

## **ABSTRACT**

### ***Reservations to provisions on woman's rights in International Conventions***

This paper analyzes the global protection of women's rights, in relation with Conventions and Treaties. The analysis is focused on reservations proposed by States parties of United Nations to women's right disposals in important documents. A brief introduction on the evolution of woman's rights is hereby proposed.

Since 1953 has been possible to recognize a sort of escalation of human's rights protection, especially for women's ones. A lot of Conventions, Committees, Covenants, Treaties were created by the United Nations to help women and to promote global gender equality, specifically there are nowadays a lot of Declarations that are supposed to enforce some concepts like the prohibition of discrimination and violence. Gender discrimination and violence are not accepted in international community as a general principle of law.

Numerous specific documents were created to ensure and enlarge women's rights protection and a large number of general provisions on equality of women and against general discrimination or violence are also contained in some key documents such as the UN Charter, the Universal Declarations on Human Rights, the Convention on the Rights of the Child and International Pacts of New York. However it is important to underline that a system of global protection for women is in place but it does not work as well.

From an historical point of view, the milestones set by UN for Women, are many. There are some events that deserve a specific attention. In 1967 there was the first Women's Declaration and in 1972 there was the first Convention for Women during the International Year for Woman. From 1975 to 1985 there was the Decade of UN for Women and a lot conferences took place all around the world to promote woman's condition. The first Conference was in Mexico City in 1975, the second one in Copenhagen in 1980, and after five years another Conference was organized in Nairobi, Kenya. After this intense period there were however other important world meetings, like the Beijing World Conference on Women in 1995 and the last Conference of New York in 2005, also known as "Beijing + 10".

Analyzing the evolution of women's right protection we must underline that the most important event was in 1979 with the birth of CEDAW, also known as Convention on

Elimination of All Forms of Discrimination against Women. This document considered fundamental of women's right, it is also important because was signed in 1990 by all UN's States parties, but they also made a lot of reservations, that sometimes, were unacceptable. In 1994 also the Declaration on Elimination of Violence against Women entered into force. It was a great event since in this document there is an important disposal about the concept of violence and, for the first time in history, there is a sort of description of what can be considered a violent or a normal behavior against women, included physical and psychological damage, genital mutilations, but also discrimination on work.

All of these above mentioned documents, Conventions or Conferences are strictly connected with the evolution of women's rights, but the most important that we have to analyze to explain the development of these issues is without doubt CEDAW.

The Convention on Elimination of All Forms of Discrimination against Women is the only legal instrument used to guarantee respect of laws on women's rights. It has been produced in 1979 and in 1981 was active. CEDAW contains thirty articles about different rights of women, such as the prohibition of discrimination and all general obligations that the Convention itself produces for States members. CEDAW is a document conceived to ban "*All Forms*" of discrimination and to grant respect for women all around the world. However it seems sometimes impossible because a lot of member States have proposed to reserve provisions of these articles.

To reserve something on a treaty is a typical behavior of many States, because they do not want to accept all the obligations of that treaty, or they do not accept the idea of full respect of particular principles contained in the text of the document. To pose a reservation on treaty is possible as explained in Article 19 of the Vienna Convention on the Law of Treaty, but it has to be compatible with the object and the purpose of the treaty, or in that case, of the Convention. This principle was accepted by CEDAW and was inserted at Article 28,2. Obviously it is necessary for each State to give a motivation of the reservation and that has to be accepted by all the other member States.

The Convention on Elimination of All Forms of Discrimination against Women is currently one of the most reserved paper of the United Nations, and it shows us that is an extremely complex document. Furthermore it is necessary to mention that in 1999 a sort of appendix was added to the Women's Convention with the name of Optional Protocol. This document,

that was not accepted by all States parties, reaffirms the will of UN to confirm some of the fundamental principles contained in all the documents of the General Assembly, like, for example, the International Covenants on Human Rights.

The primary purpose of the Women's Conventions is to eradicate Discrimination and violence against women but the object of this document is also focused on the maximization of the universal application of principles and rights, and to protect text's integrity. Some problems emerged with the acceptance and rejection of reservations. The Philippines had expressed their opinion against the admissibility of reservations, while some Eastern-European Countries voted for unanimity rule during the poll of this problem. Finland proposed that each sentence had to be ratified singly, while Sweden underlined that was a good thing that only few reservation for each member were accepted. After this discussion the final doctrine on reservation was included in Article 28, explaining that a reservation has to be compatible with the object and the purpose of the treaty.

Nowadays, there are a lot of reservations to provisions of CEDAW, a lot of these made by States that are developed or developing Countries. Forty States have made substantial reservation and thirty-seven States have reserved specifically Article 29, that concerns the possibility of appeal.

A great part of the reservations that are currently in the Convention are from States based on particular internal laws, like religious or constitutional ones. The majority are from Islamic Countries, based on Sharia law, but there is also a little group of reservations that were proposed by Monarchies to save the rule of succession to the throne, like the ones by United Kingdom, Spain, Belgium and Luxembourg.

Bahamas, Bangladesh, Djibouti, Egypt, Iraq, Kuwait, Libya, Malaysia, Morocco, Nigeria, Saudi Arabia, Singapore, United Arab Emirates and a lot of other Countries, are currently reserving disposition in order to protect the internal Islamic Law.

The above mentioned types of reservations are more problematic than those made by Western Countries. The Committee on Elimination of All Forms of Discrimination against Women has analyzed the problem and came to the solution that these States are strongly convinced that the Sharia Law can help the International Law to protect women's rights, but it is not true. The Sharia is based on the Koran, and the Koran is based on religious laws that were given us a long time ago and this is why we have to reform these laws, protecting

women. This was only an idea of the Committee, but is not yet easy change these beliefs that are extremely rooted in modern society and deeply related with tradition.

The biggest problem for us, is not to analyze which Country limits the application of the Convention, but which articles, and obviously which provisions, they use to refuse and to limit.

Articles 2 and 3 are more general than the others, Article 5, wants to eliminate all forms of prejudice against women, but at the same time contains some rights in relation with education and family. Article 8 is about legal representation and Article 10 concerns educations like schooling. Fourteen States have reserved Article 2, five Article 5 and eight Countries have limited the application of Article 7 on their own territories. Thailand was the only one to reserve Article 10 and a great part of ratifying States is currently limiting Article 16, one of the most important.

Article 7 is about "*Public Life*" and is important because of his symbolic value and for his ideal of equality. Austria is still reserving this article, limiting the possibility for women to work in army, navy and others military services.

Article 9 concerns nationality. The female possibility to have different citizenship and nationality from their husbands is directly related with the possibility of being represented on international and national level, is limited with the reservations to this Article. Article 9 has to be evaluated with Article 16, that we are going to analyze later on.

The eleventh Article of the Convention is, instead, about State's responsibility for women. It concerns right to have same opportunity as men, same work conditions and freedom to choose jobs. Obviously, also Article 11 has been reserved.

Article 15 is related with the English Married Women's Property Act and it contains a lot of disposals about legal capacity and independence always for women. Article 15 has been reserved by Thailand, Turkey and Brazil.

Concluding this list of articles, we must return on the importance of two articles: 16 and 29. The first one is very important and is maybe the most important of the entire Convention. This Article recalls a lot of central provisions of the document and contains the major part of general principles set in CEDAW. Article 16 concerns "*Family Life*" including, rights of the child, marriage, freedom of choice everything depends from marriage, like rights and

obligations, and most important, it contains a lot of rules especially to set legal age for marriage, for women and men. The biggest part of member States is still currently reserving Article's 16 disposals. One of the most important reservation has been made by India, that declares to limit the application of this Article on Indian territory, in order to save some social and cultural traditions, deeply rooted in Indian society. The shocking thing, talking about Article 16, is that, not only Countries like India, Asian States or Countries of the Arab League are reserving these rights, but also other States like France have made their own reservations.

As said before, also Article 29 is important, and fundamental in this Convention. This Article is about regulations of disputes between one State party and another one. To set a reservation on this Article is relevant because is one of the most important, and it guarantees freedom of action in every situations, without International Court's of Justice help.

Summarizing what we have said before, we can say that the regime of reservations in this Convention contains a large number of provisions. The ratifying States of this document are currently almost two hundred and the 22% of these have actives reservations in general or on particular articles.

To recap, the situation of women all around the world is still worrying, also having such important document on an international and legal point of view like the Convention on Elimination of All Forms of Discrimination against Women, that actually is not eliminating "*All Forms*" of violence and discrimination.

To conclude our analysis it is time to study another important treaty called International Pacts of New York. This document in reality contains two different Conventions, one on Civil and Political Rights, and another one on Economic, Social and Cultural Rights. These two Pacts are not focused only on the Status of Women, there are a lot of different laws and disposals without gender distinction, but contains also specific articles for women's rights and to ameliorate women's situation.

Articles 2 and 3 of both Pacts are in general, and declare some fundamental principles for global protection of human rights. There is, for example, a recall to the right to self-determination and non discrimination. Article 6, from New York Pact on Civil and Political Rights, is about death penalty but it contains a specific comma on pregnant women. This particular issue is a sensitive one because Committees are still analyzing the fact that it can

be not only an innovative right for women but also a different one for unborn children. Legal capacity and legal representation are declared in Articles 16 and 17, while Article 23 regulates family. The analysis of all these provisions underlines that having gender equality is too difficult because of reservations made by States also in that case.

The other Pact, based on Economic, Social and Cultural Rights, is quite similar to the first one, but it contains some different articles: Articles 7 and 10. The first one is related to right to work and it contains declarations on the equality of remuneration for women in comparison with men. It is an important Article because it guarantees a different perspective in women's life and it promises a sort of economic independence, that in so many Countries is still a mirage. The second one, Article 10, concerns a lot of particular rights that are recognized to women.

As in the first Convention we have examined, reservations are the main legal instrument used by States to save certain internal conditions and to keep problems unsolved. More than one hundred States have signed these two Treaties, but thirty-seven of these have made a reservation on the articles of the first Pact, and twenty-two on the second one. Belgium, Portugal, United Kingdom and Bahamas are the ones with more reservations, but there are also a lot of other States like New Zealand, Austria, Australia, Barbados and Kenya that are limiting some parts of the Treaties, not answering to the obligations that they should respect.

The largest part of these reservations is justified by religion, or to safeguard the State's internal Constitution. It is also true that the majority of their declarations is strictly related to the application of treaty's disposals on specific territories, such as Macao for Portugal or Jersey for United Kingdom.

To summarize what we said on women's situation, also with these Pacts we have still a lot of work to do, and in particular United Nations and all its Specialized Agencies, must work together to solve this issue as one of the big global challenges.

Concluding our study, we have surely to underline that a lot of steps were done by humanity to guarantee a better situation for women, and it is testified by the facts that things that were unknown before, now are in the international political agenda, but in spite of UN's commitment, we have to recognize that Treaties, Conventions, Conferences and other International legal instrument are not enough to fight effectively against women's discrimination and to destroy each kind of gender - based inequality.