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## The Pursuit of Equality Between Women and Men. The Contribution of the United Nations <sup>1</sup>

### I. THE UNITED NATIONS MANDATE ON EQUALITY BETWEEN WOMEN AND MEN <sup>2</sup>

From a chronological position, the Charter of the United Nations (UN) and the recognition of equal rights without distinction as to sex and gender constitute the starting point of any comprehensive analysis of equality between women and men.<sup>3</sup>

Since the Charter was adopted, four historical periods in the organisation's work are usually established.<sup>4</sup>

The first period spanned the years from 1945 to 1962 and focused on laying the legal groundwork for ensuring the equality of women. It began with the establishment of the organization and ended in the early 1960s. It provided a structure for discussion on the stages of the feminist movement, especially in the West, but also outlined an important process leading to the creation of new States as results of the decolonization process.

The second stage, 1963-1975, emphasized the role of women in development. States of emergency along with social, economic, cultural and political development are considered as priorities and included on the UN agenda. It is interesting to note that this stage, which sets forth the beginnings of the inclusion of women in this process, culminated in the International Year of

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<sup>1</sup> The first draft of this paper was published some years ago as a chapter in a book. See Paloma Durán: *The United Nations and Equal Opportunities for Men and Women*, INSTRAW-UN, New York, 2006

<sup>2</sup> I'm going to use this terminology in order to respect the original process in the UN. The use and reference to gender is a different matter which is not our main research focus. Cfr. Paloma Durán: *Sobre el género y su tratamiento en las Organizaciones Internacionales*, Eiunsa, Madrid 2007.

<sup>3</sup> See Articles 1, 8, and 101 of the Charter, as well as its preamble.

<sup>4</sup> On the texts of the United Nations in the areas of equality between women and men, among others, *The United Nations and the Advancement of Women*, Department of Public Information, United Nations, New York, 1996.

Women (1975) and the First World Conference on Women, held that same year in Mexico.

The third period, from 1976 to 1985, constituted the UN Decade of Women. In addition to awareness-raising programs, the Second and Third World Conferences on Women were held during this period in Copenhagen and Nairobi, respectively. The latter conference, held in 1985, marked the end of the era and began the adoption of strategies and lines of action which continued through the end of the millennium.

The final stage spans the years from 1986 to 1996, a period in which vast efforts were put forth to ensure compliance with the strategies adopted in Nairobi. This period culminated in the Fourth World Conference on Women, which was held in China in September 1995, although as part of this final stage, I will brush upon the period immediately following the Conference, and briefly comment on the Millennium Summit, celebrated in 2000.

Although this approach by stages is not very systematic, it will allow us to order the events that have defined the work of the United Nations aimed at recognizing equality between men and women and ensuring that women enjoy the same level of access as men to all spheres of social activity.<sup>5</sup>

## **2. AWARENESS-BUILDING: FROM THE SAN FRANCISCO CHARTER TO THE DRAFTING OF LEGAL INSTRUMENTS**

As previously pointed out, it all began with the signing of the San Francisco Charter on 26 June 1945. The Charter contains three objectives: international peace and security, economic and social progress, and the protection of the rights and freedoms of each individual without distinction as to race, sex, language or religion.

Some months later, at the inauguration of the first session of the General Assembly (GA) held in London in February 1946, U.S. delegate –and wife of the sitting President of the United States– Eleanor Roosevelt, read an open letter to all women of the world.<sup>6</sup> The letter had been prepared by the seventeen women who had participated in the work of the GA as delegates and experts representing eleven Member States. The main message of the text was a call to become involved in national and international affairs and was directed at both governments and women themselves, urging them to participate in peace and reconstruction efforts, as they did during the war and the resistance. As such, the declaration called upon the responsibility of women to demand an active role, and to educate their young boys and girls to understand the problems of the world; and their own countries to ensure they are not pushed aside by anti-democratic regimes, and to

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<sup>5</sup> This explains some of the positions of the Member States.

<sup>6</sup> Document A /PV. 29, 12 February 1946, *Open Letter to all Women Worldwide*.

recognize women's full engagement in the lives and in the responsibilities of their own countries as an objective to be shared by the world.

The declaration was supported by various delegations. Just a few days later ECOSOC adopted a resolution, which established the Commission of Human Rights and the Sub-Commission on the Status of Women.<sup>7</sup>

Among its competencies, this Sub-commission was tasked with assisting the Commission of Human Rights on issues related to the status of women.<sup>8</sup> It was formed by nine individuals, all appointed in an individual capacity. The first Sub-commission was formed by nine women from Chile, China, Denmark, Dominican Republic, France, India, and Lebanon.

In May of that same year, during the ECOSOC meetings, the Danish chairman of the Sub-commission proposed that the sub-commission become a commission, which occurred one month later with the adoption of the relevant ECOSOC resolution.<sup>9</sup>

The function of the new Commission on the Status of Women (CSW) would be to prepare recommendations and reports to be forwarded to ECOSOC regarding the rights of women in political, economic, social and educational spheres, as well as to advise ECOSOC on any urgent issue that emerged with respect to women's rights.

At the time, the CSW was smaller than it is today, with only fifteen members elected by ECOSOC for three-year terms, who participated in the election after their respective governments were consulted.

Continuing our chronological structure, during the period of GA sessions that year in December 1946, the Assembly adopted a resolution that requested Member States to comply with the Charter in order to ensure that women enjoyed the same political rights as men.<sup>10</sup>

In February 1947, the first CSW meeting was held, and a report was submitted to ECOSOC a few days later.<sup>11</sup> An account was given of the terms of reference, communications system, relations with non-governmental organizations, and relations inside the UN system itself, as well as the future work program for the CSW. Before concluding its report, the CSW included Chapter XI, in which urgent issues were addressed and the appointment of a competent woman to follow all matters related to women's rights, inside the Human Rights Division, was recommended to the Secretary-General.<sup>12</sup> ECOSOC consequently took note

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<sup>7</sup> ECOSOC resolution, establishing the Commission on Human Rights and the Sub-Commission of the Status of Women, document E/RES/5 (I), 16 February 1946.

<sup>8</sup> As stipulated in section B, para. 1 of ECOSOC's resolution.

<sup>9</sup> ECOSOC resolution E/RES/2/11, 21 June 1946, establishing the Commission of the Status of Women

<sup>10</sup> General Assembly Resolution, A/RES/46 (I), 11 December 1946.

<sup>11</sup> 58 Report of CSW to ECOSOC, document E/281/Rev.1, 25 February 1947.

<sup>12</sup> 59 Paragraph 37 of the Report of the CSW stated:

of the report, adopted the resolution in which the functions of the CSW were defined, and requested information from Member States on women's legal status.<sup>13</sup> Chapter III of the CSW Report, which proposed a procedure for communication, was left unfinished. ECOSOC issued a decision some months later establishing the procedure and a review system for all communications received.<sup>14</sup>

In 1948, ECOSOC requested Member States to adopt measures in order to ensure equal rights in terms of employment and remuneration<sup>15</sup> and apply the principle of equality to wages for working men and women who perform the same work, without distinction as to nationality, language, race or religion.<sup>16</sup>

During the same month of March, ECOSOC forwarded the recommendations issued by the CSW on the draft Universal Declaration of Human Rights to the General Assembly to recognize, first and foremost, equality between all human beings and equality in marriage.<sup>17</sup> The first amendment was incorporated in the final version of the Declaration, but not the second, at least in the terms proposed by CSW.

The initial proposal put forth by the CSW suggested recognizing the rights of both men and women to marry and dissolve their marriage, in accordance with the law.<sup>18</sup> Nevertheless, the final wording of Article 16 of the Declaration mentions equal rights in marrying and forming a family, the need for the full consent of both parties to marry, and recognition of the fact that the family constitutes the core unit of society and thus requires the protection of society and the State.<sup>19</sup> The Universal Declaration was adopted by the GA on 10 December

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«The Commission decided that in view of the importance of carrying out its work effectively, and of keeping in touch with women all over the world, it was urgently necessary that the Secretary-General should as soon as possible appoint a competent woman who had taken an active part in the work to improve the status of women, as head of the Status of Women section of the Division of Human Rights.»

<sup>13</sup> ECOSOC Resolution on the functions of the CSW, E/RES/48 (IV) of 29 March 1947.

<sup>14</sup> ECOSOC Resolution E/RES/76 (V), of 5 August 1947.

<sup>15</sup> ECOSOC Resolution E/RES/122G (VI), of 1 March 1948

<sup>16</sup> ECOSOC Resolution E/RES/121 (VI), 10 March 1948.

<sup>17</sup> ECOSOC Resolution E/RES/120 (VI), 3 March 1948.

<sup>18</sup> See Chapter C) of E/RES/120 (VI), 3 March 1948, which proposed the following: «Men and women shall have equal rights to contract or dissolve marriage in accordance with the law».

<sup>19</sup> The final text of article 16 of the Declaration affirms the following:

«1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.  
2. Marriage shall be entered into only with the free and full consent of the intending spouses.  
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.»

1948,<sup>20</sup> recognizing equal rights between men and women in the preamble and explicitly in the articles themselves.

In 1949, ECOSOC continued working in the area of equality between men and women. It first emphasized equality in the workplace by adopting a resolution on collaborative efforts between the International Labor Organization (ILO) and the CSW.<sup>21</sup> It then considered the report issued by the CSW that called for an increase in the involvement of women in the actual work of the United Nations.<sup>22</sup> After that, it launched an inquiry process among Member States to begin drafting a convention on the nationality of married women with a view towards complying with Article 15 of the Universal Declaration, which recognizes the right to nationality.<sup>23</sup>

ECOSOC was not the only body at work in this area. On 2 December 1949, the GA adopted the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others,<sup>24</sup> which primarily concerned women.

In 1950, the CSW received a series of reports from the Secretary-General on discrimination against women in the political sphere,<sup>25</sup> women taking part in the work of the United Nations system,<sup>26</sup> the possibility of proposing a covenant on the political rights of women,<sup>27</sup> a UNESCO study on women's educational opportunities,<sup>28</sup> and on the United Nations Technical Assistance Program in Relation to the Status of Women.<sup>29</sup>

The reports were studied by the CSW and at the same time, it continued to work on the preparatory documents for the Covenant recognizing the political rights of women. In that process, ECOSOC adopted a resolution in March 1952 on the denial of basic rights for women in non-self-governing territories.<sup>30</sup> Before the end of 1952, the GA adopted the Covenant on the Political Rights of Women.<sup>31</sup> The document contained only eleven articles, in which a woman's right to vote, be eligible for election to publicly elected bodies, and hold public office on equal terms as men were recognized in a concise and systematic manner.

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<sup>20</sup> GA Resolution 217, A, (III), 10 December 1948 which figures in document T/HR/I/Rev. 4(Vol. I/Part I).

<sup>21</sup> ECOSOC Resolution E/RES/196 (VIII), 18 February 1949.

<sup>22</sup> CSW Report to ECOSOC, E/1316, chapter IV, 19 April 1949.

<sup>23</sup> ECOSOC Resolution E/RES/242C (IX), 1 August 1949.

<sup>24</sup> See the text of the covenant in the United Nations Treaty Series, vol. 96, No. 1342, p. 271.

<sup>25</sup> Document E/CN. 6/131, 15 March 1950.

<sup>26</sup> Document E/CN. 6/132, 16 March 1950.

<sup>27</sup> Document E/CN. 6/143, 28 April 1950.

<sup>28</sup> Document E/CN. 6/146, 9 May 1950.

<sup>29</sup> Document E/CN. 6/145, 12 May 1950.

<sup>30</sup> ECOSOC Resolution, E/RES/445 C(XIV), 28 May 1952.

<sup>31</sup> United Nations Treaty Series, vol. 198, No. 2613, p. 135.

Although perhaps the effects of time have weakened part of the efforts undertaken at the time, what is certain is that in the 1950s, essentially no Member State recognized a woman's right to vote. This gap between the Covenant and the reality of the situation reveals the steps forward prompted by the decision of the United Nations to support a Covenant that demanded the recognition of some essentially non-existent rights.<sup>32</sup>

The attempts made to increase women's presence in the system were continued, as is shown by the Secretary-General's declaration itself in the CSW in 1954.<sup>33</sup> That effort, however, was pursued while measures were also taken to guarantee the equality promised in the Universal Declaration in all sectors.

The December 1954 GA resolution to eliminate customs or practices that affect the dignity of women<sup>34</sup> and the adoption, three years later, of the Convention on the Nationality of Married Women, adopted by the GA in January 1957 was clear proof of such effort.<sup>35</sup> The Convention's structure, which was very similar to the Covenant on the Political Rights of Women, contained twelve articles, which not only recognized the right itself but also included upholding the right during marriage proceedings or when a man and woman of different nationalities marry.

Nevertheless, nationality, political rights and participation in the work of the United Nations are not the only sectors where women have a lower status than men. It is, in a way, significant that the first international treaties cite nationality and political exercise, insofar as they confirm two spheres of action for ensuring women's participation: in decision-making processes, particularly in their private lives (nationality) and in their public lives (political rights).

### **3. THE 1960S: THE LEGAL INSTRUMENTS**

The 1960s decade began with an initiative to devise a long-term action program for the advancement of women. This program outlined substantive actions, allocated resources for these purposes, and called on the Secretary-General to forward information on the draft to ECOSOC as well as to the GA.<sup>36</sup>

During the same decade a host of legal instruments were also developed to strengthen the legal framework for equality as an essential element in area of human rights.

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<sup>32</sup> This clearly shows once again that the United Nations is the sum of its Member States. The Convention was adopted not as an isolated decision but rather was based on the conviction of the States to adopt it and subsequently ratify it in accordance with national legislations.

<sup>33</sup> Document E/CN. 6/SR.149, 8 April 1954.

<sup>34</sup> GA Resolution to eliminate customs, outdated laws and practices that affect the human dignity of women, A/RES/843 (IX), 17 December 1954.

<sup>35</sup> Text of the convention in the United Nations Treaty Series, vol. 309, No. 4468,

<sup>36</sup> GA Resolution A/RES/1777 (XVII), 7 December 1962.

This effort was first reflected in the adoption of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, adopted by the GA in November 1962.<sup>37</sup> The Convention followed the structure of previous texts and contained ten articles. The opening articles focused on the recognition of rights while subsequent articles discussed the process for ensuring the effective implementation of the Convention.

The Convention was later reinforced by the resolution adopted by the GA some years later in November 1965, which endorsed the Recommendation on Minimum Age for Marriage and Registration of Marriages.<sup>38</sup> The resolution, which used an innovative structure as compared to previous resolutions adopted by the Assembly, contained a number of principles and recommendations.

Among the first principles is the need to obtain consent from both spouses for marriage to be contracted after due publicity and in the presence of a competent authority. It also outlined the need to enact legislation or decision-making processes, particularly in their private lives (nationality) and in take other action to establish the minimum age for marriage and ensure all marriages are recorded in an official registry.

Among its recommendations, the Resolution suggested incorporating the principles contained therein into national legislation, and forwarding periodic information on any progress achieved and measures adopted to implement the contents of the Resolution to the Secretary General.

Together with these measures and the recently adopted text of the 1962 Convention, the Assembly adopted a resolution requesting ECOSOC and, of course, the CSW, to prepare a draft Declaration on the Elimination of Discrimination against Women<sup>39</sup>. The Resolution also requested the opinions of Member States and the entire system, and based its decision to begin the process on the need to properly implement the United Nations Charter and the Universal Declaration of Human Rights, among other reasons.<sup>40</sup>

This process began while discussions were under way regarding the content of the International Covenants of 1966.<sup>41</sup> All decisions made since 1946 concerning equality between men and women, as well as the emergence of legal instruments drafted to ensure equality, undoubtedly influenced the phrasing used in the Covenants. In fact, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, both adopted by the GA in

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<sup>37</sup> Text of the convention included in the United Nations Treaty Series, vol. 521, No. 7525, p. 231.

<sup>38</sup> GA Resolution A/RES/2018 (XX), 1 November 1965

<sup>39</sup> GA Resolution A/RES/1921 (XVIII), 5 December 1963.

<sup>40</sup> Preamble, para. 1 of the Resolution states: «Desirous of implementing the provisions of the Charter of the United Nations and the principles of the Universal Declaration of Human Rights in which are affirmed the equal rights of all human beings regardless of sex.»

<sup>41</sup> The Covenant of Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights were adopted by the GA on 16 December 1966. The texts can be found in the United Nations Treaty Series, vol. 999, p. 171; and vol. 993, p. 3.

December 1966, included a specific article on the exercise of rights under equal conditions for men and women.<sup>42</sup>

The Declaration on the Elimination of Discrimination against Women was finalized and subsequently adopted by the GA in November 1967.<sup>43</sup>

The Declaration, which followed a structure similar to that used in other adopted legal instruments, also contains eleven articles, although it bears noting that all are substantive. Given the legal nature of the Declaration, it seems logical that a procedural section would not be included since the document does not fall into the same category as an instrument like the Convention on the Nationality of Married Women or the Convention on Minimum Age for Marriage.

It could be said that this declaration is the first United Nations text in which discrimination against women is explicitly affirmed, in addition to being unjust, as an offence against human dignity.<sup>44</sup> The Declaration cites political rights, the need to constitutionally recognize equality between men and women in all legislation, the right to nationality, equality under the law, etc. as well as a long list of other items that can be considered a catalogue of the rights that were subsequently included in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The 1960s came to a close with the GA Resolution which advocated for an increased role for women within the United Nations system<sup>45</sup> and with the resolution adopted at the International Conference of Human Rights supporting the proposal presented by the Secretary-General on the long-term plan for the advancement of women.<sup>46</sup>

Before the close of 1970, the GA adopted a resolution outlining an action program to be used worldwide to ensure improvement in the status of women in all sectors.<sup>47</sup>

The program integrated a number of general objectives and specific minimum objectives in several areas of social activity. The first of those objectives was to obtain the ratification or access to the international instruments that address the status of women. This implied incorporating such instruments in

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<sup>42</sup> Article 3 of the Covenant on Civil and Political Rights states: «The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant». And Article 3 of the Covenant on Economic, Social and Cultural Rights states: «The States Parties to the present Covenant undertake to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Convention».

<sup>43</sup> GA Resolution A/RES/2263 (XXII), 7 November 1976

<sup>44</sup> *Cfr.* Definition of discrimination contained in article 1 of the Declaration

<sup>45</sup> GA Resolution A/RES/2715 (XXV), 15 December 1970.

<sup>46</sup> The Conference was held in Tehran and endorsed the proposal presented by the Secretary-General in Resolution IX, adopted 12 May 1968, which was officially distributed in document A/CONF. 32/41.

<sup>47</sup> GA Resolution A/RES/2716 (XXV), 15 December 1970.



national legislation and taking measures to ensure that they were implemented in each national territory.

In addition to these proposals, which are the logical legal outcomes of ratifying the above-mentioned instruments, the Program also cited the need to step up media campaigns to raise public awareness regarding the need for equality. To do so, the Program also proposed analyses and studies to be conducted on the status of women in each geographical area, as well as an assessment of the positive and negative effects for women posed by technological changes.

These objectives also required, according to the Program, short-, medium- and long-term strategies and projects in each State to be designed, as well as the creation of mechanisms and procedures to do so.

The specific *minimum* objectives focused on education, training and employment, health and maternity protection, and public life.

It is important to note that the decade culminated in the adoption of this Program, which brought forces together to adhere politically to the commitments established in the legal instruments. It could be said that by using two avenues (both political and legal), an attempt was made to eliminate the reluctance of some States to ratify instruments that they cannot later apply or those who lack sufficient support in their countries to ratify the instruments for any number of reasons.

In any case, the 1960s were particularly pivotal in the process as it led to the provision of legal measures and also fostered the work of government branches and an increase in role of women within the United Nations system itself.

#### **4. THE INTERNATIONAL YEAR AND DECADE OF WOMEN**

The 1970s began with the Declaration of the International Year of Women. The decision to do so, pursuant to a resolution adopted by the GA in December 1972,<sup>48</sup> marked the end of the debates on the twenty-fifth anniversary of the first meeting of the CSW held in Lake Success, New York in 1947.

The 25-year period that had passed was sufficient to assess the situation while also continuing to foster universal recognition of equal opportunities, both from legal and practical standpoints. We must also consider the commitment to action included in the program that was adopted at the end of 1970,<sup>49</sup> which outlined a series of measures that must also be assessed.

The aim of the International Year was outlined in operative paragraph 2 of the resolution: to promote equality and ensure that women were fully integrated

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<sup>48</sup> GA Resolution A/RES/3010 (XXVII), 18 December 1972

<sup>49</sup> Above mentioned GA Resolution A/RES/2716, 15 December 1970

in development efforts and that their role in society and the international community was recognized.<sup>50</sup>

The resolution proclaiming the International Year was adopted by the GA the same day it adopted the Resolution on the Improvement of the Status of Women in the United Nations System.<sup>51</sup> This marked the beginning of a decade that clearly continued along the same path followed by the previous decade in terms of promoting equality within the United Nations system, and in all spheres of action.

Nevertheless, the objectives were not left as mere declarations. The resolution proclaiming International Women's Year proposed a series of measures designed to achieve the objectives. Operative paragraph 3<sup>52</sup> invited all governments and interested organizations to ensure the full realization of women's rights.<sup>53</sup> Operative paragraph 4 also extended an invitation to governments to ratify the Convention adopted by the International Labor Organization concerning equal remuneration for men and women for work of equal value.<sup>54</sup>

Lastly, the same text asked the United Nations Secretary-General to create a program for the International Year of Women after consulting with Member States and all specialized United Nations agencies, as well as non-governmental organizations.

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<sup>50</sup> Operative paragraph 2 states:

«Decides to devote this year to intensified action: a) To promote equality between men and women; b) To ensure the full integration of women in the total development effort, especially by emphasizing women's responsibility and important role in economic, social and cultural development at national, regional and international levels, particularly during the Second United Nations Development Decade; c) To recognize the importance of women's increasing contribution to the development of friendly relations and cooperation among States and to the strengthening of world peace.»

<sup>51</sup> GA Resolution on taking measures to ensure equal opportunity in the employment of qualified women for high-level posts and decision-making offices, A/RES/3009 (XXVII), 18 December 1972.

<sup>52</sup> Operative para. 3 of the Resolution states: «Invites all Member States and all interested organizations to take steps to ensure the full realization of the rights of women and their advancement on the basis of the Elimination of All Forms of Discrimination against Women.»

<sup>53</sup> I will not spend any time on the terminological controversy surrounding «women's rights», but for purposes of clarification, I will make but one comment. Although this term was used initially, the focus of the search for equality for women revamped this terminology and soon advocated that women should not have specific rights that differ from anyone else's. In order to ensure equality between women and men, the full realization of women's rights would have to be verified. This is the situation in most Nordic countries and many other countries today.

<sup>54</sup> Operative para. 4 states: «Invites Governments that have not yet done so to ratify as soon as possible the Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (1951), adopted by the International Labour Conference at its thirty-fourth session.»

The Program was adopted by ECOSOC in 1974,<sup>55</sup> in the same resolution that contained a request for the Secretary-General to hold an International Conference during the International Year of Women where the level of compliance with the commitments undertaken could be reviewed and a short- and long-term program of action to ensure equal opportunity in all efforts in order to foster development and eliminate discrimination could be agreed upon. In addition to confirming the program, the resolution invited all Member States to participate in the Conference.<sup>56</sup>

On the same day the resolution was adopted, the Assembly adopted yet another document,<sup>57</sup> which created a consultative committee for the conference formed by 23 Member States appointed by the Chairman of the Third Committee in consultation with the regional groups. These consultations were carried out concurrently and the 23 members were elected the same day the Resolution was adopted.<sup>58</sup>

The preparations leading up to the conference did not prevent the Assembly from adopting the Declaration on the Protection of Women and Children in Emergency and Armed Conflict beforehand.<sup>59</sup>

The First World Conference on Women was held in Mexico from 19 June to 2 July 1975. Although the final report, with all documents adopted, was included in the official documents in 1976,<sup>60</sup> the GA adopted several measures before the International Year concluded.

On 12 December 1975, the GA adopted a resolution that endorsed the implementation of the action plan approved at the I World Conference for Women's International Year.<sup>61</sup> Three days later, the Assembly adopted a resolution on the integration of women in development processes;<sup>62</sup> a resolution requesting the assistance of the system in ensuring the integration of women in development;<sup>63</sup> a resolution on women's role in international peace and security;

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<sup>55</sup> Resolution of the Economic and Social Council 1851 (LVI), 16 May 1974.

<sup>56</sup> In addition to the invitation to Member States in operative para. I, the resolution also invites the national liberation movements recognized by the African Union and the League of Arab States in their respective regions, to participate as observers at the Conference.

<sup>57</sup> GA Resolution A/RES/3277 (XXIX), 10 December 1974

<sup>58</sup> The Member States on the Committee included: Australia, Belgium, Brazil, France, German Democratic Republic, India, Iran, Jamaica, Japan, Jordan, Mexico, Niger, Philippines, Rwanda, Romania, Senegal, Sierra Leone, Sweden, Tunisia, Union of Soviet Socialist Republics, United Kingdom, United States of America, and Venezuela

<sup>59</sup> GA Resolution A/RES/3318 (XXIX), 14 December 1974

<sup>60</sup> Document E/CONF. 66/34, 1976. The text of Plan of Action and the Declaration adopted in Mexico, together with the subsequent World Conferences on Women, is available in Spanish in the volume authored by the Women's Institute (Ministry of Labour and Social Affairs), *Las Conferencias Mundiales de Naciones Unidas sobre las Mujeres*, Instituto de la Mujer (Documents series No. 26), Madrid, 1999, pp. 848.

<sup>61</sup> GA Resolution A/RES/3490 (XXX), 12 December 1975

<sup>62</sup> GA Resolution A/RES/3505 (XXX), 15 December 1975

<sup>63</sup> GA Resolution A/RES/3524 (XXX), 15 December 1975.

<sup>64</sup> a resolution on the improvement of the economic status of women <sup>65</sup> and a resolution on the improvement of the situation of women in rural areas and women with low income. <sup>66</sup>

During that same session, the Assembly adopted the Decade of Women (1976-1985), established the International Research and Training Institute for the Advancement of Women (UN-INSTRAW), and decided to hold the Second World Conference on Women in 1980 to assess to what extent the goals adopted in Mexico had been fulfilled. <sup>67</sup>

Nevertheless, the political measures were not the only actions taken by the Member States or the Organization itself. The GA also adopted a resolution calling on the States to ratify the International Covenants and the international legal instruments to ensure the realization of all human rights and fundamental freedoms for women. <sup>68</sup> This practice of concurrently proposing political and legal measures has been used in the United Nations system since the beginning. Each approach complements the other in obtaining the objective, which is equality. However, we must point out that the latter resolution, in addition to encouraging the ratification of existing instruments, called on CSW to prepare a draft Convention on the Elimination of Discrimination against Women. <sup>69</sup>

While this process was under way, ECOSOC in 1976 adopted the creation of UN-INSTRAW <sup>70</sup> as an autonomous entity of the system to be funded through voluntary contributions.

Likewise, the CSW adopted the Program of Action for the United Nations Decade of Women, which was endorsed by ECOSOC <sup>71</sup> and later by the GA <sup>72</sup> Plans were made to draw upon resources in the United Nations Volunteer Fund for the Decade of Women to hold the conference. With a view toward ensuring the resources would be used efficiently, the Assembly adopted criteria for the use of the Fund, <sup>73</sup> extended an invitation to Member States to support the Fund, <sup>74</sup> and held a conference to request more contributions for the Fund. <sup>75</sup>

Although during this period, efforts were concentrated on safeguarding the financial resources to carry out the foreseen activities, the Assembly did not

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<sup>64</sup> GA Resolution A/RES/3519 (XXX), 15 December 1975

<sup>65</sup> GA Resolution A/RES/5322 (XXX), 15 December 1975.

<sup>66</sup> GA Resolution A/RES/3523 (XXX), 15 December 1975.

<sup>67</sup> GA Resolution A/RES/3520 (XXX), 15 December 1975

<sup>68</sup> GA Resolution A/RES/3521 (XXX), 15 December 1975

<sup>69</sup> Operative para. 2 of Resolution 3521 (XXX) states: «Request the Commission on the Status of Women to complete, in 1976, the elaboration of the draft Convention on the elimination of discrimination against women».

<sup>70</sup> ECOSOC Resolution E/RES/1998 (LX), 12 May 1976

<sup>71</sup> E/5894, 14 October 1976

<sup>72</sup> GA Resolution A/RES/31/134, 16 December 1976.

<sup>73</sup> GA Resolution A/RES/31/133, 16 December 1976.

<sup>74</sup> GA Resolution A/RES/31/136, 16 December 1976.

<sup>75</sup> GA Resolution A/RES/31/137, 16 December 1976.

neglect its responsibility concerning some specific questions, and in 1976 it adopted a resolution calling on States to take measures to reduce women's illiteracy worldwide.<sup>76</sup>

With the Program adopted, the preparatory process for the Second World Conference on Women was now under way –this time with the experience acquired in Mexico–. This meant that more time would go into the organization of the preparatory Committee than for the first conference. This time, the Assembly adopted the resolution under which it created the preparatory consultative Committee nearly three years before.<sup>77</sup> The same day, it adopted another resolution requesting the CSW to prepare a draft Declaration on the Participation of Women in the Strengthening of International Peace and Security.<sup>78</sup>

The middle of the Decade in 1980 marked the period for assessing the efforts carried out thus far, gearing up for the Second World Conference on Women, and deciding on the topics to include on the conference agenda. To this end, the Assembly adopted a resolution in early 1979 on the preparatory activities for the conference;<sup>79</sup> approved a general agenda for the Second World Conference on Women;<sup>80</sup> and decided to hold the conference in Denmark.<sup>81</sup>

Before the conference took place, the Assembly decided to include the situation of Palestinian women<sup>82</sup> and female refugees<sup>83</sup> on the agenda, as well as to endorse the recommendations issued by the Preparatory Committee.<sup>84</sup> However, these preparations did not prevent the Assembly from also adopting a substantive resolution on the need to improve women's education.<sup>85</sup>

But at this point in the Decade, the most important milestone, aside from the Second World Conference on Women, was the adoption of the Convention on the Elimination of All Forms of Discrimination against Women.<sup>86</sup> The text, negotiated in a relatively brief period of time, envisaged a legal duty to reform national legislation in order to ensure equality between men and women.

Although we will discuss the content at greater length later on, I would like to touch on the importance of preparing a legal document that turned a number of the political commitments undertaken over the past few years, and more specifically at the First World Conference on Women held in Mexico in 1975, into national legislation.

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<sup>76</sup> GA Resolution A/RES/31/134, 16 December 1976.

<sup>77</sup> GA Resolution A/RES/32/140, 16 December 1976.

<sup>78</sup> GA Resolution A/RES/32/142, 16 December 1976.

<sup>79</sup> GA Resolution A/RES/33/185, 29 January 1979.

<sup>80</sup> GA Resolution A/RES/33/189, 29 January 1979.

<sup>81</sup> GA Resolution A/RES/33/189, 29 January 1979.

<sup>82</sup> GA Resolution A/RES/34/160, 17 December 1979.

<sup>83</sup> GA Resolution A/RES/34/161, 17 December 1979.

<sup>84</sup> GA Resolution A/RES/34/162, 17 December 1979.

<sup>85</sup> GA Resolution A/RES/34/159, 17 December 1979.

<sup>86</sup> The text can be found in the United Nations Treaty Series, vol. 1249, No. 20378, p. 13

The Second World Conference on Women was held in Copenhagen from 14 to 30 July 1980,<sup>87</sup> and their documents were endorsed by the GA in December of that same year.<sup>88</sup> As soon as this process was concluded, the GA began the process for the second half of the Decade of Women,<sup>89</sup> whose activities were financed through the Voluntary Fund. The period of use for the Fund was increased beyond the end of the Decade,<sup>90</sup> which would conclude with the Third World Conference on Women<sup>91</sup> in Nairobi<sup>92</sup> in view of the problems specific to women who work in colonial or occupied territories. This awareness was also shown in the adoption of the Declaration on Women's Participation in Promoting Peace and International Cooperation.<sup>93</sup>

In addition to efforts aimed at applying and attaining each commitment adopted in Mexico and Copenhagen, the system continued its work both in terms of the Fund and the mechanisms created to ensure equal opportunity for women. This is how the attention given to INSTRAW, for example, can be explained.

Its statutes were adopted by the Economic and Social Council,<sup>94</sup> and its activities and programs by the Assembly;<sup>95</sup> and the Voluntary Fund itself, which was defined as an autonomous entity associated with the United Nations Development Program (UNDP) and independent from the United Nations Development Fund for Women (UNIFEM).<sup>96</sup> Moreover, the Assembly called upon all entities of the system to integrate women in development processes.<sup>97</sup>

The CSW was the entity appointed to serve as the preparatory committee for the Third World Conference on Women scheduled to coincide with the end of the Decade of Women.<sup>98</sup> Several days later, the Assembly decided to appoint a person to coordinate the improvement of the status of women in the United Nations Secretariat.<sup>99</sup>

The Decade concluded with the Third World Conference on Women held in Nairobi from 15 to 26 July 1985,<sup>100</sup> the conclusions of which were endorsed by the Assembly in December 1985.<sup>101</sup>

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<sup>87</sup> The Report of the II Conference can be seen in the Report itself, which was distributed as document A/CONF. 94/35.

<sup>88</sup> GA Resolution A/RES/35/136, 11 December 1980.

<sup>89</sup> GA Resolution A/RES/36/126, 14 December 1981.

<sup>90</sup> GA Resolution A/RES/36/129, 14 December 1981.

<sup>91</sup> GA Resolution A/RES/37/60, 3 December 1982.

<sup>92</sup> GA Resolution A/RES/38/108, 16 December 1983.

<sup>93</sup> GA Resolution A/RES/37/63, 3 December 1982.

<sup>94</sup> ECOSOC Resolution E/1984/41, 28 March 1984.

<sup>95</sup> Report of INSTRAW on its activities, A/38/406, 21 October 1983; and GA Resolution A/RES/39/125, 14 December 1984.

<sup>96</sup> GA Resolution A/RES/39/125, 14 December 1984.

<sup>97</sup> GA Resolution A/RES/39/128, 14 December 1984.

<sup>98</sup> GA Resolution A/RES/39/129, 14 December 1984.

<sup>99</sup> GA Resolution A/RES/39/245, 18 December 1984.

<sup>100</sup> Report of the Conference A/CONF. 116/28/Rev.1.1986.

<sup>101</sup> GA Resolution A/RES/40/108, 13 December 1985.

## **5. THE TURN OF THE MILLENNIUM AND FOLLOW-UP**

The conclusions drafted in Nairobi were considered to be action strategies for the advancement of women and the year 2000, as the end of the twentieth century, was set as a target date. In the years subsequent to the Third World Conference on Women, efforts aimed at promoting equal opportunities between men and women did not diminish. In addition to endorsing the Nairobi strategies, the GA adopted a resolution insisting on the need to observe the conclusions, specifically in light of the status of women in developing countries.<sup>102</sup> It also adopted a separate resolution that reaffirmed the responsibility of Member States to implement the commitments undertaken within their own countries<sup>103</sup> while another made a call for proper mechanisms for assessing compliance with the Nairobi strategies.<sup>104</sup> Other resolutions adopted promoted a relationship between compliance with Nairobi and the CSW mandate,<sup>105</sup> addressed substantive topics<sup>106</sup> or were aimed at having a higher number of States ratify the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), adopted in 1979.<sup>107</sup>

Although the Nairobi strategies were pursued with the target date of 2000 in mind, ECOSOC did not delay in recommending that a Fourth conference be held in 1995, a recommendation that was endorsed by the GA that same year.<sup>108</sup> This effort dovetail with others undertaken within the Secretariat itself aimed at increasing the number of women<sup>109</sup> and another designed to ensure that at all major conferences and events held in the 1990s would include the status of women as a cross-cutting issue in all spheres.

One example of this was the inclusion of chapter 24 (Global Action for Women) in Agenda 21, adopted in 1992 at the Conference on Environment and Development;<sup>110</sup> Section II.A.3 on equality in the area of human rights in the outcome document of the World Conference on Human Rights held in Vienna in 1993;<sup>111</sup> Chapter IV, principle 4 (gender equality and the empowerment of women) of the outcome document of the International Conference on Population

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<sup>102</sup> GA Resolution A/RES/41/111, 4 December 1986.

<sup>103</sup> GA Resolution A/RES/43/101, 8 December 1988.

<sup>104</sup> GA Resolution A/RES/44/77, 8 December 1989.

<sup>105</sup> GA Resolution A/RES/46/98, 16 December 1992; GA Resolution A/RES/47/108, 20 December 1993.

<sup>106</sup> GA Resolution A/RES/44/78, 8 December 1989; GA Resolution A/RES/54/126, 14 December 1990.

<sup>107</sup> GA Resolution A/RES/44/73 and GA Resolution A/RES/49/162, both 23 December 1984.

<sup>108</sup> GA Resolution A/RES/45/129, 14 December 1990.

<sup>109</sup> GA Resolution A/RES/45/239C, 21 December 1990.

<sup>110</sup> Report of the Conference, A/CONF.151/26/rev.1. Vol. 1, 1992.

<sup>111</sup> Report of the Conference, A/CONF.157/24/ Part I, 13 October 1993.

and Development in Cairo in 1994;<sup>112</sup> and Commitment 5 (equality and equity between men and women) of the Declaration adopted at the Social Development Summit held in Copenhagen in March 1995.<sup>113</sup>

The efforts carried out in the Secretariat and others at these Conferences were complemented by programs and actions in substantive areas. In 1993, the GA adopted the Declaration on the Elimination of Violence against Women<sup>114</sup> insisted on the ratification of the CEDAW and took up the reports being presented by the Secretary-General to the GA on the status of CEDAW, violence against working women, and on the trafficking of women and young girls, *inter alia*.

Likewise, the Commission of Human Rights adopted a resolution on the appointment of a Special Reporter on Violence against Women.<sup>115</sup>

These actions aimed at ensuring equality for women were growing stronger on multiple avenues. All these elements have helped improve the status of women but unfortunately equality is still a far-off goal in many sectors.

In this context, the opportunity to hold a Fourth World Conference on Women in Beijing from 4 to 15 September 1995 represented another means of promoting measures to gain equality and at the same time constituted a unique way of raising public awareness worldwide.

The outcome document of the conference was endorsed by the GA in November 1995,<sup>116</sup> during a period when the GA adopted numerous resolutions on the status of women. Without naming them all, it suffices to mention a number of resolutions focused on young girls: the trafficking of women and young girls; violence against female migrant workers; and the abuse and raping of women in areas of armed conflict in the former Yugoslavia.<sup>117</sup>

Against this backdrop, we must also consider the vital role assumed by the Fourth World Conference on Women in highlighting the work performed by non-governmental organizations, which have undoubtedly increased their involvement in the efforts of the system and the calls made by the NGOs with the consent of the Member States.

After Beijing, the arrival of the new millennium led to an annual review of the extent to which the commitments undertaken in different spheres of action, including the Platform for Action adopted in Beijing. As the process was winding down in 2000, the CSW set the stage for the so-called «Beijing+5 processes», which was no less problematic during its negotiation. In any event, the CSW reached the end of the process and the document was adopted by consensus.

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<sup>112</sup> Report of the Conference, A/CONF.171/13, 18 October 1994.

<sup>113</sup> Report of the Summit, A/CONF.166/9, 1995.

<sup>114</sup> GA Resolution A/RES/48/104, 20 December 1993.

<sup>115</sup> Resolution of the Commission on Human Rights 1994/45, 11 March 1994.

<sup>116</sup> GA Resolution A/RES/50/744, 10 November 1995.

<sup>117</sup> Respectively GA Resolution A/RES/50/154, 21 December 1995; GA Resolution A/RES/50/167, 22 December 1995; GA Resolution A/RES/50/192, 22 December 1995



In September of that same year, the Millennium Summit was held. All Heads of State and governments participated and the Millennium Declaration was adopted, along with the principles and values to be ensured in the following years. Equality between men and women was included among the objectives even if today, 10 years after the event, the goals are not fully implemented.

During the post-Beijing and Beijing+5 and +10 periods, the system of work in the United Nations was maintained using a structure similar to the one currently in place. Two main areas of focus included the improvement of the situation of women at the Secretariat and follow-up to and revision of progress made on the commitments undertaken at the World Conferences on Women. Of no less importance was the impetus given to the review of the legal obligations that came out of the ratification of the human rights legal instruments, and, of particular note, CEDAW. A final area of importance included the adoption of thematic resolutions by the CSW, ECOSOC and the GA.

In this snapshot, I should also like to mention the work initiated in the Security Council with the adoption of Resolution 1325 on Women, Peace and Security and the resolutions adopted after that in the Security Council, which proposed not only a follow up of the commitments but also to include a gender mainstreaming approach in the work of the Security Council.

In any case, we could say that the Millennium had a political momentum but unfortunately it did not mean the fulfillment of the goals agreed.

## **6. LEGAL INSTRUMENTS USED IN THE UNITED NATIONS**

Equality and non-discrimination are embedded in the founding documents of the United Nations. Article I of the United Nations Charter outlines the purposes of the Organization and its third paragraph focuses explicitly on the exercise of human rights and fundamental freedoms, without distinction as to race, sex, language or religion.

The history of the United Nations has been punctuated by the adoption of numerous legal instruments that contain specific references to equality and non discrimination on the basis of sex. An exhaustive account is not necessary, but we can highlight the instruments that are turning out to be more significant due to their effectiveness. For the purposes of providing a proper assessment, a distinction must be made in order to classify different legal norms. The distinction among protective, corrective and non- discriminatory norms is widely accepted.

- Protective norms are those that protect and maintain aspects of women's lives in accordance with a cultural division of work and roles between men and women. Irrespective of how these norms are interpreted, the regulations of the International Labor Organization for preventing night

work performed by women or women's employment in mines could be included here.

- Corrective norms are understood as all those applied to ensure women's equality in areas where they are clearly being treated differently than men. We would include here, for example, all forms of affirmative action in their broadest sense. In the case of the United Nations, the most significant example could be the Convention on the Nationality of Married Women of 1957, the objective of which is to change the current situation of women's nationality being tied to their husband's.
- Lastly, the so-called non discriminatory norms would include a wide range of *neutral* regulations from a gender standpoint, in the sense that the norms under this category never use sex to establish any kind of benefit or obstacle in society. These norms undoubtedly underline the content of the Founding Charter of the United Nations and the Universal Declaration of Human Rights, which, both in the preamble and body, contain calls for the recognition of equality and non-discrimination.

In any case, we must take into account the fact that this distinction is useful for the analysis of United Nations instruments, but we cannot overlook the fact that in practice, the distinction is not absolute. Some instruments contain different types of norms within the same text. For example, the Universal Declaration recognizes equality and non-discrimination and also contains, in Article 25, a call for special protection of maternity and infancy.

Nonetheless, it can be said that the content of United Nations instruments has been evolving hand in hand with society and the needs voiced by Member States. Progress has been made as a result, in that women are no longer being considered objects of special protection –merely because of their sex– and are considered as individuals without distinction.<sup>118</sup>

For the purposes of our study, I will first address the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, which are, in a way, the basis for other agreements. I will not analyze the legal instruments in any chronological order as it should be understood that it is more appropriate after the Covenants to focus on the Convention on the Rights of the Child and other instruments that have implications for women and young girls directly. Once these have been analyzed, I will save the specific 1979 CEDAW

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<sup>118</sup> Analyzing the changes seen in the norms of the United Nations is a very interesting topic, although it falls outside the scope of my analysis in this section. I would only like to note here that the guidelines at the start, for example, as regards work through the ILO, provide an account of the great majority of women who were not yet incorporated into the work force, and were thus given more of a homemaker role, except in some cases.

Nevertheless, at present, the approach to gender equality, not only in the workplace but in all areas of social activity, is entirely different. Except in remote instances, most Member States have women fully integrated into the working world or, at least, with the possibility of gaining access to it.

for last. The latter has been around longer than a number of instruments, such as the Convention on the Rights of the Child, and deserves to be reviewed separately insofar as it pertains specifically to the elimination of discrimination against women.

## **6.1 The International Covenants of 1966**

The Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, both adopted in 1966, serve as a guide for all efforts carried out in the area of human rights within the United Nations system.

Although the United Nations, since its founding Charter was signed in 1945, has adopted a generous list of specific covenants focusing on certain rights, it could be said that the outline and groundwork for the protection of such rights and freedoms are found in the Covenants.

The Covenant on Civil and Political Rights establishes the duty of States to guarantee the rights in their territory, without distinction on the basis of sex, under Article 2.1. The principle of equality and non-discrimination is also stated under Articles 3 and 26 of the same Covenant. This same legal document also contains other explicit references to non-discrimination on the basis of sex in the exercise of such rights. These include Article 4 concerning the right of derogation in states of emergency, Article 6 concerning the death penalty, Article 23 on the family, Article 24 on the rights of children and Article 25 on the right to take part in the conduct of public affairs. Article 23 also addresses the equality of rights as to marriage and the ability of men and women to marry under equal conditions and form a family with the full consent of both.

Moreover, the Covenant on Civil and Political Rights also recognizes a number of rights that are important in ensuring gender equality, even though it is not explicitly addressed. These include Article 7, which prohibits inhuman and degrading treatment; Article 8, which prohibits slavery; Article 12 concerning the right to freedom of movement; Article 16 on equality before the law; Article 17 on the right to private and family life; Article 18 on the right to freedom of thought, conscience and religion; and Articles 21, 22 and 25 on rights relating to taking part in the conduct of public affairs.

Any study of these articles in particular would warrant a more detailed analysis, but for the purposes of our work, it suffices to confirm that the Covenant on Civil and Political Rights also contains several types of provisions. So far we have reviewed several deemed non discriminatory (including all the recently mentioned articles) and others that would qualify as protective or corrective depending on the approach taken.

Nevertheless, before continuing, I would like to make note of Article 26 on the Covenant on Civil and Political Rights, which recognizes equality before the

law and also the entitlement to equal protection under the law without discrimination.<sup>119</sup>

Equality, in a general sense, is already recognized under Articles 2 and 3 of the same Covenant, which could be considered complementary to the interpretation given to Article 26. Under this Article, the Covenant ensures that States Party guarantee equality in the content of the law to be applied in each case.

The Human Rights Committee has brought some light to bear on the interpretation of this Article, taking into account the fact that the Covenant does not contain an explicit definition of non-discrimination. As such, in its General Comments it is explained that the term «discrimination» is understood as any differentiation, exclusion, restriction or preference on the basis of race, color, sex, language, religion, political opinion or any other factor, national or social origin, property, birth or status that seeks to prevent or compromise the recognition or exercise of the rights to which all are entitled.<sup>120</sup>

Nevertheless, the Committee has also pointed out that the exercise of rights under equal conditions does not necessarily mean equality in all instances, and each State has a margin of interpretation in accordance with its national legislation and legal practices. This means that not all differentiated treatment could be automatically considered discriminatory.

The Covenant on Economic, Social and Cultural Rights, in turn, also prohibits any forms of discrimination on the basis of sex under Article 2, and following the same structure used in the Covenant on Civil and Political Rights, is rounded off with the obligation of States Party to ensure the exercise of equal rights under Article 3.

Article 7 of the Covenant on Economic, Social and Cultural Rights recognizes the right to equal pay for work of equal value. Article 10 concerning the family includes a call for equality and the freedom of men and women to consent to marriage and also recognizes the possibility of special protection being accorded to mothers during a reasonable period before and after childbirth.

Other provisions of the Covenant itself are also important for women: Article 6 on labor; Article 9 concerning the right to social security; Article 12 on the right to health; Article 13 on the right to education; and, Article 15 on the right to enjoy the benefits of scientific progress.

In any event, each economic, social and cultural right would have to be revised according to a gender perspective. The right to health stands alone in having been revised in this fashion. Perhaps this will be an area that should be

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<sup>119</sup> This distinction also raises the debate about what equality in terms of the law means in practice. In some cases it has been understood as the ability of all to gain access to legal protection without distinction. And in other cases, it has been understood in a second phase, thinking that the law must provide protection in terms of equality, irrespective of the right that has been infringed upon or that is being demanded. However, we are going to consider both concepts as a whole in the article under review.

<sup>120</sup> General Comment 18/37.

analyzed to determine the extent to which non discriminatory norms are similar in the case of such rights.<sup>121</sup>

## **6.2 The Convention on the Rights of the Child, 1989**

The Convention on the Rights of the Child was opened for signatures once it was adopted by the GA in November 1989. It is one of the most widely accepted legal instruments of the United Nations and perhaps one of the instruments that entered into force most quickly. Today, all Member States of the United Nations, except the United States, have ratified the Convention, which makes it the most widely ratified among all human rights instruments.

It is only fair to point out that the late adoption of the document by the GA does not mean that there has been no previous activity in the area. The Declaration on the Rights of the Child was adopted in 1959, but neither the Declaration nor the Convention contains separate references for young boys and girls.

Both documents cite the Universal Declaration of Human Rights and the Covenants of 1966 in order to underscore the exercise of rights by all people without distinction as to sex and the importance given by all United Nations instruments to the protection of children.

This Convention applies to individuals who are under the age of 18. Under Article 2, the Convention underlines the obligation of States Party to protect each child without distinction and without discrimination of any kind. Furthermore, the Convention uses a double approach in the case of children: it believes children are entitled to special protection as well as certain rights and freedoms.<sup>122</sup>

However, as is the case with other instruments, the Convention recognizes a number of rights that affect young girls especially, even though it fails to explicitly mention them. Article 6, on the right to life, is one such example, which outlines the duty of the State to ensure to the maximum extent possible the survival and development of children. Other examples include Article 7, which establishes the right of children to be cared for by their parents; Article 8 on the right to preserve identity; Article 12 concerning the right to form one's own views; Articles 13 and 14 on the freedom of thought, conscience and religion; Article 16 regarding the right to privacy, family, home, and correspondence; Article 19, on the protection against all forms of violence; Article 24 on the right to health; Article 26 on the right to social security; Article 28 on the right to education;

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<sup>121</sup> Jane Connors: «General Human Rights Instruments and their relevance to Women», in *Advancing the Human Rights of Women: Using International Human Rights Standards in Domestic Litigation*, Asia/South Pacific Regional Judicial Colloquium, Hong Kong, 1996.

<sup>122</sup> Merja Pentikäinen: *The Applicability of the Human Rights Model to Address the Status and Concerns of Women* (Erik Castrén Institute, Research Reports 1/1999), Forum Iuris. Helsinki, 1999.

Article 34 on protection against sexual abuse and sexual exploitation; Article 35 on the sale and trafficking of children; Article 36 concerning the protection against all forms of exploitation; and Article 37 on the right to freedom.

In addition to the recognition of these rights, the content of Article 18 is significant, as it places the responsibility for child-rearing on parents and also outlines the responsibility of the State to provide institutions or mechanisms that make it possible for parents to fulfill the responsibility that they are ascribed.<sup>123</sup>

We unfortunately lack the minutes from the informal debates conducted as the content of the Convention was being drafted. According to the information provided by some delegations, the most debated topic fell precisely in the area of health, traditional practices or customs affecting the health of women and young girls.<sup>124</sup> Despite attempts to incorporate specific language in the Convention to abolish such practices, the objective was not met. The debates resulted in the drafting of Article 24, which calls on States to take appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

In turn, the Committee placed in charge of monitoring the implementation of the Convention (set forth under Articles 44 and 45) engages in efforts aimed at assisting States, rather than penalizing them for non-compliance. Certainly the treatment of childhood varies substantially based on factors such as legal age/age of majority, culture and traditions particular to each society, but the fact that sometimes such factors can be used as an excuse for preventing the protection of young girls and boys is significant.

In terms of the topic in question, the exercise of rights has different implications in some cases, even though the Convention does not specify the difference between young boys and girls. For this reason, the Committee will use its recommendations to set the standard in this area

### 6.3 Other United Nations instruments

Neither the Convention of the United Nations on Torture nor the Convention on the Elimination of All Forms of Racial Discrimination make any explicit mention of the principle of non-discrimination on the basis of sex. It could then be argued that only specific instruments do so, and that the above-mentioned principle is enshrined explicitly in the founding documents and the Covenants of 1966.

This explanation however does not suffice if we consider the efforts made throughout the system to ensure policies of equality. Activities in the political sphere have been much more intense and constant than in the legal sphere, but this does not mean that the system has legally omitted the work accomplished in

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<sup>123</sup> See Paloma Durán: *El reconocimiento de los derechos de los niños*, Nau Llibres, Valencia, 1990.

<sup>124</sup> Paloma Durán: *El reconocimiento...*, cit., pp. 48 et seq.

the area of equality. This is evidenced by the fact that CEDAW, which I will discuss later, in addition to its Optional Protocol, was adopted.

In any case, it is true that for a number of years now calls have been made to mainstream a gender perspective in all follow-up and compliance processes for all legal commitments undertaken upon ratifying human rights instruments.

In some areas, it has not been easy to mainstream the gender perspective, as in the case of the United Nations Convention relating to the Status of Refugees, statistical data has confirmed that in 1995, eighty percent of displaced persons and refugees were women.<sup>125</sup> Article 2 of the Convention establishes that to seek protection under the document, an individual must show in a well-documented manner that he or she is suffering persecution on the basis of his or her race, religion, nationality, political opinion or relationship to a particular social group. This means that sex is excluded from the list of reasons outlined in the Convention, despite the fact that some authors have attempted to claim that it would fall within the «social groups» category.

The starting point will be the theory that international regulations are neutral in terms of gender. This statement however is rendered invalid if the host of additional problems faced by women is considered –for example the case of refugee women, which must be considered separately, not only because of their numbers but because of the additional difficulties they face–.<sup>126</sup> In response, the United Nations Office of the High Commissioner for Refugees adopted the Guidelines on the Protection of Refugee Women in 1990, the content of which was strengthened during the debates of the Fourth World Conference on Women held in Beijing in 1995.

Something similar could be said for the situation of women in armed conflicts, where women remain part of the civilian population. If we take into account that in the past fifty years, the number of victims among civilian populations has surpassed the number of military casualties the facts will show the situation of women. This factor is compounded by the extent of the differential impact of conflicts on men and women,<sup>127</sup> first and foremost in terms of the consequences felt not only while the conflict is underway but also during reconstruction and rehabilitation. Estimates that over 10,000 women and young girls were subjected to abuse and rape during the conflict in the former Yugoslavia have been confirmed. Additionally, women play roles as protagonists and victims in times of conflict. In fact, girl soldiers served in the army ranks of fifty-four countries between 1990 and 2002 and engaged in conflict in over 36.<sup>128</sup>

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<sup>125</sup> Paragraph No. 136 of the Platform for Action adopted in Beijing in September 1995.

<sup>126</sup> On the topic, see the comments by Merja Pentikäinen: *The Applicability of the Human Rights Model* cit., pp. 80 et seq.

<sup>127</sup> See the study on the impact of conflict on women and young girls, presented by the Secretary-General at the Security Council, in compliance with the mandate of Resolution 1325 (2000) on Women, Peace and Security, distributed under that same title, Publications of the United Nations, New York, 2002.

<sup>128</sup> *Ibid.* p. 13 et seq.

Furthermore, when considering the situation of women in conflict, we must take into account that women do not constitute a homogenous group and that conditions vary by country and culture. Lastly, a difference must be made as to the specific impact of conflicts on women and young girls and the gender perspective mainstreamed in the approach taken to these conflicts.

This confirms that international and humanitarian law cannot be neutral in addressing the situation of women and young girls. In the case of humanitarian law, the Geneva Conventions provide guidelines but they fail to meet or even respond to the needs of women and young girls. In this regard, the resolutions adopted by the Security Council on the protection of civilians in conflict have led to the drafting of an *Aide-Memoir*, which for the first time includes in a specific section women's situation (version adopted in December 2003).

In the same vein, we must also take into account the importance of the efforts carried out by the War Crimes Tribunal, created for the cases of Yugoslavia and Rwanda, the statutes for which include explicit reference to the rape of women in connection with crimes against humanity.<sup>129</sup>

The International Criminal Court (ICC), which was established in Rome in 1998, has also made subsequent contributions. The ICC has been mandated to enforce the law against anyone who has committed the crimes deemed most serious by the international community. In this regard, the articles governing the activities of the ICC<sup>130</sup> explicitly recognize rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence, as war crimes, and when they are committed as part of a widespread or systematic attack directed against any civilian population, they constitute crimes against humanity.

#### **6.4 The Convention on the Elimination of All Forms of Discrimination against Women (1979) and its Optional Protocol (1999)<sup>131</sup>**

Since the adoption of the Founding Charter of the United Nations in 1945, a number of legal instruments of different types have been adopted. The 1948

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<sup>129</sup> Articles 2-5 of the Statute of the Tribunal for former Yugoslavia, created by Security Council resolution (S/RES/827, May 1993).

<sup>130</sup> See articles 1 to 8 of the Statute of the International Criminal Court.

<sup>131</sup> The text of the Convention and the Optional Protocol was distributed in Spanish and English by the Women's Institute (Ministry of Labour and Social Affairs) of Spain, in its Document collection, No. 25, Madrid, 2000, for the seminar held to disseminate its content among governmental and non-governmental bodies, as established under Article 13 of the Protocol: Each State Party undertakes to make widely known and to give publicity to the Convention and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party.



Universal Declaration constitutes the first detailed instrument to enshrine rights and freedoms and contains thirty articles outlining them.

In the nearly sixty years of existence enjoyed by the United Nations, over sixty agreements have been adopted, addressing issues ranging from slavery, genocide, torture, law enforcement, the rights of refugees and minorities to human rights, inter alia. They are all based –explicitly or implicitly– on the principle of equality and non-discrimination outlined in the San Francisco Charter and the Universal Declaration of Human Rights.

Nevertheless, this legal framework has not been enough to ensure equal entitlement to human rights and fundamental freedoms for women.<sup>132</sup> As I pointed out in the general chronology of the United Nations, the Declaration on the Elimination of All Forms of Discrimination against Women was adopted in 1967. The declaration voices concern over instances of discrimination against women despite advances made in the area of human rights. Nevertheless, the legal status of the Declaration does not create obligations for States, which gave rise to the need to draft a document with legal implications that demands the adoption of specific measures to eliminate discrimination against women.

From 1948 to 1962, the CSW helped draft a series of Treaties, including the Convention on the Political Rights of Women (1952), the Convention on the Nationality of Married Women (1957), and the Convention on the Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (1962), which outline the rights of women in areas where they were clearly vulnerable.

In 1965, the CSW began drafting the Declaration on the Elimination of Discrimination against Women adopted in 1967, despite knowing that the Declaration was not a Treaty. Efforts were initiated in 1972 and a draft was pushed forward by the First World Conference on Women. The Declaration was passed as the Convention on the Eliminations of all Forms of Discrimination against Women (CEDAW) in 1979, and entered into force in 1981, after being ratified by twenty countries. By 2003, the Convention had been ratified by 171 countries and signed by two others.<sup>133</sup>

It could be said that CEDAW's content goes beyond the mere recognition of equality and non-discrimination before the law, as it proposes specific measures to be taken in all fields, particularly in political, economic, social and cultural fields. As is known, the content of CEDAW is structured into six parts and also includes an introduction.

Part I comprises Articles I to 6, in which the States undertake an obligation to implement constitutional, legislative, administrative or other measures to ensure the advancement of women, modify cultural and social patterns of behavior as needed, and suppress all forms of traffic in women and exploitation of

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<sup>132</sup> About the matter, see the text prepared by the United Nations in collaboration with the Inter-Parliamentary Union: *The Convention on the Elimination of all forms of discrimination against Women and its Optional Protocol (Handbook for Parliamentarianism)*, New York, 2003.

<sup>133</sup> *Ibid.*, p. 34.

prostitution of women. This first part includes an explicit definition of discrimination against women for the first time,<sup>134</sup> which States Party are required to cover in their periodic reports.

Part II includes the protection of women's rights to participate in the political and public life of their countries under Articles 7 and 9. Part III, which includes Articles 10 to 14, outlines measures for eliminating discrimination in the education, employment, health, economic, social and cultural sectors. Part IV, which includes Articles 15 and 16, sets forth measures for ensuring equality before the law, as well as equality in exercising rights as to marriage and family life. The last two parts include provisions relating to the submission of periodic reports to the Committee created under the Convention itself, as well as the conditions for the deposit of ratifications and reservations to the text.<sup>135</sup>

Pursuant to the content of CEDAW, a Committee composed of twenty-three individuals of high moral consideration and independent experts in the fields addressed by the Convention was created. The individuals are appointed for four-year periods, which can be extended, and their mandate is to revise and follow-up the reports submitted by States to give an account of their level of compliance with the provisions of the Convention. The work carried out within the framework of CEDAW was strengthened with the adoption of the Optional Protocol in 1999. In twenty-one articles, the text of the Protocol included two new mechanisms for ensuring the effectiveness of the Convention.

The first mechanism, the communications procedure, is set forth in Articles 2 to 7 of the Protocol. Under this mechanism, individuals or groups of individuals may submit communications to the Committee if considered victims of any violation of any right enshrined in CEDAW. The procedure provides an opportunity to take action at the international level when an individual has exhausted the resources available to them in their own country in order to demand compliance with the rights outlined in the Convention. It also gives the Committee an opportunity to invite the State concerned to adopt more effective

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<sup>134</sup> Article I of the Convention states:

«For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.»

<sup>135</sup> As is known, many States have submitted their reservations or interpretative statements regarding several of the articles in the Convention. For example, Spain which issued its reservation regarding equality as it pertains to the inheritance of the Crown, since, according to its current Constitution, though women are not excluded from succession, male descendants are preferred over female descendants.

measures to enforce CEDAW and provide assistance to States to strengthen the content of the obligations undertaken upon ratification.

In addition to the communications procedure, the Protocol also establishes an inquiry mechanism under Articles 8 and 9, which enables the Committee to initiate an inquiry if it has received reliable information that a State Party has failed to comply with one of the rights enshrined in CEDAW. This is done with a view to compiling information from the State and resolving the situation.

These two possibilities for action have been incorporated in the Protocol in a bid to ensure the objectivity of the information received and also to ensure that States undertake and comply with, in an objective way, the legal obligations that they undertake upon ratification of the document.

The Protocol was adopted on 6 October 1999, and opened for signature and ratification on 10 December 1999. It entered into force on 22 December 2000; three months after 10 ratification instruments were deposited.<sup>136</sup> To date, the Protocol has been signed by over seventy-five States and ratified by fifty.<sup>137</sup>

## **6.5 The United Nations World Conferences on Women**

The decision made by the United Nations to hold World Conferences on different issues has been one of its best. The World Conferences have been able to, among other things, raise public awareness worldwide in areas where both social and governmental awareness are needed. The pressure from social movements, particularly since the 1960s, has led to the legal protection of some assets that, for historical reasons above all, had not received due attention. These included protection of the environment, the right to food, and the right to housing, or in this case, women's rights and freedoms.

In addition to raising public awareness, the conferences have distributed information on the situation of the world in each subject area for which a conference has been held. We may recall, for example, the budgets earmarked for eradicating world hunger, which were widely ignored until the 1980s, or perhaps the public policies intended to guarantee access to housing. We may also recall a lack of sex-disaggregated statistical data across different spheres of activity in society.

My intention is not to go overboard praising the conferences, but rather show that these events were not held in vain. With regard to the World Conferences on Women, the fact that since the first conference was held a little over twenty-five years ago, the progress achieved has been much quicker and more effective than imagined must be pointed out. We have moved from the recognition of inequality in the document adopted in Mexico in 1975 to the analysis of and follow-up to the measures adopted in Beijing in 1995.

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<sup>136</sup> See The Convention on the Elimination.....op. cit., p.82

<sup>137</sup> *Ibid.*

As I pointed out in the chronology of the United Nations, four World Conferences on Women have been held. The first in Mexico City (Mexico) in 1975; the second in Copenhagen (Denmark) in 1980, in the middle of the United Nations Decade of Women (1976-1985); the third at the end of the Decade, in Nairobi (Kenya) in 1985; and the fourth in Beijing (China) in 1995, before the turn of the millennium.<sup>138</sup>

Each had a different purpose and gave rise to the documents that provide the standard for a host of political commitments, which have defined both international politics in terms of gender issues and also public policy at national and local levels.

In addition, the conferences have paved the way for the involvement of civil society and non-governmental organizations. This dovetails with the idea of strengthening the efforts of all stakeholders in any area addressed by the United Nations with a view to achieving all objectives proposed. The private sector, organizations (in this case, not only women's organizations, but in fact all those who work toward mainstreaming gender issues in their activities), civil society, and governmental and legislative institutions have taken part in the process. Perhaps as a result, equality between men and women has moved away from being an issue pertaining to women, worked on by women and supported by women, to a social problem whose solution requires everyone's involvement.

In addition, another interesting step has been taken from a political, legal and cultural standpoint, in that equality policies have been extended to gender policies. That is, in fields where women need specific policies to guarantee their equality with respect to men, specific policies would need to be maintained. At the same time, equality must be mainstreamed in all spheres of action in society.

Although the gender approach has been the focus of numerous theoretical debates, I understand that its interpretation goes back to the definition provided at Beijing, which specifies that the term «gender» must be interpreted and understood as it is commonly used and generally accepted.<sup>139</sup>

Aside from the academic debate, which I am not going to get into for obvious reasons, what is certain is the fact that the gender perspective brings to light the impact that policies and actions have on both women and men.<sup>140</sup>

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<sup>138</sup> The texts of the documents adopted at the end of the Conference, in Spanish, used in this analysis, were those published by the Women's Institute (Ministry of Labour and Social Affairs) of Spain, in the Documents series, No. 26, Madrid, 1999.

<sup>139</sup> See appendix IV, of the Report of the Fourth World Conference on Women held in Beijing: «Statement by the President of the Conference on the Commonly Understood Meaning of the Term "Gender"» which is included in the edition to which I have referred prepared by the Women's Institute of Spain, compiling the reports of the four World Conferences, pp. 847-848.

<sup>140</sup> For the debate in Beijing, see Paloma Durán: «The concept of gender», in *Los límites del Derecho*, Comares, Granada, 1997. For a more general discussion, see Paloma Durán: *Debates sobre el género*, Valencia 1992.

In this sense, the conferences show a positive effect from all standpoints. The fact that there are elements that require further work does not dilute the positive impact that they have had on the advancement of women.

Lastly, I would not like to conclude this small reference to the conferences without pointing out –as I have previously– that the documents are negotiated by Member States, who have the mandate and powers to make the decisions at the United Nations.

Although distribution among regional or «like-minded» groups<sup>141</sup> facilitates negotiation and shortens the process, this does not mean that we can go so far as to say that the United Nations has a specific policy. The policy of the United Nations is defined by the stances taken by Member States, who are the negotiators. The United Nations Secretariat, and by extension, all the departments, organs and individuals within the system, complies with the mandates received from States after having negotiated and adopted them using established procedures and organs.

The Charter explicitly points out that individual at the Secretariat are not able to request «instructions» from any State nor will States attempt to exert influence of any kind.<sup>142</sup>

The content of the Charter is especially important when toning down criticism leveled at the Organization when certain policies are implemented. In this regard, a division of duties is obvious. And the same could be said for the development funds and programs, whose executive boards, formed by Member States, are the decision-makers who approve the budgets.

On this issue, the stances taken by each Member State channeled through their governments must be considered in order to later refer to the «policies of the United Nations».

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<sup>141</sup> The term «like-minded» is used to group States with similar positions on some subject, although they might not necessarily respond to a homogeneous territorial or regional distribution.

<sup>142</sup> Article 100 of the United Nations Charter specifically states:

«1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.»

## **6.6 Last news**

After four year of negotiations, on July 2, 2010, the GA approved Resolution 64/289 which established the creation of a new entity for gender equality and women empowerment, called «UN-Women».

The new entity treats to unify the work and mandate of the Division for the Advancement of Women (DAW); The Office of the Special Advisor to the Secretary General for gender issues (OSAGI); The Development Fund for Women (UNIFEM) and the International Institute for Research and Training for the Advancement of Women (INSTRAW).

More recently, on September 14, 2010 the Secretary General announced the appointment of Michelle Bachelet, former President of Chile, as a Deputy SG for UN-Women.

The Executive Board will be integrated by 41 members: 10 form the African group; 10 from Asia; 4 from East European countries; 5 from Western countries and 6 additional seats for donor countries.

There is no time to see the results and efficiency of the new entity but Resolution 64/289 showed a very clear consensus on the need not only to improve the situation of women worldwide but also to improve the ways and tools within the UN system in order to improve situation of women which –at the end– it means to improve the situation of society as a whole.

This process is an effort to promote participation of women in society which is also the way to eradicate poverty all over the world.