The model used to assess the impact of the CEDAW on public sector is similar to the ordinary least squares regression used to assess educational opportunity. Once again, I use country fixed effects, a lagged dependent variable, and control for any potential trend over time (which as we shall see is not important in this case). However, the data available on public employment by gender is much more limited than is the case for school enrollment. The earliest observations are for 1985, and many countries had already ratified the CEDAW by that time. Moreover, data are available for only between 45 and 55 countries. Data were almost completely unavailable for African countries. Surprisingly, data were quite sparse for the most highly developed OECD countries as well. Most consistently represented in the tests that follow are the middle income countries of Latin America, Asia, and parts of Europe.

The results of CEDAW affects on public employment are reported in Table 9.3.

[TABLE 9.3 ABOUT HERE]

The first point to notice is that unlike the case of education and access to contraceptives, there is no statistically significant effect of the CEDAW on the share of women in public employment. While it is encouraging to see that the coefficients go in the positive direction (especially given the stringency of the model), we cannot be sure that the effect of signing the treaty in this case is much

more than naught. The most important predictors of improvements in women's share of what must be in many countries plum positions are economic. There is good evidence that when the economy improves, women's share of public jobs increase. Of course the converse is disheartening for those who advocate secure right for women on par with men: women apparently are the first to lose out when GDP growth flags. In two specifications, it seems that women have better prospects for public employment in wealthier countries, though these results are affected somewhat by the inclusion of a time trend (which itself is not statistically significant, however). Once again, improvements are limited by past levels of female employment shares: governments with high proportions of women are less likely to improve.

As in all other cases, there is a significant positive impact to average practices within the region. The higher the proportion of female public employees for the region as a whole, the more likely a given member of that region is to improve their ratio in the next period. This effect is robust to many more domestically oriented explanations. For example, the level of democracy makes no difference in this case. The presence of women's nongovernmental organizations did not make these figures budge significantly, although the estimated coefficient was in the expected direction. Progressive left governments were no better at hiring women than were centrist or right wing governments. Military governments might have been expected to staff the government with generals (and colonels, majors, captains...) but these results do not reveal a significant tendency for military governments to masculinate public employment. And if anything civil wars open up positions for women in the bureaucracy, though the results are not statistically significant.

Modeling the proportion of women in public employment has turned out to be a difficult task. Data limitations blow up standard errors, so that it is difficult to have confidence in many of explanations tested in Tale 9.3. Still, the estimates for a commitment to the CEDAW treaty were in the hypothesized direction, consistent with the results for girls in school and policies regarding access to contraception.

V. Conclusions

The CEDAW has been the most serious international legal effort to deal with one of the world's gravest inequalities, that prevailing between men and women. It is an extraordinarily ambitious agreement, setting out an agenda that even its staunchest supporters envisioned would require a generation or more to implement. This treaty in particular deals with sensitive social and

family issues, and as such has drawn a broad range of reservations from state parties. Social and religious beliefs can be difficult barriers for the full implementation of the CEDAW, despite the fact that many countries ratified quickly.⁸⁸

Women's rights are realized subject to a range of constraints and caveats. Women's nongovernmental organizations were especially important in the realization of educational rights. The obverse, of course, is that where these organizations are weak or non-existent, girls are more likely to languish with only a few years of schooling under their belts (or burkas). Family planning provisions are almost certainly driven *primarily* by the aggregate population policies of the government. Women's access to plum jobs in the public sector are apparently spurred by economic growth, and constrained by retrenchment.⁸⁹ In all cases, moreover, government policies are shaped significantly by accepted practices within the region. There is no denying that we are looking at a multiplicity of explanations for the fate of women over the past few decades.

Nevertheless, there is good reason to believe that the legalization of women's rights in treaty form was worth the effort, and these treaties continue to be worth the vigilance required to insure continuing compliance. As Ursula O'Hare has written, there is a need for translating moral outrage into enforceable legal rights (O'Hare 1999). The CEDAW is a promissory note that the world's women and their sympathetic partners have used to leverage social change in a broad range of cases. The data point reasonably clearly and consistently to the positive impact of ratification. CEDAW ratification is associated with a growing effort to get girls out of the field and home, and into the educational mainstream. CEDAW ratification is also associated with the growing recognition that women cannot control their life chances unless they can better control their reproductive capacities: net of any policy to increase or to reduce population in the aggregate, governments that have ratified the CEDAW are more likely to encourage women's access to modern forms of birth control. With respect to employment, the results of CEDAW ratification were consistently positive, though not statistically significant. Taken as a whole, these results suggest that international commitments are taken quite seriously.

⁸⁸ See for example (Sundstrom 2002) on the case of Russia. On the point that women's rights have to do with broader issues of the subordination of women within the family structure, see (O'Hare 1999).

⁸⁹ Other studies have linked backsliding with respect to women's rights more broadly to the retrenchment required by the International Monetary Fund's structural adjustment conditionality. See for example (Freeman and Fraser 1994)(p. 119), citing "Engendering Adjustment for the 1990s: Report of a Commonwealth Expert Group on Women and Structural Adjustment," London: Common Wealth Secretariat, 1989.

Figure 9.1:

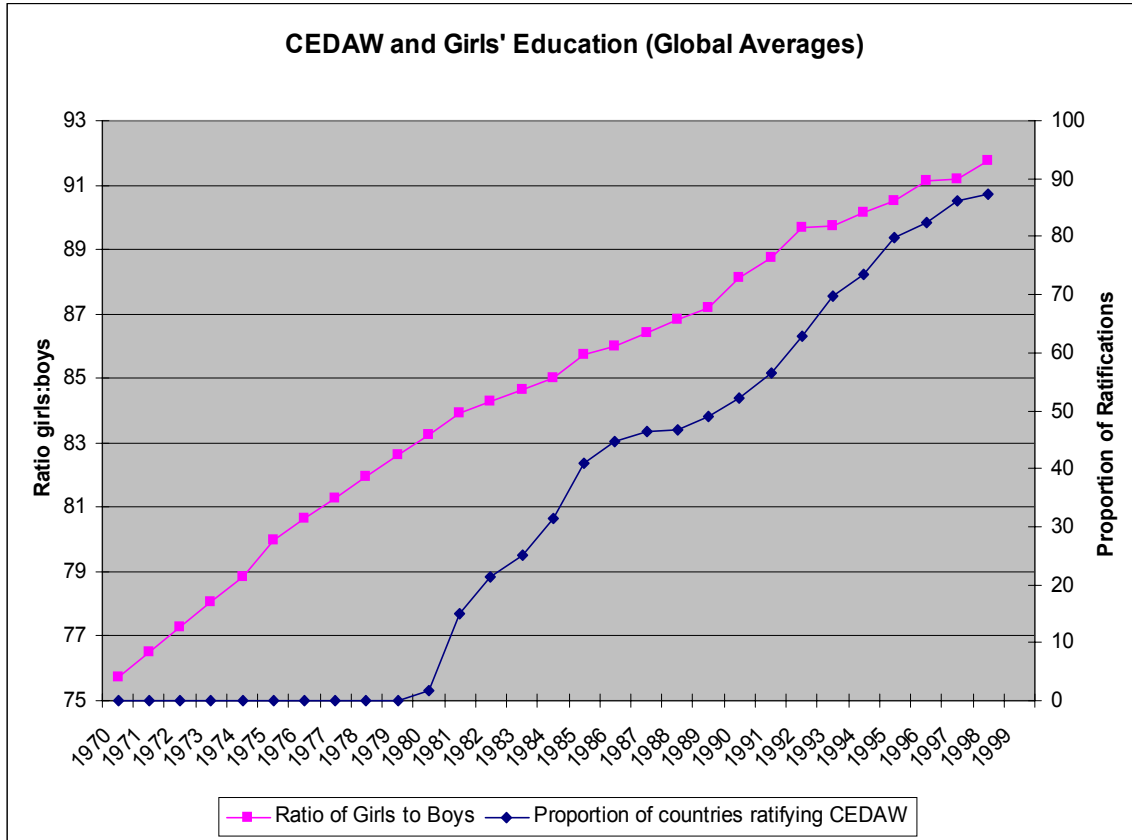


Figure 9.2:

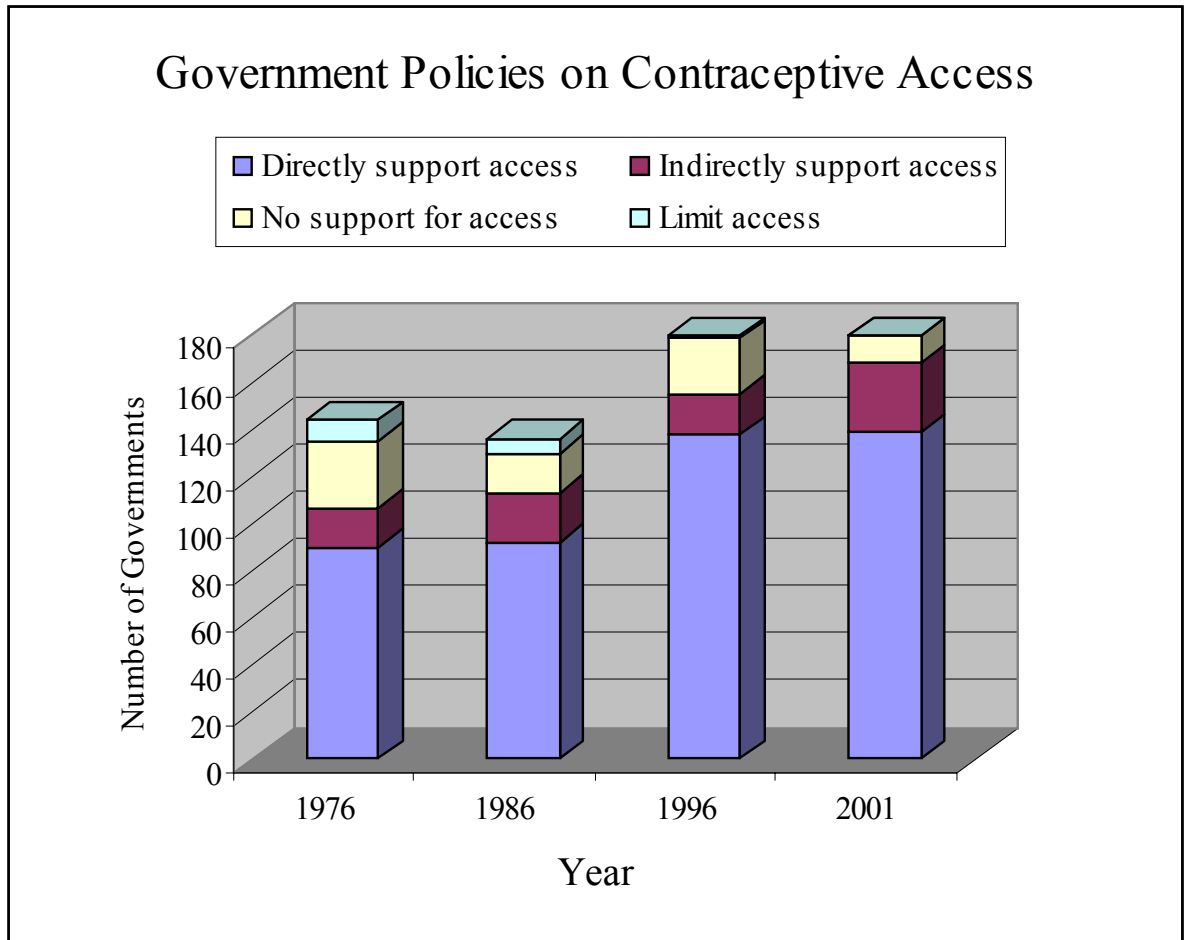
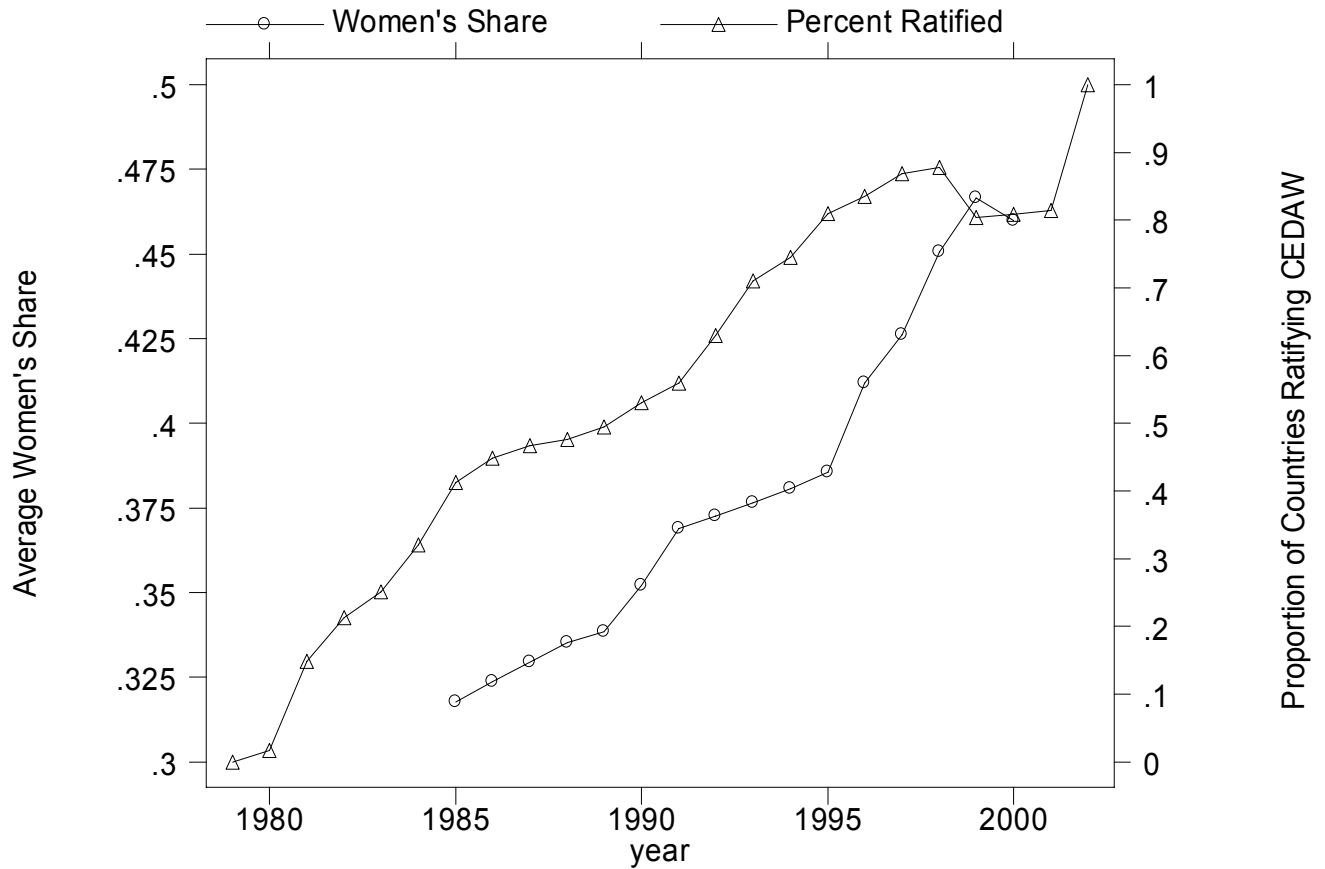


Figure 9.3



CEDAW and Women's Average Share of Public Employment

Table 9.1
Effects of a CEDAW Commitment on Girls' Education
Dependent Variable: Change in School Enrollment Ratio (Girls:Boys)
Results of OLS regression with fixed country effects, lagged dependent variable, and control for time trend

<i>Explanatory Variables:</i>	Model 1	2 Model	Model 3	Model 4	Model 5
CEDAW commitment	0.166* (0.097)	0.162* (0.091)	0.184* (0.057)	0.181* (0.060)	0.192** (0.045)
Regional enrollment ratios	0.062* (0.088)	0.063* (0.084)	0.065* (0.088)	0.065* (0.088)	0.061 (0.150)
Women's INGOs (log)	0.193* (0.081)	0.221** (0.043)	0.295** (0.012)	0.296** (0.012)	0.299** (0.022)
Ratio of girls:boys (t-3)	-0.083** (0.013)	-0.081** (0.021)	-0.081** (0.025)	-0.082** (0.029)	-0.082** (0.027)
Agriculture share of GDP	0.021 (0.227)	0.018 (0.271)	0.016 (0.303)	0.017 (0.305)	0.017 (0.301)
GPD per capita (log)	--	-0.240 (0.324)	-0.376 (0.161)	-0.365 (0.170)	-0.381 (0.103)
democracy	--	--	-0.019 (0.235)	-0.019 (0.235)	-0.020 (0.232)
Civil war	--	--	--	0.086 (0.558)	0.149 (0.255)
Child labor (% of 10-14 year olds in labor force)	--	--	--	--	-0.019 (0.581)
Year	-0.022** (0.033)□	-0.021** (0.041)	-0.025** (0.023)	-0.025** (0.023)	-0.029** (0.019)
Constant	45.429** (0.025)	45.699** (0.021)	50.404** (0.014)	50.362** (0.015)	61.918*** (0.008)
Observations	2679	2592	2313	2313	2278
R-squared	0.473	0.477	0.390	0.390	0.390

All explanatory variables lagged 3 years

Robust p values in parentheses

* significant at 10%; ** significant at 5%; *** significant at 1%

Table 9.2
Effects of a CEDAW Commitment on Access to Modern Family Planning
Dependent Variable: Government Policy with respect to Family Planning Access
Results of ordered logit regression with fixed effects for dominant religion, lagged dependent variable, and
control for time trend

<i>Explanatory Variables:</i>	Model 1	Model 2	Model 3	Model 4
CEDAW Commitment	0.978** (0.020)	1.196* (0.076)	1.208* (0.078)	1.190* (0.087)
Year	-0.041 (0.117)	-0.045 (0.180)	-0.048 (0.210)	-0.047 (0.222)
Initial contraceptive policy	1.498*** (0.000)	1.725*** (0.000)	1.664*** (0.000)	1.709*** (0.000)
Policy of population increase	-0.681 (0.119)	-0.867* (0.084)	-0.939* (0.063)	-0.877* (0.096)
Policy of population reduction	2.627*** (0.000)	4.122*** (0.001)	4.181*** (0.000)	4.065*** (0.001)
Average regional policies	2.880*** (0.000)	2.638*** (0.000)	2.737*** (0.000)	2.762*** (0.000)
Overseas development assistance (% of GDP)	0.020*** (0.000)	0.019*** (0.000)	0.019*** (0.000)	0.000*** (0.000)
% of population under 14	-15.547** (0.012)	-15.770** (0.044)	-18.035** (0.034)	-17.519** (0.030)
GDP per capita (log)	-0.423*** (0.007)	-0.341** (0.044)	-0.343* (0.091)	-0.271 (0.396)
Democracy	--	0.023 (0.484)	0.027 (0.467)	0.020 (0.592)
Women's INGOs (log)	--	--	-0.143 (0.589)	-0.079 (0.766)
Child labor (% of 10-14 year olds in labor force)	--	--	--	0.009 (0.677)
Observations	475	321	315	311

Robust p values in parentheses

* significant at 10%; ** significant at 5%; *** significant at 1%

Note: maximum likelihood estimation would not converge with country or regional fixed effects.

Table 9.3
Effects of a CEDAW Commitment on Share of Women in Public Employment
Dependent Variable: Change in Share of Women in Total Public Employment
Results of OLS regression with country fixed effects, lagged dependent variable, and control for time trend

<i>Explanatory Variables:</i>	Model 1	Model 2	Model 3	Model 4
CEDAW Commitment	0.003 (0.335)	0.003 (0.382)	0.003 (0.384)	0.003 (0.348)
Democracy	-0.001 (0.155)	-0.001 (0.155)	-0.001 (0.128)	-0.001 (0.106)
Women's INGOs (log)	0.007 (0.329)	0.011 (0.333)	0.010 (0.464)	0.011 (0.435)
Average regional women's share of public employment	0.160** (0.013)	0.147** (0.018)	0.145** (0.023)	0.142** (0.039)
Women's share of public employment (t-1)	-0.317*** (0.004)	-0.319*** (0.004)	-0.321*** (0.004)	-0.326*** (0.002)
GDP per capita (log)	0.025** (0.033)	0.023* (0.072)	0.022 (0.110)	0.019 (0.200)
Interstate armed conflict	0.003 (0.303)	0.003 (0.291)	0.003 (0.295)	0.003 (0.292)
GDP growth rate	0.000* (0.077)	0.000* (0.071)	0.000* (0.072)	0.000** (0.034)
Civil war	0.007 (0.174)	0.006 (0.196)	0.006 (0.196)	0.006 (0.228)
Military government	--	-0.002 (0.721)	-0.002 (0.710)	-0.004 (0.522)
Year	--	--	0.000 (0.932)	0.000 (0.858)
Left government	--	--	--	-0.000 (0.934)
Constant	-0.159* (0.084)	-0.143 (0.160)	-0.324 (0.829)	-0.438 (0.784)
Observations	404	403	403	383
R-squared	0.332	0.335	0.335	0.335

Robust p values in parentheses

* significant at 10%; ** significant at 5%; *** significant at 1%

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International Human Rights: Law, Politics, and Accountability
(tentative title)

Chapter 10:
Women's Equality: Education, Work and Reproduction

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Please note: This paper is a chapter in a broader project on commitment to and compliance with international human rights treaties. The first half of the project theorizes and explores empirically the question of why governments commit themselves to such treaties. It focuses on ratification, reservations, and reporting as indicators of commitment to a treaty regime. The second half of the project explores whether these treaties influence governmental behavior. It discusses civil rights, torture and detention, women's rights, and the issue of child soldiers.

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Chapter 10: Women's Equality: Education, Work and Reproduction

The previous chapters have shown that international legal commitments can have an important effect on the propensity of governments to keep their promises with respect to two very sensitive political and civil rights issues: the use of torture and the provision of a fair trial. This chapter turns to a problem that is often rooted quite deeply in the local culture: the non-discriminatory treatment of women citizens. Attitudes toward women often frustrate the efforts of the most sincere governments to improve significantly their rights chances. But as we shall see, in the context of growing accountability, an international legal commitment plays an important role in helping to change these attitudes sufficiently for women's prospects to improve. When governments publicly announce that they are bound by the contents of treaty arrangements, this enhances the effects of the accountability mechanisms that are in place. Treaties have the effect of focusing expectations of both domestic and transnational constituencies. That governments have committed themselves to protect the rights of women is much to the good.

This chapter proceeds as follows. The first section discusses the situation of women in recent decades. Severe inequalities have traditionally existed and continue to exist in much of the world between women and men. Differences in legal rights, family rights, nationality rights, and access to the means of self-betterment, employment, health care, and education, have plagued the prospects for women around the world. The Convention for the Elimination of Discrimination Against Women (CEDAW) is the world's premiere legal response to these inequalities. Enforcement of this agreement has been highly decentralized, through international nongovernmental women's advocacy groups and domestic audiences who demand that their government take their treaty commitment seriously. The second section discusses the data and methods I will use to demonstrate this point. The third section provides evidence that international commitments improve the treatment of women in three fundamental ways: it tends to improve their access to literacy training and to employment opportunities. The findings are remarkably robust: international legal commitments improve the power of accountability mechanisms to demand and elicit social change. Once again, international law plays a crucial supporting role for those who would hold government to their word.

II. Women's Rights and International Law

By almost any measure, women's rights globally have largely been subordinated to those of men. Back in 1979, the year that the CEDAW was open for signature, a Report on the State of the World's Women found that, "Women and girls constitute one-half of the world's population, one-third of its labor force. They perform two-thirds of the world's work hours . They earn, by estimate, only one-tenth of the world's income. They own less than one-hundredth of the world's property. World-wide, women attend school half as often as men. Two out of every three illiterates are female" (Langley 1988). By the turn of the millennium, women were still largely in dire straits compared to men. According to the World Health Organization, 70% of the 1.2 billion people living in poverty are female. There are twice as many women as men among the world's 900 million illiterates, and the growth in female illiteracy seems to be outstripping that of men. Millions of women world wide lack protection against unwanted pregnancies: taking into account unmarried women and women living in the former Soviet Union, 122.7 million women have an "unmet need" for contraception (Ross and Winfrey 2002). Economically, women continue to face a clear gender disadvantage: on average, women are paid 30-40% less than men for comparable work. In a number of ways, then, women face important disadvantages globally.⁹⁰

The role of international law

Attempts have been made to address these inequalities multilateral legal instruments. The rights outlined in the founding human rights agreements were explicitly intended to apply equally to men and women.⁹¹ For a number of reasons that have been the subject of much feminist analysis,⁹² women's rights had for many years not been seen as central to the main body of human rights broadly understood. The CEDAW⁹³ was the first broad-based legal response, and in its wake, interest in women's rights picked up over the course of the 1990s. Women's rights were on the agenda of the United Nations World Conference on Human Rights held in Vienna in 1993, and were mentioned

⁹⁰ World Health Organization, Fact Sheet No. 251, June 2000. <http://www.who.int/inf-fs/en/fact251.html> (accessed 8 July 2003)

⁹¹ A general right of non-discrimination on the basis of sex is guaranteed in the UNDHR in Article 2, in Article 1(3) of the UN Charter, Article 2(1) of the ICCPR, and Article 2(2) of the ICESCR.

⁹² See for example (Charlesworth, Chinkin, and Wright 1991)

⁹³ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979; entry into force 3 September 1981.

fairly prominently in the “Declaration and Programme of Action” adopted at that conference.⁹⁴ In 1994, a Special Rapporteur on Violence Against Women was appointed by the UN Commission on Human Rights,⁹⁵ belatedly taking a place alongside similar machinery to address such problems as disappearances freedom of religion.⁹⁶ That year, the United Nations General Assembly passed the Declaration on the Elimination of Violence against Women.⁹⁷ World attention on women’s issues reached its apex at the 1995 World Conference on Women, sponsored by the United Nations, and held in Beijing.⁹⁸

Still, resistance to explicit international legal machinery to support women’s rights is fairly widespread. Despite its swift entry into force (the CEDAW was opened for signature in 1979 and entered into force two years later), reservations have been broad and widespread. The most common subject of reservation has been against jurisdiction by the International Court of Justice, but a number of parties – particularly Islamic countries – have placed exceptionally broad reservations on their acceptance of CEDAW obligations (Clark 1991). The Women’s Convention came into force with a comparatively weak monitoring committee. The stature and powers of the committee were addressed in 1999 by the adoption by the UN Commission on the Status of Women of a no-reservations-allowed Optional Protocol giving individuals and groups of individuals a right to complain about their government’s violation of the treaty provisions.⁹⁹ The Optional Protocol entered into force in December 2000.

⁹⁴ The Declaration and Programme of Action (1993) can be accessed at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument) (accessed 8 July 2003). See especially Part A, sections 18, 28-30; Part B, sections 36-44, and Part D section 81.

⁹⁵ 1994/45. Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women, 56th meeting, 4 March 1994; See paragraph 6. Resolution creating the Special Rapporteur for Violence Against Women can be access at: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/2848af408d01ec0ac1256609004e770b/34a30d007de68b3d8025672e005b0410?OpenDocument#45> (Accessed 8 Jul 2003).

⁹⁶ For a recent list of special rapporteurs on human rights set up under the United Nations Human Rights Commission, see <http://www.unhchr.ch/html/menu2/7/b/tm.htm>. (Accessed 29 July 2003)

⁹⁷ General Assembly resolution 48/104 of 20 December 1993, A/RES/48/104, 23 February 1994. The Declaration can be accessed at: [http://193.194.138.190/huridocda/huridoca.nsf/\(Symbol\)/A.RES.48.104.En?Opendocument](http://193.194.138.190/huridocda/huridoca.nsf/(Symbol)/A.RES.48.104.En?Opendocument) (accessed 8 July 2003).

⁹⁸ Documents related to the 1995 Women’s conference can be accessed at <http://www.un.org/womenwatch/confer/beijing/reports/plateng.htm> (accessed 8 July 2003).

⁹⁹ CEDAW, Optional Protocol, Article 17. The Optional protocol to the CEDAW can be accessed at http://www.bayefsky.com/treaties/cedaw_opt.php

The Women's convention is widely viewed as "the starting point for delivery of justice for women" (p. 124).(Freeman and Fraser 1994). It is quite an ambitious convention. Not only does it purport to provide women with equal political and civil rights; it was apparently intended to eliminate *all forms* of discrimination against women. Article 1 is quite sweeping. It defines discrimination as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."¹⁰⁰ All measures that have the effect of discriminating against women are forbidden – even if governments did not intend them to be.¹⁰¹ The treaty even obligates governments 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 stereotyped roles for men and women;...”¹⁰²

For all of the legal machinery that has been developed over the past two decades to address women's issues, we know very little about their effects on the actual realization of women's rights. The research has been limited. Dorothy Stetson has attempted to try and explain governments' policies toward women using scores on a “feminist policy scale” that addresses laws relating to abortion, woman battery, rape, and prostitution (Stetson 1995). She found in bivariate tests for a cross-section of 23 European countries (plus the United States) in the 1980s that acceptance of human rights documents was one of only four predictors to be correlated with higher scores on the scale.¹⁰³ Appropriately, nowhere does she claim a *causal* interpretation running from legal commitments to feminist policies; indeed, the causal relationship could just as easily run in the opposite direction. In a more elaborately controlled study that looked specifically at changes over time, Oona Hathaway found no statistically significant relationship between ratification of the Women's Political Rights Convention (1954)¹⁰⁴ and the proportion of males in national legislatures (Hathaway 2002). Once

¹⁰⁰ CEDAW, Article 1.

¹⁰¹ CEDAW Article 2.

¹⁰² CEDAW, Article 5(a).

¹⁰³ Acceptance of human rights documents coded for ratification of the ICCPR, the ICCPR's Optional Protocol I, ICESCR, and acceptance of jurisdiction of the International Court of Justice.

¹⁰⁴ Convention on the Political Rights of Women, opened for signature March 1953, 27 U.S.T. 1909, 193 U.N.T.S. 135 (entered into force July 1987).

again, the scant literature has barely addressed the nexus between international legal obligation and rights outcomes.¹⁰⁵ The studies that have been done to date remain inconclusive.

What rights? Education, Reproductive Health, and Employment

No study to date has looked at the effects of the global legal centerpiece for guaranteeing women's rights, the CEDAW itself. A central difficulty is that the CEDAW contains broad obligations that are difficult precisely to define and even more difficult for governments effectively to guarantee. My strategy is to choose some of the most basic of rights, which are mentioned in a most explicit form, and to test the proposition that governments who have committed themselves to the CEDAW will make an effort to design policies to address the exercise of these rights. The rights examined in this chapter relate to government policies with respect to girls' education, policies to enhance reproductive autonomy, and policies to enhance women's participation in the work place. The evidence suggests that in at least two cases, committing to the CEDAW has had some effect on spurring governments to take women's rights seriously.

II. Educational opportunity

Education is fundamental to a whole range of other rights that the CEDAW envisions women should equitably enjoy. Access to education influences the exercise of a broad range of social and political rights, and is one of the primary determinants of the gender gap more generally (Wils and Goujon 1998).¹⁰⁶ The level of education of a mother can have severe consequences her own and for the well-being of her family. In 20 developing countries, under-five mortality was found to be

¹⁰⁵ There is more literature that tries to explain the provision of women's rights, without considering treaty effects. Steven Poe, Karl Ho, and Dierdre Wendel-Blunt used a 1994 cross-section of scores on women's political and economic rights around the world based on US State Department reports to show, using bivariate tests, that the more economically advanced countries (measured by GDP per capita) tended to have a better record on women's rights than less economically developed countries (Poe, Wendel-Blunt, and Ho 1997). Clair Apodaca has demonstrated that an index which she terms the Women's Economic and Social Human Rights (WESHHR) – an amalgam of indicators meant to capture the right to work, the right to an adequate standard of living, the right to health and well-being, and the right to an education – is positively associated with per capita gross national product (Apodaca 1998).¹⁰⁵

¹⁰⁶ Decades of recent research has confirmed that educating girls, especially at the primary through secondary school levels, has a large positive impact on women's earnings (relative to that of men) See for example (Knowles, Lorgelly, and Owen 2002). For a review of the research on the greater return to female than to male education, see (Psacharopoulos 1994). For household survey-based research that reaches similar conclusions in Taiwan see (Spohr 2003) and in India see (Duraismy 2002)

significantly related to a lack of maternal education.¹⁰⁷ Education is one of the important factors found to influence contraceptive use (Ainsworth, Beegle, and Nyamete 1996; Sai 1993), which, as will be discussed below, contributes to a reduction in female and child mortality and morbidity.

The CEDAW addresses educational equality head-on. Article 10 requires that “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...” Governments are also required to provide a comparable quality of education for girls and boys in all types of schools, in rural as well as in urban areas, in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training.¹⁰⁸ Moreover, girls are to have a right to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality.¹⁰⁹ They are to have equal access to scholarships and educational grants.¹¹⁰ Governments who become party to the CEDAW are required to address the literacy gap between men and women, and put programs in place to address the problem of female retention.¹¹¹

If governments have moved to implement the educational guarantees of the CEDAW, we should be able to observe change from year to year in the ratio of girls to boys attending elementary and secondary schools.¹¹² As this ratio rises, it is possible to infer a much greater government effort to provide a free and widely available opportunity for families to send their daughters to school. Obviously, this ratio alone does not capture all of the detailed requirements of the subparagraphs of Article 10,¹¹³ but it is a good start for examining governments’ commitment to the crucial first step: getting girls out of the house or the field or the factory and into the classroom. Figure 9.1 graphs the raw ratio over time. Clearly, on a global scale girls’ educational opportunities have by this measure improved over the past two decades. Indeed, the data suggest that the upward trend began prior to the year in which the CEDAW was open for signature. The question we need to answer, however, is whether the public commitment to CEDAW has contributed anything to this upward trend.

¹⁰⁷ World Health Organization, Fact Sheet No. 251, June 2000. <http://www.who.int/inf-fs/en/fact251.html>

¹⁰⁸ CEDAW, Art. 10(a).

¹⁰⁹ CEDAW, Art. 10(b).

¹¹⁰ CEDAW, Art. 10(d).

¹¹¹ CEDAW, Art. 10(e and f).

¹¹² World Bank, World Development Indicators.

¹¹³ Admittedly, equal numbers in school need not mean equal education. A poignant example is given by Mai Yamani: “[in Saudi Arabia] the first school opened in 1903 was named Falah (‘success’). This school was only for men. The first school of an equivalent nature opened in Jeddah only at the beginning of the 1960s, with the name Dar al-Hanan (‘house of tenderness’). The objective of dar al-Hanan was to produce better mothers and homemakers through Islamically guided instruction.” (Yamani 2000).

[FIGURE 9.1 ABOUT HERE]

If signing the CEDAW treaty encourages governments to do more to ensure girls' equal access to education, then we should observe a positive correlation between the ratio of girls to boys in school and the making of a CEDAW commitment, other contributing factors held constant. But in order to draw firm inferences about potential causal impacts, it is crucial to develop a stringent model that makes it less plausible that the treaty commitment is coincidental with broader trends that could as well explain the improvements. First, it is clear especially in the case of equal access to education that there has been an improvement over time, and that this improvement began prior to the signing (indeed the existence) of the CEDAW. It is essential therefore to control for the effects of time alone. In all of the models explaining gender ratios in schools, a "year" variable is included in order to eliminate any explanation that might be linked to "natural" improvements over time. And in order to minimize the confusion of cause and effect, all explanatory variables – including the CEDAW commitment – are lagged three periods. This specification recognizes that it takes time – bureaucratically, politically, logistically – for the influences discussed here to have effects on the outcomes in which we are interested. Furthermore, it is clear that there are many other explanations at the national level that could explain the outcomes with which we are concerned.¹¹⁴ I therefore use country fixed effects models to reduce the possibility that some unobserved effect that existed prior to the treaty commitment made the country a "natural candidate" for improvement in girls' education. Finally, all models include a lagged dependent variable, or a "baseline" from which to measure improvements. In the case of education, I use the absolute ratio in the period three years prior to the observed period. Every model reported, therefore, includes a time trend, fixed effects, and models change from a baseline. These specifications alone greatly reduce the probability that CEDAW effects are being attributed where "unobserved" effects are actually at work.

A battery of control variables are included to isolate the impact of making a treaty commitment. The clearest alternative explanation is that educating girls follows from the availability of resources associated with higher levels of development. The tests that follow control for development level by including at least some specifications that include GDP per capita and share of GDP value-added accounted for by agriculture. I also control for child labor practices, which could certainly have an effect on gender ratios in school, if there is a gender disparity in the tendency to enter the work force at a young age. Child labor practices also provide additional information related

¹¹⁴ See for example with respect to population policies (Lush et al. 2000).

to economic development generally. The tests that follow also control for political conditions that may have an independent effect on policies. One might hypothesize that democratic polities are much more likely to demand gender equality and female empowerment; after all, countries that empower women to vote generally receive a higher polity score than regimes that systematically exclude women. I also control for the effects of military conflict. Civil wars can be expected to draw boys out of the classroom and into battle; this may have a positive effect on the ratios we are examining, though it is hardly an acceptable solution to girls' educational rights.

These tests also control for the pervasiveness of women's international nongovernmental organizations operating within each country over time. One of the central findings in much of the case study research in the area of women's rights has been the crucial role of women's international non-governmental organizations as a moving force not only for construction and interpretation of international law, but also compliance pressures. Margaret Keck and Kathryn Sikkink found that the transnationally organized women's movement was important to the spread of suffrage and the crystallization of women's rights over the course of the past century (Keck and Sikkink 1998). A host of authors have noted that women's advocacy groups have been central to the formation as well as the enforcement of the CEDAW.¹¹⁵ These tests will help to determine whether they have been influential in changing government practices as well.

Finally, all of these tests control for the average ratios of other countries in the region. Other studies have found regional dummies to have substantial impacts on women's rights (Apodaca 1998). Inserting a regional measure is likely to absorb developmental and cultural factors common to a particular region. But unlike a dummy variable, the regional measure – which changes from year to year as neighboring governments change their practices – also captures mounting pressure within the region to behave in ways that are consistent with comparable nearby countries. We have found in earlier chapters that there are exceptionally strong regional effects both when governments commit to treaties and in their compliance patterns. We should control for any such influences if we want to isolate the specific influence of making a legal commitment to the CEDAW treaty.

[TABLE 9.1 ABOUT HERE]

¹¹⁵ (Freeman and Fraser 1994). Christine Chinkin writes that the international women's movement has engaged the human rights movement "to create networks that confront the global subordination of women... This has challenged the boundaries, concepts, and structures of human rights law, and forced changes in the international legal regime" (Chinkin 2000)(p. 133). On the importance of women's organization on framing the issues in a rights perspective, see (Coomaraswamy 1996; Joachim 2003) On the importance of objective data from NGOs see (Cook 1993b).

Table 9.1 provides the results of the analysis for factors contributing to an improvement in the ratio of girls to boys in primary and secondary education. The central finding is that, net of many other influences, ratification of the Convention on the Elimination of Discrimination against Women has a consistently positive and statistically significant effect, ranging between a 90-95% confidence interval. The effect of the CEDAW treaty is detectable despite the fact that the model includes a time trend (which is always statistically significant, though in the negative direction, given this battery of controls), and despite the inclusion of country dummies that should help to account for any “natural” country-specific tendency to improve girls’ education over time.¹¹⁶ Furthermore, the lagged dependent variable (the absolute level of the ratio) controls for baseline effects. According to these results we can be quite sure that countries that had high female to male enrollment ratios in the previous three years were much less likely to see dramatic changes in the ratio in the future. The worst offenders have (naturally) scored the greatest improvements on average.

The presence of international women’s non-governmental organizations had a consistently positive impact on getting girls in school. Despite controlling for the time trend and including country fixed effects, the presence of active international women’s organizations was associated with a growth in the girl to boy enrollment ratio in the next three years. While the country dummies capture national level conditions, average regional enrollment ratios are included in order to pick up the regional context of policy change. In all except Model 5, average regional ratios were significant in predicting ratio changes. Surprisingly, these regional effects tell a more consistent and statistically significant story than the national level developmental indicators. Neither GDP per capita nor the prevalence of agriculture in GDP appears to make a significant impact on change in the ratio of girls to boys in school. Their direction, however, indicate that less developed countries are making greater improvements in these ratios, which is understandable since their baseline ratios were likely to be much lower to begin with. Child labor and civil war had no statistically significant effects.

III. Reproductive Health

Reproductive health is another fundamental right that is central not only to basic autonomy, but also to the enjoyment of other rights as well. The growing (though imperfect) consensus of the

¹¹⁶ Country dummies are included but not reported here. Complete results are available from the author on request.

international community is reflected in the words of the UN, which concluded almost three decades ago that, "the ability to regulate the timing and number of births is one central means of freeing women to exercise the full range of human rights to which they are entitled."¹¹⁷ In 1994, the United Nations International Conference on Population and Development reiterated and solidified a rights-based approach to reproductive health,¹¹⁸ marking a shift from emphasis on population control to women's empowerment more generally (Lane 1994).¹¹⁹ Reproductive health has increasingly been cast as an issue of fundamental human rights. As such, it refers to the ability to reproduce, to regulate fertility, and to carry reproduction to a successful and healthy outcome. Services to promote reproductive health include providing appropriate sex education counseling, the means to prevent unwanted pregnancies, and to prevent and treat sexually transmitted diseases and infertility (Cook 1993a).¹²⁰

Central to reproductive well-being is the ability to control one's fertility. When women are denied the means to do this, study after study shows that their health – and that of their developing family – are at risk (Winikoff and Sullivan 1987). Conversely, when contraceptives are available, maternal and infant health improve significantly (Diaz 1998; Miller and Rosenfield 1996; Schenker and Eisenberg 1997). The effects of uncontrolled fertility are compounded in conditions of poverty. Poor families tend to be larger than richer ones, and adolescent pregnancy much more common, which increases the reproductive and caring burden on women.¹²¹ Overall, epidemiological data demonstrate life and health risks from pregnancies that come too early, too late, too often, or too close together in a woman's reproductive years (Royston and Armstrong 1989). Since the alternative to contraception in much of the world is unsafe abortion, some scholars have argued for access to preventive and emergency birth control on the basis of a right to life itself (Cook and Dickens 2003; Teklehaimanot 2002).

The CEDAW provides the legal basis for a women's right of access to the means to control her own reproduction (Cook 1993a). Article 10 (h) provides for "access to specific educational

¹¹⁷ *Status of Women and Family Planning*, 1975, UN Doc. E/CN.6/575/Rev.1

¹¹⁸ Documents relating to this conference can be accessed at <http://www.iisd.ca/linkages/cairo.html> (accessed 9 July 2003).

¹¹⁹ Follow up to the Cairo meeting included a Special Session of the United Nations General Assembly that met at UN headquarters in New York, 30 June-2 July 1999. Statements from this meeting reproduced in ([Anon] 1999b). Progress on implementation of the Cairo agreement was followed up at an intergovernmental Forum convened by the United Nations Population Fund in The Hague, 8-12 February 1999. The Hague Forum was preceded by related meetings of nongovernmental organizations, representatives of youth groups, and of parliamentarians. See ([Anon] 1999a).

¹²⁰ On the concept and measure of reproductive health, see (Sadana 2002)

¹²¹ World Health Organization, Fact Sheet No. 251, June 2000. <http://www.who.int/inf-fs/en/fact251.html>

information to help to ensure the health and well-being of families, including information and advice on family planning.” Article 12(1) obligates governments “...to eliminate discrimination against women in the field of health services, including those related to family planning.” Art. 16(1)(e) of the CEDAW stipulates a right “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.” According to one scholar of reproductive rights, “The goal [of these CEDAW provisions] is the reduction of maternal mortality and morbidity and enhancement of the dignity of women and their reproductive self-determination” (Cook 1993a)(p. 75).

The indicator of compliance with the right of women to make basic choices about their reproductive future is the extent to which government policy facilitates general access to contraception. Since 1976, the United Nations Population Division’s Department of Economic and Social Affairs has periodically surveyed governments to ascertain their practices with respect to access to family planning. Governments’ responses fall into one of four categories: a policy of limiting access; a policy of providing no support for access; a policy of providing indirect support; and finally a policy of providing direct family planning support (see Figure 9.2).¹²²

[FIGURE 9.2 ABOUT HERE]

Governments that provide direct support for family planning, other things being equal, are doing much more to give women the right to make their own reproductive choices.¹²³ Note that the focus here is on *government policy*; it is not on contraceptive uptake. A woman might still feel a good deal of personal or social pressure to have children based on the desires of her partner, the demands of her farm, the practices in her village, or the mores of her religion (Sai 1993).

In short, a right to access to modern forms of contraception is central to a women’s exercise of autonomy. Governments are in a position to enhance a woman’s control over her reproduction –

¹²² Surveys relate to 1976, 1986, 1996, and 2001. United Nations Population Division, Department of Economic and Social Affairs, <http://www.un.org/esa/population/publications/npp2001/doc/nppdownload.htm> (Accessed 5 July 2003). Note that these data do not indicate what kinds of family planning measures have been implemented. A study by Rebecca Cook et al suggests there has been some liberalization toward legal abortions during this period (Cook, Dickens, and Bliss 1999). For a broad and historical account of family planning practices over the course of the past half-century see (Caldwell, Phillips, and Barkat-e-Khuda 2002).

¹²³ For a critique of the extent to which these programs are really empowering, or even voluntary for women (at least in the case of India in the mid 1970s), see (Nair 1992). For a broader critique of narrow “family planning” programs see Claudia Garcia-Moreno and Amparo Claro, “Challenges from the Women’s Health Movement: Women’s Rights Versus Population Control.” <http://www.hsph.harvard.edu/rt21/globalism/CLARO.html>

and hence a significant aspect of her future – by providing free and widely available access to modern forms of contraception. I am interested in analyzing *government policies* with respect to these issues, which brings us closest to the compliance question.

The model used to assess the impact of CEDAW on women's reproductive rights is similar to the model presented on education above. Because the dependent variable is an ordered category, an ordered logit model is used. However, it is not possible to use country dummies using this estimation technique, given the much smaller number of observations (1976, 1986, 1996, and 2001).¹²⁴ In this case, I use dummies for the primary religion practiced within the country.¹²⁵ This seems like a good alternative, since religion can in theory have a tremendous impact on population practices within a society.¹²⁶ As above, I control for previous policies; in the case of access to contraception, I use the "initial policy" reported by the government in 1976. Any potential time trend is also controlled by including year in the specifications.

Several of the control variables discussed above are included here (regional policies, women's advocacy groups, democracy, GDP per capita, the pervasiveness of child labor). In addition, it is important to control for some variables that may influence policies for family planning access more specifically. Most importantly, there is an obvious need to control for population policies. State policies of access to contraception has traditionally been aimed at controlling aggregate population growth, though there is some evidence that justifications are shifting in many countries to broaden the rationale to encompass women's empowerment (Ollila, Koivusalo, and Hemminki 2000).¹²⁷ But if we are to interpret access to birth control as a woman's right, we should see a CEDAW effect above and beyond whatever general goals the government has with respect to population growth. All of the specifications control for governments' stated population policies:

¹²⁴ The technical problem is that when I attempt to estimate an ordered logit model using country dummies, the model fails to converge and standard errors cannot be estimated.

¹²⁵ The inventory of religions includes: Sunni Muslim, Shi'a Muslim, Ibadhi Muslim, Judaism, Ukrainian Greek Catholicism, Roman Catholic, Hinduism, Mahayana Buddhism, Theravada Buddhism, Tibetan Buddhist, Lamaism, Shinto, Confucianism, Taoist, Alawis, HaoHao, CaoDai, Native/traditional/indigenous/local, Protestant, Wesleyan, Anglican, Church of England, Baptist, Evangelical Protestant, Lutheran, Presbyterian, Evangelical Lutheran, Church of Ireland, Calvinist, Methodist, Orthodox, Eastern Orthodoxy, Russian Orthodox, Greek Orthodox, Armenian Orthodox, Bulgarian Orthodox, Georgian Orthodox, Ukrainian Orthodoxy, Ethiopian Orthodox Christian, Animist and other.

¹²⁶ For a discussion of the tensions between religious beliefs and internationally encouraged standards of reproductive health that emerged over the course of the 1990s, see (Freedman and Isaacs 1993).

¹²⁷ The 1994 International Conference on Population and Development held in Cairo was especially important in this regard. A "new paradigm" in population policy emerged from the conference which shifted emphasis from a macro concern with rapid population growth to individual rights in sexuality and reproduction (DeJong 2000). For case studies on the generally successful implementation of a more rights-based approach to family planning in Latin American and the Caribbean region see (Helzner 2002).

whether they favor an increase or a decrease (the excluded category is non-interference). Additionally, I control for important demographic conditions by including a measure of the youthfulness of the population (the share of the total population under fourteen years of age). Especially young demographic structures could certainly encourage governments to support direct access to contraceptives as a matter of national policy.

Finally, all models of access to family planning control for overseas development assistance as a proportion of GDP. Many studies emphasize the extent to which international aid donors, such as the World Bank, have influenced governments to put population control programs into place (Luke and Watkins 2002; Nair 1992). It is important to distinguish these incentives from the treaty commitment itself.

[TABLE 9.2 ABOUT HERE]

With a few interesting twists, the results of my analysis of government contraceptive policies tell a highly consistent story. Table 9.2 demonstrates that once again, under highly stringent specifications, making a CEDAW commitment makes it much more likely that a government will support access to modern methods of contraception. Every model suggests that we can be at least 90% confident that CEDAW ratification has had an effect on such access. Note, however, that this model includes fixed effects based on religion of the majority of the population, rather than country. These results should therefore be interpreted as net of any influences that might flow from widely held religious beliefs. This time, there is no detectable time trend, although the direction of the effect is the same as in the case of education. There is, however, a highly significant baseline effect: governments that had policies of high accessibility in 1976 were likely also to have highly accessible policies in succeeding years. In effect, then, we should interpret all coefficients – including the CEDAW commitment – as the *additional* probability of supportive access policies above and beyond those in place at the beginning of the observation period.

Three other variables have a consistent effect on access policies. Highly significant (not surprisingly) is the government's general desire to reduce the rate of population growth. The general desire to *increase* the rate of population growth (or in some cases halt decline) was signed in the expected direction, away from encouraging broad access, and was marginally significant in most models. The inclusion of these controls facilitates an interpretation of the CEDAW commitment as a principled, rights-based policy, rather than simply a pragmatic response to population pressures.

As in the case of education, there is an undeniably strong regional influence on contraception policies. Some of this result may be due to similar developmental conditions or cultural influences, although the inclusion of the battery of developmental indicators and the fixed effects based on religion makes such an explanation less likely. These regional effects could have much more to do with localized learning or regional socialization than with developmental factors alone. For our purposes, however, it is important to note that treaty commitments survive the inclusion of regional context, though admittedly the latter is much more statistically significant.

These findings also confirm what numerous observers have long suspected and the donor community has often explicitly intended: a high dependence on overseas development assistance has a strong positive effect on a government's contraceptive accessibility policy. In every model, overseas development assistance as a proportion of GDP had a highly statistically significant impact on government policy.

Demographic and developmental factors had a much more consistent set of effects in influencing government policies on contraception than on education. The youthfulness of the population correlated with a reduced probability that the government would improve access, controlling as we have done, for the general policy orientation with respect to population growth. The incidence of child labor had no significant effects. Wealthier countries were significantly less likely to provide direct government support for contraception; presumably they assume that such direct support is unnecessary in the face of declining populations and ample private resources.

What of the oversight of domestic and transnational audiences? As in the case of education, there is no strong evidence that democracy alone improves access to family planning methods. In contrast with our findings with respect to education, this time we could find no statistical evidence that women's international NGOs contributed to a policy of greater access.

VI. Employment

By many criteria, women face daunting discrimination in entering the work place and holding a job compared to their male counterparts. Women's share of paid employment in industry and services has increased in most regions of the world, with the exception of parts of Eastern Europe. The gap between men and women entering the labor market is still very high in many regions,

although it has started to diminish in the 1990s.¹²⁸ Still, there are only eleven countries in the world where women are roughly equal with respect to paid employment in industry and services.¹²⁹ Globally, women earn 20-30 per cent less than men. More and more women are entering paid work but more jobs have often not meant *better* jobs. Half of the world's labor is in sex-stereotyped occupations, with women dominating those occupations which are lowest paying and least protected.¹³⁰ Part-time work and work in the informal sector remain the norm. It is estimated that, were value of the unpaid, invisible work done by women - approximately US\$11 trillion per annum - to be included in the total, global output would be almost 50 per cent greater. Those women who do find paying jobs face a much higher risk than men of a drastic drop in living standards when they retire.¹³¹

The CEDAW protects women's right to non-discrimination in the workplace explicitly in 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..." Governments are bound by the terms of the treaty to ensure that women have the right to the same employment opportunities,¹³² the right to free choice of profession and employment, the right to promotion, training, job security and benefits,¹³³ equal pay for equal work,¹³⁴ equal access to unemployment, retirement, and sick pay benefits,¹³⁵ and a right to a safe working environment.¹³⁶

Has the CEDAW improved the lot of women with respect to equal employment opportunities? In answering this question, we face the same difficulties as we did above in testing for the impact of CEDAW on educational opportunities. Governments are responsible for providing a

¹²⁸ This is the case for example in Latin America, where on average women receive 50% of the salary earned by a man in the same position. Source: Julieta Lemaitre, Luisa Cabal y Mónica Roa, *Cuerpo y Derecho: legislación y jurisprudencia en América Latina*, Editorial Temis, Colombia, 2001, <http://www.whrnet.org/docs/issue-sexualrights.html>

¹²⁹ Source: United Nations Development Fund for Women (UNIFEM), June 1, 2000, http://www.unifem.undp.org/progressww/pr_progress1.html

¹³⁰ A study by the ILO notes that the information, communications, and technology revolution has only very partially addressed these disparities. There remains a "digital gender gap" within many countries, as women often find themselves occupying lower-level ICT jobs while men rise to higher paying, more responsible positions. International Labor Organization, Press Release, "ILO's World Employment Report 2001: Despite Improved Employment Outlook, Digital Divide Looms Large" 24 January 2001 (*ILO/01/03*) <http://www.ilo.org/public/english/bureau/inf/pr/2001/03.htm>. (Accessed 30 July 2003).

¹³¹ International Labor Organization, GENPROM. <http://www.ilo.org/public/english/employment/gems/about/> (Accessed 30 July 2003).

¹³² CEDAW, Art. 11(1)(b).

¹³³ CEDAW, Art. 11(1)(c).

¹³⁴ CEDAW Art. 11(1)(d).

¹³⁵ CEDAW, Art. 11(1)(e).

¹³⁶ CEDAW, Art. 11(1)(f).

range of guarantees, and employment figures alone cannot attest to the true quality of opportunity afforded women in the work place. Moreover, the government is not directly responsible for the exact terms of employment in the private sector, though they are of course responsible for enforcing the laws on the books, including relevant international legal commitments. However, there is a way to see if governments are making a good faith effort to reduce job discrimination: by examining employment patterns in the public sector. The public sector provides the most direct indicator that governments are meeting their obligations under international law to equitably employ women. Furthermore, public sector jobs often provide the best benefits (job security, sick pay, pensions), to which the sub-clauses of Article 11 say women are equally entitled. The indicator of compliance with Article 11 of the CEDAW is therefore the share of women employed in the public sector. If the treaty has any effect on government policies with respect to non-discriminatory employment, it should show up in this share.

[FIGURE 9.3 ABOUT HERE]

The model used to assess the impact of the CEDAW on public sector is similar to the ordinary least squares regression used to assess educational opportunity. Once again, I use country fixed effects, a lagged dependent variable, and control for any potential trend over time (which as we shall see is not important in this case). However, the data available on public employment by gender is much more limited than is the case for school enrollment. The earliest observations are for 1985, and many countries had already ratified the CEDAW by that time. Moreover, data are available for only between 45 and 55 countries. Data were almost completely unavailable for African countries. Surprisingly, data were quite sparse for the most highly developed OECD countries as well. Most consistently represented in the tests that follow are the middle income countries of Latin America, Asia, and parts of Europe.

The results of CEDAW affects on public employment are reported in Table 9.3.

[TABLE 9.3 ABOUT HERE]

The first point to notice is that unlike the case of education and access to contraceptives, there is no statistically significant effect of the CEDAW on the share of women in public employment. While it is encouraging to see that the coefficients go in the positive direction (especially given the

stringency of the model), we cannot be sure that the effect of signing the treaty in this case is much more than naught. The most important predictors of improvements in women's share of what must be in many countries plum positions are economic. There is good evidence that when the economy improves, women's share of public jobs increase. Of course the converse is disheartening for those who advocate secure right for women on par with men: women apparently are the first to lose out when GDP growth flags. In two specifications, it seems that women have better prospects for public employment in wealthier countries, though these results are affected somewhat by the inclusion of a time trend (which itself is not statistically significant, however). Once again, improvements are limited by past levels of female employment shares: governments with high proportions of women are less likely to improve.

As in all other cases, there is a significant positive impact to average practices within the region. The higher the proportion of female public employees for the region as a whole, the more likely a given member of that region is to improve their ratio in the next period. This effect is robust to many more domestically oriented explanations. For example, the level of democracy makes no difference in this case. The presence of women's nongovernmental organizations did not make these figures budge significantly, although the estimated coefficient was in the expected direction. Progressive left governments were no better at hiring women than were centrist or right wing governments. Military governments might have been expected to staff the government with generals (and colonels, majors, captains...) but these results do not reveal a significant tendency for military governments to masculinate public employment. And if anything civil wars open up positions for women in the bureaucracy, though the results are not statistically significant.

Modeling the proportion of women in public employment has turned out to be a difficult task. Data limitations blow up standard errors, so that it is difficult to have confidence in many of explanations tested in Tale 9.3. Still, the estimates for a commitment to the CEDAW treaty were in the hypothesized direction, consistent with the results for girls in school and policies regarding access to contraception.

VII. Conclusions

The CEDAW has been the most serious international legal effort to deal with one of the world's gravest inequalities, that prevailing between men and women. It is an extraordinarily ambitious agreement, setting out an agenda that even its staunchest supporters envisioned would

require a generation or more to implement. This treaty in particular deals with sensitive social and family issues, and as such has drawn a broad range of reservations from state parties. Social and religious beliefs can be difficult barriers for the full implementation of the CEDAW, despite the fact that many countries ratified quickly.¹³⁷

Women's rights are realized subject to a range of constraints and caveats. Women's nongovernmental organizations were especially important in the realization of educational rights. The obverse, of course, is that where these organizations are weak or non-existent, girls are more likely to languish with only a few years of schooling under their belts (or burkas). Family planning provisions are almost certainly driven *primarily* by the aggregate population policies of the government. Women's access to plum jobs in the public sector are apparently spurred by economic growth, and constrained by retrenchment.¹³⁸ In all cases, moreover, government policies are shaped significantly by accepted practices within the region. There is no denying that we are looking at a multiplicity of explanations for the fate of women over the past few decades.

Nevertheless, there is good reason to believe that the legalization of women's rights in treaty form was worth the effort, and these treaties continue to be worth the vigilance required to insure continuing compliance. As Ursula O'Hare has written, there is a need for translating moral outrage into enforceable legal rights (O'Hare 1999). The CEDAW is a promissory note that the world's women and their sympathetic partners have used to leverage social change in a broad range of cases. The data point reasonably clearly and consistently to the positive impact of ratification. CEDAW ratification is associated with a growing effort to get girls out of the field and home, and into the educational mainstream. CEDAW ratification is also associated with the growing recognition that women cannot control their life chances unless they can better control their reproductive capacities: net of any policy to increase or to reduce population in the aggregate, governments that have ratified the CEDAW are more likely to encourage women's access to modern forms of birth control. With respect to employment, the results of CEDAW ratification were consistently positive, though not statistically significant. Taken as a whole, these results suggest that international commitments are taken quite seriously.

¹³⁷ See for example (Sundstrom 2002) on the case of Russia. On the point that women's rights have to do with broader issues of the subordination of women within the family structure, see (O'Hare 1999).

¹³⁸ Other studies have linked backsliding with respect to women's rights more broadly to the retrenchment required by the International Monetary Fund's structural adjustment conditionality. See for example (Freeman and Fraser 1994)(p. 119), citing "Engendering Adjustment for the 1990s: Report of a Commonwealth Expert Group on Women and Structural Adjustment," London: Common Wealth Secretariat, 1989.

Figure 9.1:

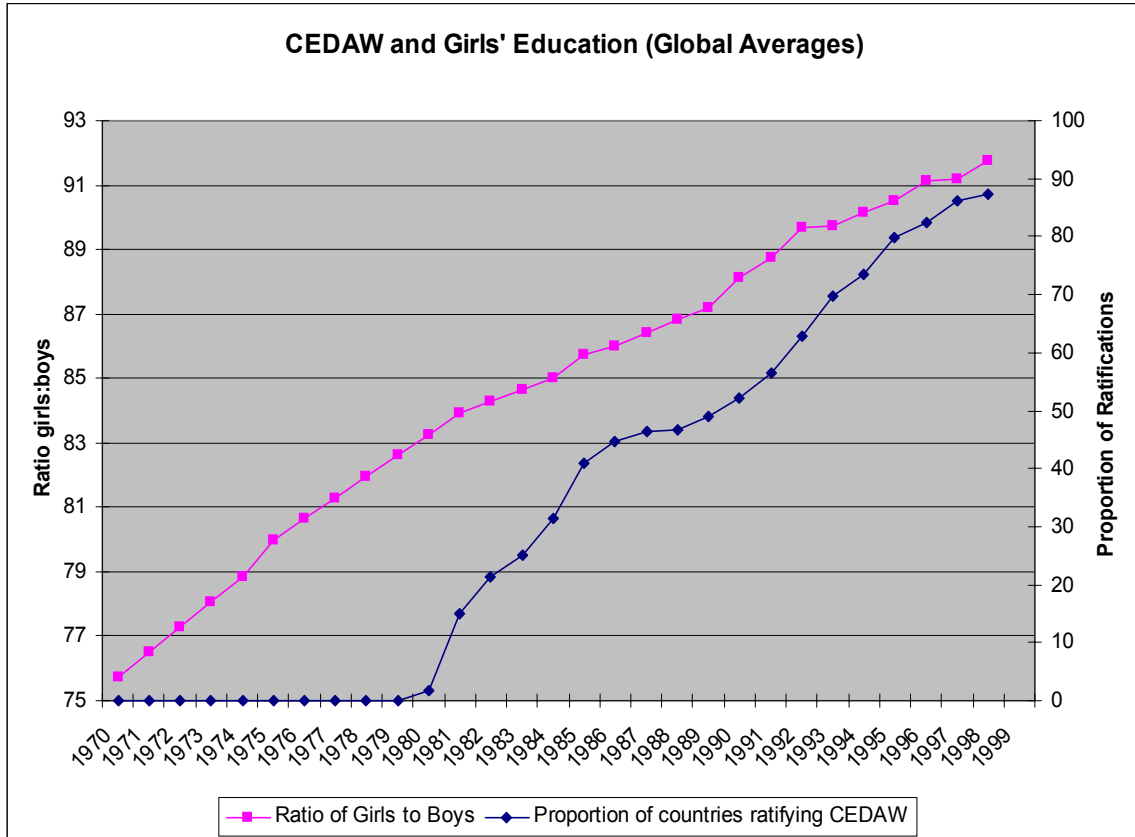


Figure 9.2:

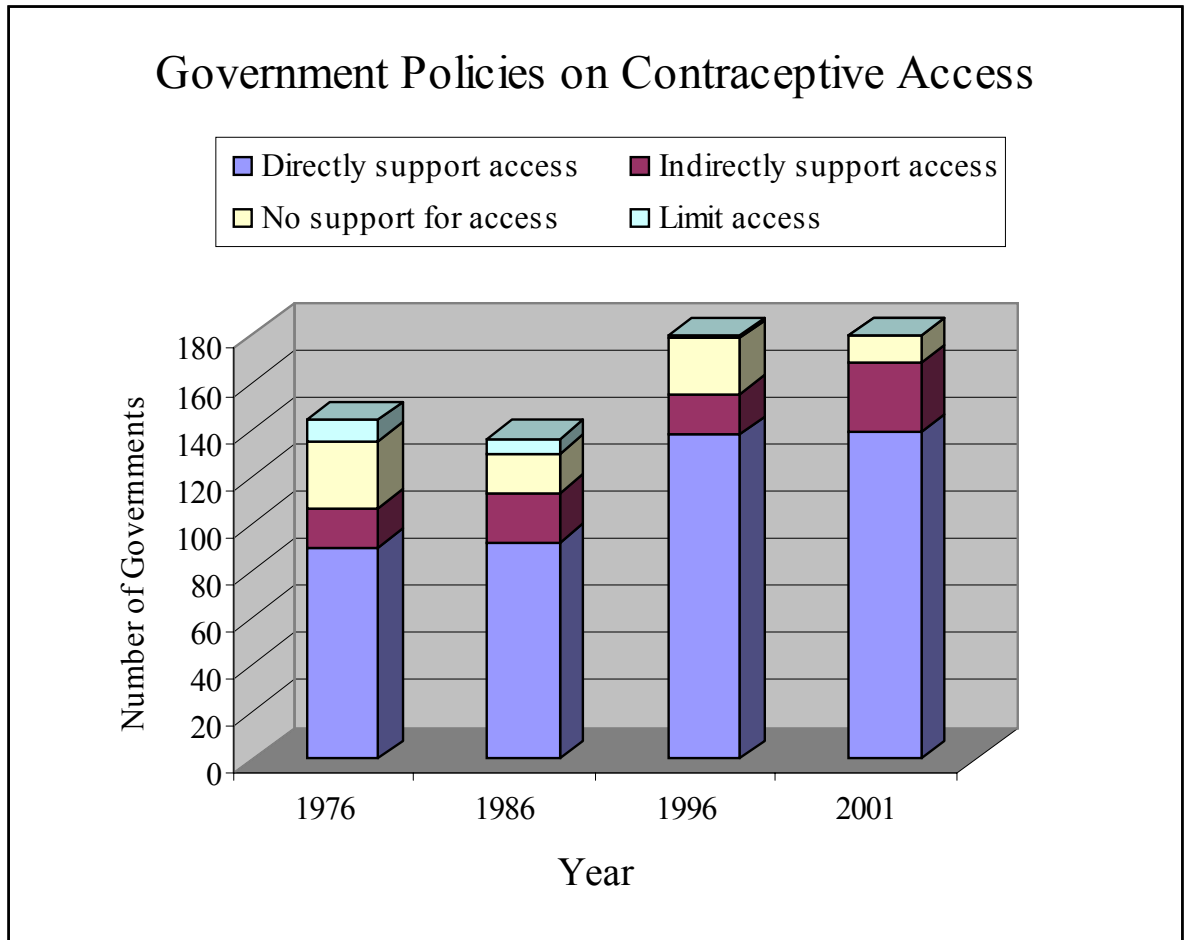
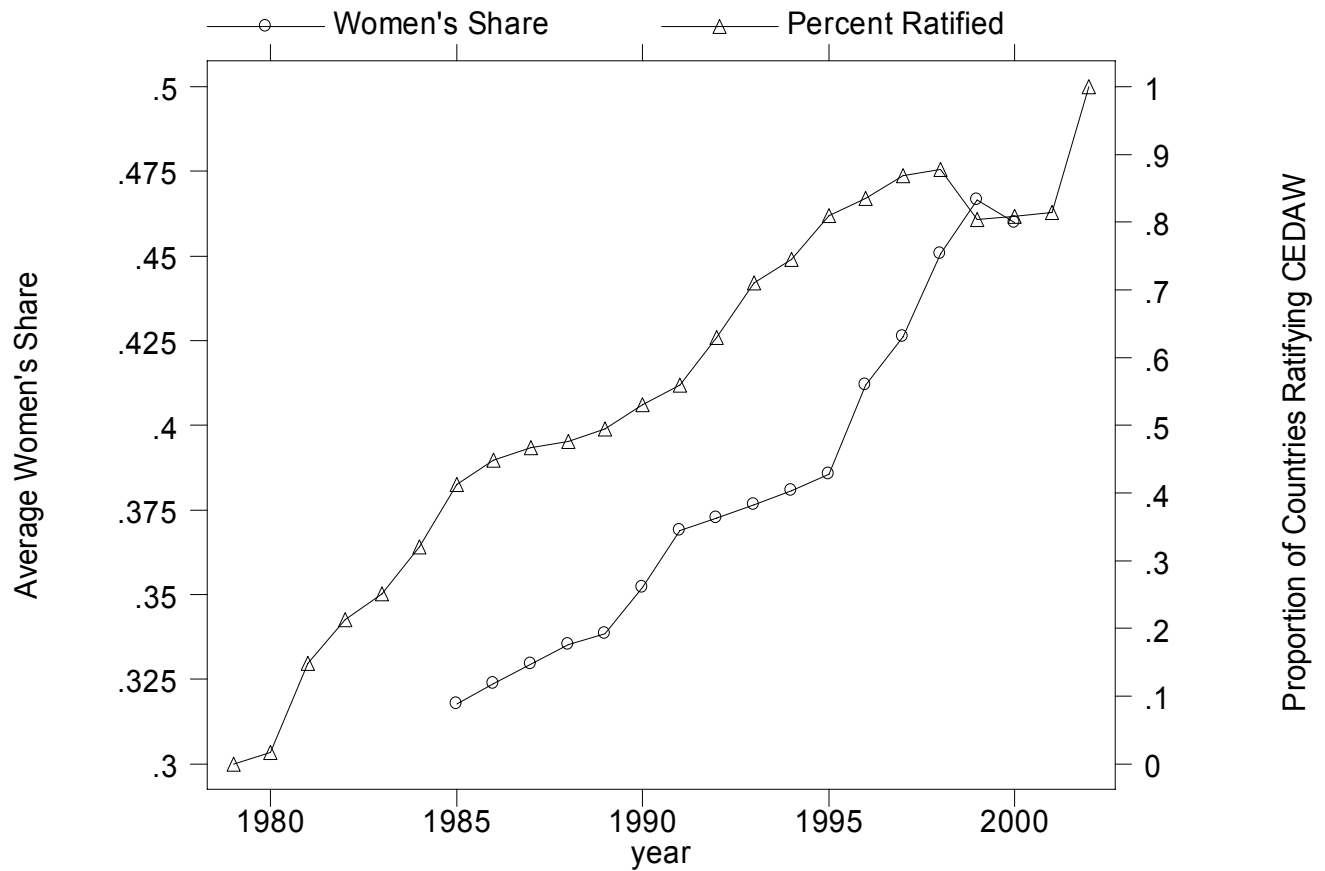


Figure 9.3



CEDAW and Women's Average Share of Public Employment

Table 9.1
Effects of a CEDAW Commitment on Girls' Education
Dependent Variable: Change in School Enrollment Ratio (Girls:Boys)
Results of OLS regression with fixed country effects, lagged dependent variable, and control for time trend

<i>Explanatory Variables:</i>	Model 1	2 Model	Model 3	Model 4	Model 5
CEDAW commitment	0.166* (0.097)	0.162* (0.091)	0.184* (0.057)	0.181* (0.060)	0.192** (0.045)
Regional enrollment ratios	0.062* (0.088)	0.063* (0.084)	0.065* (0.088)	0.065* (0.088)	0.061 (0.150)
Women's INGOs (log)	0.193* (0.081)	0.221** (0.043)	0.295** (0.012)	0.296** (0.012)	0.299** (0.022)
Ratio of girls:boys (t-3)	-0.083** (0.013)	-0.081** (0.021)	-0.081** (0.025)	-0.082** (0.029)	-0.082** (0.027)
Agriculture share of GDP	0.021 (0.227)	0.018 (0.271)	0.016 (0.303)	0.017 (0.305)	0.017 (0.301)
GPD per capita (log)	--	-0.240 (0.324)	-0.376 (0.161)	-0.365 (0.170)	-0.381 (0.103)
democracy	--	--	-0.019 (0.235)	-0.019 (0.235)	-0.020 (0.232)
Civil war	--	--	--	0.086 (0.558)	0.149 (0.255)
Child labor (% of 10-14 year olds in labor force)	--	--	--	--	-0.019 (0.581)
Year	-0.022** (0.033)□	-0.021** (0.041)	-0.025** (0.023)	-0.025** (0.023)	-0.029** (0.019)
Constant	45.429** (0.025)	45.699** (0.021)	50.404** (0.014)	50.362** (0.015)	61.918*** (0.008)
Observations	2679	2592	2313	2313	2278
R-squared	0.473	0.477	0.390	0.390	0.390

All explanatory variables lagged 3 years

Robust p values in parentheses

* significant at 10%; ** significant at 5%; *** significant at 1%

Table 9.2
Effects of a CEDAW Commitment on Access to Modern Family Planning
Dependent Variable: Government Policy with respect to Family Planning Access
Results of ordered logit regression with fixed effects for dominant religion, lagged dependent variable, and control for time trend

<i>Explanatory Variables:</i>	Model 1	Model 2	Model 3	Model 4
CEDAW Commitment	0.978** (0.020)	1.196* (0.076)	1.208* (0.078)	1.190* (0.087)
Year	-0.041 (0.117)	-0.045 (0.180)	-0.048 (0.210)	-0.047 (0.222)
Initial contraceptive policy	1.498*** (0.000)	1.725*** (0.000)	1.664*** (0.000)	1.709*** (0.000)
Policy of population increase	-0.681 (0.119)	-0.867* (0.084)	-0.939* (0.063)	-0.877* (0.096)
Policy of population reduction	2.627*** (0.000)	4.122*** (0.001)	4.181*** (0.000)	4.065*** (0.001)
Average regional policies	2.880*** (0.000)	2.638*** (0.000)	2.737*** (0.000)	2.762*** (0.000)
Overseas development assistance (% of GDP)	0.020*** (0.000)	0.019*** (0.000)	0.019*** (0.000)	0.000*** (0.000)
% of population under 14	-15.547** (0.012)	-15.770** (0.044)	-18.035** (0.034)	-17.519** (0.030)
GDP per capita (log)	-0.423*** (0.007)	-0.341** (0.044)	-0.343* (0.091)	-0.271 (0.396)
Democracy	--	0.023 (0.484)	0.027 (0.467)	0.020 (0.592)
Women's INGOs (log)	--	--	-0.143 (0.589)	-0.079 (0.766)
Child labor (% of 10-14 year olds in labor force)	--	--	--	0.009 (0.677)
Observations	475	321	315	311

Robust p values in parentheses

* significant at 10%; ** significant at 5%; *** significant at 1%

Note: maximum likelihood estimation would not converge with country or regional fixed effects.

Table 9.3
Effects of a CEDAW Commitment on Share of Women in Public Employment
Dependent Variable: Change in Share of Women in Total Public Employment
Results of OLS regression with country fixed effects, lagged dependent variable, and control for time trend

<i>Explanatory Variables:</i>	Model 1	Model 2	Model 3	Model 4
CEDAW Commitment	0.003 (0.335)	0.003 (0.382)	0.003 (0.384)	0.003 (0.348)
Democracy	-0.001 (0.155)	-0.001 (0.155)	-0.001 (0.128)	-0.001 (0.106)
Women's INGOs (log)	0.007 (0.329)	0.011 (0.333)	0.010 (0.464)	0.011 (0.435)
Average regional women's share of public employment	0.160** (0.013)	0.147** (0.018)	0.145** (0.023)	0.142** (0.039)
Women's share of public employment (t-1)	-0.317*** (0.004)	-0.319*** (0.004)	-0.321*** (0.004)	-0.326*** (0.002)
GDP per capita (log)	0.025** (0.033)	0.023* (0.072)	0.022 (0.110)	0.019 (0.200)
Interstate armed conflict	0.003 (0.303)	0.003 (0.291)	0.003 (0.295)	0.003 (0.292)
GDP growth rate	0.000* (0.077)	0.000* (0.071)	0.000* (0.072)	0.000** (0.034)
Civil war	0.007 (0.174)	0.006 (0.196)	0.006 (0.196)	0.006 (0.228)
Military government	--	-0.002 (0.721)	-0.002 (0.710)	-0.004 (0.522)
Year	--	--	0.000 (0.932)	0.000 (0.858)
Left government	--	--	--	-0.000 (0.934)
Constant	-0.159* (0.084)	-0.143 (0.160)	-0.324 (0.829)	-0.438 (0.784)
Observations	404	403	403	383
R-squared	0.332	0.335	0.335	0.335

Robust p values in parentheses

* significant at 10%; ** significant at 5%; *** significant at 1%

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