**-- Statement of Professor Harold Hongju Koh**
**Regarding United States Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women**
**U.S. Senate Foreign Relations Committee**
**June 13, 2002**

Chairman Biden, Senator Boxer, Members of the Committee:

Thank you for inviting me to appear before your Committee today to testify regarding the long-overdue United States Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW or Women's Convention). I have studied and argued for ratification of that Convention for more than a decade, first in my academic capacity as Gerard C. and Bernice Latrobe Smith Professor of International Law (and from 1993-1998 as Director of the Orville H. Schell, Jr. Center for International Human Rights) at Yale Law School, where I have taught since 1985, and then from 1998 to 2001 when I served as Assistant Secretary of State for Democracy, Human Rights and Labor.[1]

In his State of the Union address, President George W. Bush recently announced that "America will always stand for the non-negotiable demands of human dignity: the rule of law; limits on the power of the state; *respect for women*; private property; free speech; equal justice; and religious tolerance" (emphasis added). I can imagine no more fitting way for this Administration and this Senate to answer that demand than by moving quickly to ratify this treaty for the rights of women.

I am particularly honored to appear here today in front of Senators who have been such strong advocates for gender equality over so many years. Senator Boxer, let me commend you for your efforts during these past several Congresses to make this hearing a reality, particularly by introducing S.Res. 237, which called not just for hearings on CEDAW ratification, but also for a date certain for Senate action. Let me equally commend you, Chairman Biden, as principal author of the Violence Against Women Act, for your sustained efforts to secure a national commitment to end violence and discrimination against women across this country.

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[1] See, e.g., Testimony of Harold Hongju Koh, Assistant Secretary of State for Democracy, Human Rights and Labor. Before the Subcommittee on International Operations and Human Rights, U.S. House of Representatives, March 8, 2000, available at http://www.state.gov/www/policy_remarks/ 2000/000308_koh_testimony.html.

My main message today is that this commitment should not stop at the water's edge. Particularly after September 11, America cannot be a world leader in guaranteeing progress for women's human rights, whether in Afghanistan, here in the United States, or around the world, unless it is also a party to the global women's treaty.

Let me first review the background and history of CEDAW; second, explain why ratifying that treaty would further our national commitments to eliminating gender discrimination, without jeopardizing our national interests; and third, explain why some concerns occasionally voiced about our ratification of this treaty are, upon examination, completely unfounded.

First, some history. The United Nations Charter reaffirms both the faith of the peoples of the United Nations "in the equal rights of men and women," Preamble, and their determination to promote respect for human rights "for all without distinction as to race, sex, language, or religion." Art. 1(3). In 1948, the Universal Declaration of Human Rights similarly declared that "everyone" is entitled to the rights declared there "without distinction of any kind, such as race, colour, [or] sex …." Art. 2. In 1975, a global call for an international convention specifically to implement those commitments emerged from the First World Conference on Women in Mexico City. But until 1979, when the General Assembly adopted the CEDAW, there was no convention that addressed comprehensively women's rights within political, social, economic, cultural, and family life. After years of drafting, the United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women in December 18, 1979, and the Convention entered into force in September 1981.

In the more than two decades since, 169 nations other than our own have become parties to the Convention. Only nineteen United Nations member states have not. That list includes such countries as Afghanistan, Bahrain, Iran, Somalia, Sudan, Syria, Qatar, and the United Arab Emirates. To put it another way, the United States is now the only established industrialized democracy in the world that has not yet ratified the CEDAW treaty. Frankly, Senators, this is a national disgrace for a country that views itself as a world leader on human rights.

Why should the United States ratify this treaty? For two simple reasons. First, ratification would make an important global statement regarding the seriousness of our national commitment to these issues. Second, ratification would have a major impact in ensuring both the appearance and the reality that our national practices fully satisfy or exceed international standards.

The CEDAW treaty has been accurately described as an international bill of rights for women. The CEDAW simply affirms that women, like the rest of the human race, have an inalienable right to live and work free of discrimination. The Convention affirms the rights of all women to exercise on an equal basis their "human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."[2]

The treaty defines[3] and condemns discrimination against women[4] and announces an agenda for national action to end such discrimination. By ratifying the treaty, states do nothing more than commit themselves to undertaking "appropriate measures"[5] toward ending discrimination against women, steps that our country has already begun in numerous walks of life. The CEDAW then lays a foundation for realizing equality between women and men in these countries by ensuring women's equal access to, and equal opportunities in, public and political life—including the right to vote, to stand for election,[6] to represent their governments at an international level,[7] and to enjoy equal rights "before the law"[8]—as well as equal rights in education,[9] employment,[10] health care,[11] marriage and family relations,[12] and other areas of economic and social life.[13] The Convention directs States Parties to "take into account the particular problems faced by rural women,"[14] and permits parties to take "temporary special measures aimed at accelerating de facto equality" between men and women, a provision analogous to one also found in the Convention on the Elimination of All Forms of Racial Discrimination, which our country has already ratified.[15]

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[2] Art. 1.
[3] See Art. 1 ("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.").
[4] See Art. 2 ("States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake" to embody the principle of gender equality into national laws.).
[5] See Art. 3.
[6] See Art. 7.
[7] See Art. 8.
[8] See Art. 15.
[9] See Art. 10.
[10] See Art. 11.
[11] See Art. 12.
[12] See Art. 16.
[13] See Art. 13.
[14] See Art. 14.
[15] Compare CEDAW Art. 4 with International Convention on the Elimination of All Forms of Racial

Ratifying this treaty would send the world the message that we consider eradication of these various forms of discrimination to be solemn, universal obligations. The violent human rights abuses we recently witnessed against women in Afghanistan, Bosnia, Haiti, Kosovo, and Rwanda painfully remind us of the need for all nations to join together to intensify efforts to protect women's rights as human rights. At the State Department, where I supervised the production of the annual country reports on human rights conditions worldwide, I found that a country's ratification of the CEDAW is one of the surest indicators of the strength of its commitment to internalize the universal norm of gender equality into its domestic laws.

Let me emphasize that in light of our ongoing national efforts to address gender equality through state and national legislation, executive action, and judicial decisions, the legal requirements imposed by ratifying this treaty would not be burdensome. Numerous countries with far less impressive practices regarding gender equality than the United States have ratified the treaty, including countries whom we would never consider our equals on such matters, including Iraq, Kuwait, North Korea, and Saudi Arabia.

At the same time, from my direct experience as America's chief human rights official, I can testify that our continuing failure to ratify CEDAW has reduced our global standing, damaged our diplomatic relations, and hindered our ability to lead in the international human rights community. Nations that are otherwise our allies, with strong rule-of-law traditions, histories, and political cultures, simply cannot understand why we have failed to take the obvious step of ratifying this convention. In particular, our European and Latin American allies regularly question and criticize our isolation from this treaty framework both in public diplomatic settings and private diplomatic meetings.

Our nonratification has led our allies and adversaries alike to challenge our claim of moral leadership in international human rights, a devastating challenge in this post-September 11 environment. Even more troubling, I have found, our exclusion from this treaty has provided anti-American diplomatic ammunition to countries who have exhibited far worse record on human rights generally, and women's rights in particular. Persisting in the aberrant practice of nonratification will only further our diplomatic isolation and inevitably harm our other United States foreign policy interests.

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Discrimination Art. 1(4).

Treaty ratification would be far more than just a paper act. The treaty has demonstrated its value as an important policy tool to promote equal rights in many of the foreign countries that have ratified the CEDAW. As a recent, comprehensive world survey issued by the United Nations Development Fund for Women chronicles, numerous countries around the world have experienced positive gains directly attributable to their ratification and implementation of the CEDAW.[16] CEDAW has been empowering women around the globe to change constitutions, pass new legislation, and influence court decisions in their countries. Ratification of the CEDAW by the United States would similarly make clear our national commitment to ensure the equal and nondiscriminatory treatment of American women in such areas as civil and political rights, education, employment, and property rights

Most fundamentally, ratification of CEDAW would further our national interests. Secretary of State Colin Powell put it well when he said earlier this year: "The worldwide advancement of women's issues is not only in keeping with the deeply held values of the American people; it is strongly in our national interest as well. . . . Women's issues affect not only women; they have profound implications for all humankind. Women's issues are human rights issues... . We, as a world community, cannot even begin to tackle the array of problems and challenges confronting us without the full and equal participation of women in all aspects of life."

After careful study, I have found nothing in the substantive provisions of this treaty that even arguably jeopardizes our national interests. Those treaty provisions are entirely consistent with the letter and spirit of the United States Constitution and laws, both state and federal. The United States can and should accept virtually all of CEDAW's obligations and undertakings without qualification. Regrettably, the Administration has not provided a witness here today to set forth its views on the ratification of this treaty. Although past Administrations have proposed that ratification be accompanied by certain reservations, declarations, and understandings, only one of those understandings, relating to limitations of free speech, expression and association, seems to me advisable to protect the integrity of our national law.[17]

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[16] See generally UNIFEM, "Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)," available at http://www.unifem.undp.org/cedaw/cedawen4.htm.

[17] That proposed understanding, included in the 1994 Senate Foreign Relations Committee Report, states in relevant part, that the United States understands that by ratifying it could not constitutionally "accept

Finally, let me address some myths and fallacies that have been circulated about the likely impact of United States ratification of the CEDAW. The most common include the following:

First, that CEDAW supports abortion rights by promoting access to "family planning." This is flatly untrue. There is absolutely no provision in CEDAW that mandates abortion or contraceptives on demand, sex education without parental involvement, or other controversial reproductive rights issues. CEDAW does not create any international right to abortion. To the contrary, on its face, the CEDAW treaty itself is neutral on abortion, allowing policies in this area to be set by signatory states and seeking to ensure equal access for men and women to health care services and family planning information. In fact, several countries in which abortion is illegal—among them Ireland, Rwanda, and Burkina Faso—have ratified CEDAW.

A second fallacy is that CEDAW ratification would somehow undermine the American family by redefining traditional gender roles with regard to the upbringing of children. In fact, CEDAW does not contain any provisions seeking to regulate any constitutionally protected interests with respect to family life. The treaty only requires that parties undertake to adopt measures "prohibiting all discrimination against women" and to "embody the principle of the equality of men and women" in national laws "to ensure, through law and other appropriate means, the practical realization of this principle." How best to implement that obligation consistent with existing United States constitutional protections--which as you know, limit the government's power to interfere in family matters, including most parental decisions regarding childrearing -- is left for each country to decide for itself.

Third, some have falsely suggested that ratification of CEDAW would require decriminalization of prostitution. Again, the text of the treaty is to the contrary. CEDAW's Article 6 specifically states that countries that have ratified CEDAW "shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution in women."

Fourth, some claim that if CEDAW were U.S. law, it would outlaw single-sex education and require censorship of school textbooks. In fact, nothing in

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any obligation under this Convention, in particular under Articles 5, 7, 8, and 13, to restrict those rights [of freedom of speech, expression and association], through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States." S384-10, Exec. Rep. Sen. Comm. On For. Rel. Oct.. 3, 1994, *reprinted in* 89 Am. J. Int'l L. 108 (1995).

CEDAW mandates abolition of single-sex education. As one way to encourage equal access to quality education for all children, Article 10 requires parties to take all appropriate measures to eliminate "any stereotyped concept of the roles of men and women at all levels and in all forms of education by *encouraging* [not requiring] coeducation *and other types of education which will help to achieve this aim . . .,"* (emphasis added) including, presumably, single-sex education that teaches principles of gender equality. CEDAW also encourages the development of equal education material for students of both genders. This provision is plainly designed not to disrupt educational traditions in countries like ours, but rather, to address those many countries in the world (like Afghanistan during Taliban rule) in which educational facilities for girls are either nonexistent or remain separate and unequal.

Fifth, some have suggested that U.S. ratification of CEDAW would require the legalization of same-sex marriage. Whatever view one may hold regarding the desirability of same-sex marriage, this treaty plainly contains no such requirement. Article 10 of CEDAW requires only elimination of discrimination directed against women "in all matters related to marriage and family relations." Thus, for example, the practice of polygamy is inconsistent with the CEDAW because it undermines women's equality with men and potentially fosters severe financial inequities. Article 10 would neither require nor bar any national laws regarding same-sex marriage, which by their very nature, would apply equally to men and women.

Finally, and most pervasively, opponents of CEDAW have claimed that U.S. ratification would diminish our national sovereignty and states' rights by superseding or overriding our national, state or local laws. Given the broad compatibility between the treaty requirements and our existing national laws, however, very few occasions will arise in which this is even arguably an issue. Moreover, the treaty generally requires States to use "appropriate measures" to implement the non-discrimination principle, which by its terms accords some discretion to member countries to determine what is "appropriate" under the national circumstances. Finally, the Senate is, of course, free to address any material discrepancies between national law and the treaty by placing understandings upon its advice and consent, along the lines of the "freedom of speech" understanding discussed above, or by the Congress passing implementing legislation—as it has done, for example, to effectuate the Genocide Convention—specifying the precise ways in which the federal legislature will carry out our

international obligations under this treaty.

Ironically, many of the unfounded claims about the likely effects of CEDAW ratification have been asserted by self-proclaimed advocates of states' rights. In fact, within our own country, the emerging trend has been the opposite. Broad sentiment has been emerging at both the state and local level to incorporate the CEDAW requirements into local law. As I speak, governmental bodies in some fifteen states and Guam,[18] sixteen counties[19] and forty-two cities[20] have adopted resolutions or instruments endorsing CEDAW or adopting it on behalf of their jurisdictions. Far from CEDAW imposing unwanted obligations on local governments, local governments are in fact responding to the demands of their citizens, who have become impatient at the lack of federal action to implement these universal norms into American law.

A host of other misconceptions exist about CEDAW, some of them preposterous, which I would be happy to address in response to your specific questions.[21] But my main point is clear: we must not let unfounded fears projected onto the CEDAW prevent us from the long overdue step of ratifying this important document.

Particularly in a time of terror, promoting human rights and eradicating discrimination should not be partisan issues. As President Bush recently reminded us, the United States cannot fight a war on terrorism alone; it needs cooperation not only from its current allies, but also from the rest of the world. "We have a great opportunity during this time of war," he said, "to lead the world toward the values that will bring lasting peace ...[such as] the non-negotiable demands of human dignity [that include] respect for women. . . ." First Lady Laura Bush echoed that sentiment on International Women's Day 2002, when she said, "People

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[18] To date, legislative bodies have endorsed US ratification of the CEDAW in CA (twice), CT (Senate), FL (House), HI (House), IL (House), IA, ME, MA, NH, NY, NC, RI (Gen. Assembly), SD (House), VT, Wisconsin (Senate), and the territory of Guam. For a complete listing, see Working Group on Ratification of UNCEDAW, Human Rights for All, at 41-42, available at http://www.amnestyusa.org/commit/cedawbw.pdf.

[19] These include counties in California, Illinois, Kentucky, Ohio, Florida, Wisconsin, and Washington.

[20] San Francisco, California, for example, has enacted a city ordinance designed to incorporate CEDAW into the functioning of the city by promoting equality in the city's treatment of public employees, its budgetary spending, and its provision of municipal services to city inhabitants.

[21] One such preposterous claim, for example, is that U.S. ratification of the CEDAW would somehow require the United States to abolish Mother's Day. Nothing in the treaty requires this. Rather than denigrating motherhood, the CEDAW's central aim is to support motherhood, by promoting women's freedom to make choices on an equal basis with men. Nothing in that goal conflicts with our proud American tradition of celebrating both Mother's Day and Father's Day every year, as expressions of this country's commitment to gender equality, which is fully consistent with the nondiscrimination goals of the CEDAW.

around the world are looking closely at the roles that women play in society. And Afghanistan under the Taliban gave the world a sobering example of a country where women were denied their rights and their place in society... Today, the world is helping Afghan women return to the lives that they once knew.... Our dedication to respect and protect women's rights in all countries must continue if we are to achieve a peaceful, prosperous world.... Together, the United States, the United Nations and all of our allies will prove that the forces of terror can't stop the momentum of freedom."

The world looks to America for leadership on human rights, both in our domestic practices and in our international commitments. Ours is a nation conceived in liberty and dedicated to the proposition that all human beings—not just men—are created equal. Our country has fought a civil war and a centuries-long social struggle to eliminate racial discrimination. It is critically important that we seize this opportunity to announce unequivocally to the world that we, of all nations, insist on the equality of all human beings, regardless of gender.

Senators, in closing let me say how much United States ratification of this important treaty means to every American. My mother, Hesung Chun Koh, came to this country more than fifty years ago from the Republic of Korea and found equal opportunity here as a naturalized American citizen. My wife, Mary-Christy Fisher, is a natural-born American citizen and lawyer of Irish and British heritage. I am the father of a young American, Emily Koh, who will turn sixteen years old in ten days' time.

Although I have tried, I simply cannot give my daughter any good reason why her grandmother and mother would have been protected by CEDAW in their ancestral countries, but that she is not protected by it in the United States, which professes to be a world leader in the promotion of women's rights and gender equality. I cannot explain to her why this country we love, and which I have served as Assistant Secretary of State for Human Rights, has for so long failed to ratify the authoritative human rights treaty that sets the universal standard on women's equality. Finally, I cannot explain why, by not ratifying, the United States chooses to keep company with such countries as Afghanistan, Iran, Sudan, and Syria, in which human rights and women's rights have been brutally repressed.

The choice is simple. Our continuing failure to ratify this treaty will hamper and undermine our efforts to fight for democracy and human rights around the world. Ratification now of the CEDAW treaty would be both prudent foreign policy and simple justice.

Thank you. I now look forward to answering any questions you may have.