Few institutions at the United Nations have promoted abortion more consistently or more persistently than the Committee on the Elimination of Discrimination against Women (CEDAW).

For decades, the CEDAW committee has routinely subjected countries with pro-life laws to pressure to decriminalize abortion or remove restrictions on abortion.

Examples of this are not difficult to find. For instance, at its 75th Session last year in February, 8 out the 8 countries submitting periodic reports to the CEDAW committee received some level of rebuke from the committee on the issue of abortion.

The Committee called upon Zimbabwe to “Decriminalize abortion in all cases” and to “ensure access to safe abortion and post-abortion services in all parts of the [country].” The Committee rebuked Eritrea for not securing to the Committee’s satisfaction the “full and effective implementation” of a 1991 law in Eritrea which allows abortion in cases of rape, incest, and life of the mother; the CEDAW committee further called on Eritrea to “also decriminalize a fourth condition, namely malformation of the fetus,” in spite of the fact that abortion in cases of fetal disability is illegal in Eritrea. The CEDAW committee further called on Pakistan to “Review its abortion legislation with a view to legalizing abortion in cases of rape, incest, threat to the life or health of the pregnant woman or severe fetal impairment,” and additionally called upon Afghanistan to “legalize abortion” under those same conditions.

Even Latvia, a country where abortion is completely legal and available on demand up to the 12th week of pregnancy, was criticized by the CEDAW committee which asked the country to ensure that “free abortion services are available to all girls.” CEDAW also asked that
Latvia ensure that “girls’ views are always heard and respected in decisions on abortion,” a subtle shot across the bow at Latvia’s abortion laws which require parental consent for minors seeking an abortion.

The CEDAW committee is a human rights instrument established through an important international human rights treaty on women’s rights called the *Convention on the Elimination of All Forms of Discrimination against Women* (also “CEDAW”). The CEDAW committee is tasked with monitoring the implementation of the Convention. From time to time, the CEDAW committee receives periodic reports from states that have ratified the treaty and makes nonbinding suggestions or recommendations on how states can fulfil their obligations under the treaty.

Countries that have ratified the CEDAW Convention are not required to follow the suggestions and general recommendations made by the Committee. Indeed, the CEDAW Convention itself does not mention abortion once. The CEDAW Convention is neutral on abortion and nothing contained in the treaty imposes an obligation on states to legalize, decriminalize, or otherwise change their national laws on abortion.

Moreover, the CEDAW committee itself has no authority to reinterpret the terms of the Convention to mean something other than what the countries that drafted and agreed to the treaty intended it to mean. Seeing as many countries which have ratified or acceded to the Convention have laws which ban abortion and have no intention of changing their laws on abortion, it is not possible to assume that the terms of the Convention somehow impose an obligation on states to make abortion available. The treaty itself is silent on abortion and the CEDAW committee does not have authority to reinterpret the terms of the treaty contrary to the meaning of the terms as agreed to by the states. The CEDAW committee then has no authority to even make suggestions that states should decriminalize and deregulate abortion. Yet they do so nonetheless.

Most of the time, when the CEDAW committee makes recommendations that states should legalize abortion, states ignore them and no real harm is done. However, sometimes, the recommendations made by the Committee have great consequence for the country in question. Sometimes countries will endeavor to make changes to their national abortion laws per the Committee’s recommendations.

For instance, in 2014, the constitutional court of Bolivia legalized abortion in cases of psychological health and removed a prior legal requirement that women first obtain permission from a judge before having an abortion. Prior to the court’s ruling, abortion had
been legal in Bolivia in cases of rape, incest, and in cases to protect the life or health of the mother. The Bolivian constitutional court in its decision cited the non-binding recommendations and concluding observations the CEDAW Committee had issued to Bolivia over the years as part of its justification for the ruling.

Similarly, the constitutional court in Colombia in 2006 cited one of the concluding observations given by the CEDAW Committee to Colombia in 1999[1] as part of its legal reasoning in a decision that legalized abortion in Colombia in cases of life or health of the mother, rape, incest, involuntary artificial insemination, and fetal disability. Prior to the decision by the constitutional court, abortion had been completely illegal in Colombia.

The United States is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women, but the United States has not ratified the treaty. Under the U.S. Constitution, in order for a treaty to become part of U.S. law, it must be entered into by the president with the advice and consent of a two-thirds majority in the U.S. Senate.

The Convention on the Elimination of All Forms of Discrimination against Women was signed by the United States under President Jimmy Carter on July 17, 1980 and subsequently submitted by President Carter to the Senate for its advice and consent. Since then, the Senate Foreign Relations Committee has on a few occasions held hearings on whether or not to ratify the treaty.

The Senate Foreign Relations Committee has twice favorably reported the Convention out of committee, once in 1994 under the Clinton administration and again in 2002 during the Bush administration. Indeed, it was then-Senator, now-President Joe Biden who presided over the Senate Foreign Relations Committee in 2002 when the committee voted 12 to 7 in favor of ratifying the treaty. But neither in 1994 nor 2002 was the treaty ever put before the full Senate for a vote.

To this day, the CEDAW Convention has never been voted on by the full Senate. As a result, the United States has never ratified the treaty and is therefore not bound to abide by the treaty’s terms.

However, the Biden administration may attempt to change all that. President Biden had pledged during his campaign to pursue ratification of the CEDAW Convention as part of his broad and far-reaching Agenda for Women.

Additionally, the 2020 Democratic Party Platform committed Democrats to “work to ratify the Convention on the Elimination of All Forms of Discrimination Against Women.”
If the United States were to ratify the Convention, the U.S. would be bound to abide by the terms of the treaty and to reflect the aims of the treaty in both federal and state laws. Under the U.S. Constitution, treaties ratified by the United States become part of “the supreme Law of the Land.”

Ratification of the Convention could have consequences for pro-life laws in the U.S. Although the Convention itself is neutral on abortion, the CEDAW Committee has made clear that it believes the Convention imposes certain obligations on states to make abortion legal and accessible.

Pro-life and pro-family advocates in the U.S. have long been concerned that certain provisions of the Convention could be interpreted as requiring states to legalize abortion.

Article 12(1) of the Convention declares that states must “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure ... access to health care services, including those related to family planning.” Many interpret “family planning” as including abortion.

Similarly, Article 16(1)(e) of the Convention declares that states must provide for both men and women “The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the ... means to enable them to exercise these rights.” Many pro-abortion advocates have interpreted the right to “decide freely and responsibly on the number and spacing of their children” as indicative of a right to abortion, particularly when the Convention also specifies that women must be given access to the “means” to obtain this aim.

Pro-family advocates have also been alarmed by the CEDAW committee’s revisionist thinking concerning gender roles and traditional family values. In 2000, the CEDAW committee condemned Belarus for reintroducing Mother’s Day, saying that “The Committee is concerned by the continuing prevalence of sex-role stereotypes” that are presumably perpetrated by celebrations such as Mother’s Day.[2]

In another eyebrow raising gesture, the CEDAW committee in 1999 also called on the government of China to legalize prostitution, saying in no uncertain terms “The Committee recommends decriminalization of prostitution.”[3]

When states ratify a treaty, they can provide reservations or interpretative understandings that excuse them from having to comply with some part of the treaty. If a country enters a reservation on a certain part of the treaty at the time of ratification, they are not bound to
abide by that part of the treaty. For instance, when Malta and Monaco ratified CEDAW, they each entered reservations that declared that they would not be required to change their laws on abortion under the treaty.

When the CEDAW Convention was approved by the Senate Foreign Relations Committee in 1994 and 2002, the Senate committee included several reservations, understandings, and declarations (RUDs) to be included as part of the U.S. ratification of the treaty.

Among the reservations included by the Senate in its approval of CEDAW in 2002 were reservations that stipulated that the treaty would impose no restrictions on the conduct or traditional family roles, customs, or religious beliefs of private citizens or organizations in the U.S. or on the laws of the federal or state governments. A reservation was included to state that the U.S. was under no obligation to conscript women into military combat service, and that the U.S. government was under no obligation to provide paid maternity leave.

Several interpretative understandings were also included. These interpretative understandings would seek to make clear how the United States interprets certain controversial aspects of the treaty. The Senate Foreign Relations Committee 2002 report had included interpretative understandings that the U.S. would be under no compulsion to restrict the freedom of speech under the Convention, that the U.S would not be required to provide access to contraceptives or abortion, and that the recommendations made by the CEDAW committee are not binding on states. Additionally, an interpretative understanding sponsored by Senator Jesse Helms additionally made clear that “nothing in this Convention shall be construed to reflect or create any right to abortion and in no case should abortion be promoted as a method of family planning.”

But even if these somewhat robust reservations and interpretative understandings were included as part of the U.S. ratification of CEDAW, it would not be enough to protect the U.S. from the pressure leveraged by the CEDAW committee.

Reservations on abortion in the CEDAW Convention have not protected states like Malta from the CEDAW committee’s actions. In ratifying the treaty, Malta entered a reservation explicitly declaring that the country “does not consider itself bound by sub-paragraph (e) of paragraph (1) of article 16 in so far as the same may be interpreted as imposing an obligation on Malta to legalize abortion.” The CEDAW committee in its concluding observations on the periodic report submitted by Malta in 2010 completely ignored Malta’s right to declare a reservation against abortion under the Convention. The CEDAW committee rebuked Malta for its complete ban on abortion, stating that “The Committee
urges the State party to review its legislation on abortion and consider exceptions to the general prohibition of abortion for cases of therapeutic abortion and when the pregnancy is the result of rape or incest.”

If the United States were to ratify the CEDAW Convention, it could have potentially far-reaching and permanent consequences for laws in this country protecting the right to life for the unborn and laws protecting freedom of speech, freedom of religious beliefs about gender roles, and traditional family values and gender roles. The CEDAW committee would not hesitate to issue recommendations calling on the U.S. to repeal the multitude of federal and state-level restrictions on abortion and public spending for abortion and contraception. And like Colombia and Bolivia before us, activist and revisionist judges here in the U.S. may attempt in the future to use the non-binding recommendations issued by the CEDAW committee and other human rights treaty bodies, such as the Human Rights Committee, to justify the legalization of abortion or or the removal of pro-life laws.

