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# The Mid-Life Crisis of the Universal Declaration of Human Rights

Hilary Charlesworth\*

## *I. Introduction*

A half century in a human life is regarded as a particularly significant anniversary because it is viewed as mid-life – fifty years is at least the halfway point in a person's earthly existence. We anticipate that, by the age of fifty, a person is at the apogee of their development. We expect them to have fulfilled any promise they showed as a young person and to have tied up loose ends. We are impatient with any signs of unexploited talent and missed opportunities. At the same time, the age of fifty is sometimes associated with mid-life crises that propel middle aged individuals into dramatic change in personal relationships or in work. Mid-life crises take a variety of forms. Sometimes a mid-life crisis is an attempt to live a more authentic existence, an existence that is truer to the real desires of the person than the imposed traditional lifestyle they previously have followed. Other mid-life crises may be attempts to slough off responsibilities and to cling to a youth that has passed.

These somewhat contradictory currents are implicated in the fiftieth anniversary of the Universal Declaration of Human Rights (Universal Declaration).<sup>1</sup> Some reactions to the fiftieth anniversary will be purely celebratory – it is, after all, a great feat that this set of human rights standards adopted in the tense post-war world has achieved widespread acceptance, at least in the sense that no state has denounced it, and more positively in the sense that it has been widely implemented in national legal systems. Other responses to the fiftieth anniversary will be tempered by the sustained resistance to many of the Universal Declaration's provisions. Some states are reluctant to be bound fully to the treaty translations of the Universal Declaration's provisions. Some states claim that the Universal Declaration and the United Nations (U.N.) system of human rights protection is a reflection of Western values and therefore is a vehicle of cultural imperialism. Some activists and scholars claim that in our

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1. Universal Declaration of Human Rights, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948).

globalized world, the provisions of the Universal Declaration are completely inadequate to respond to the real threats facing humanity.

In this paper, I focus on one element of mid-life benchmarks: What relevance is the Universal Declaration – and the body of human rights law it has generated – to women's lives around the world? My argument is that the Universal Declaration can be likened to a certain type of fifty-year-old man. It was born in an era when the rights of men to control and dominate the public spheres of the economy, politics, law, and culture were unquestioned. It may have been shaken a little by the increasing claims of women to participate in life beyond the private sphere, but it nonetheless has settled into a rather self-satisfied middle age in which society accommodates women by changing slogans or vocabulary. The Universal Declaration needs a mid-life crisis of identity to force it to reexamine its existence in a radical way and to launch it into an energetic middle age that is not set in traditional male patterns. This is, of course, an unpredictable journey that may antagonize those who have relied on the Universal Declaration as a stable symbol of international values.

First, I will set forth the limited attention that the text of the Universal Declaration gives to women's lives. Then, I will describe some of the recent feminist critiques of the U.N. human rights system and the U.N.'s responses to these critiques. Finally, I will present some possible outcomes of a productive mid-life crisis of the Universal Declaration.

## *II. Text of the Universal Declaration*

Eleanor Roosevelt chaired the Commission on Human Rights's (CHR) drafting committee that was responsible for the Universal Declaration. All of the other committee members were men. The language of the Universal Declaration reflects this uneven representation of the sexes. The new Commission on the Status of Women (CSW), however, kept a watching brief on the creation of the instrument. John Humphrey's account of the drafting of the Universal Declaration notes that the CSW successfully objected to Rene Cassin's draft of article 1 that stated: "All men are brothers. Being endowed [with] reason, members of one family, they are free and possess equal dignity and rights."<sup>2</sup> The final version of article 1 refers to human "beings" as born free and equal in dignity and rights, but article 1 nevertheless retains a reference to "the spirit of brotherhood."<sup>3</sup> Throughout the Universal Declaration, "man" is used as a general category (although the terms "human beings" and "person" are also used) and the male pronoun is used consistently.<sup>4</sup> We now

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2. John P. Humphrey, *The Universal Declaration of Human Rights: Its History, Impact and Juridical Character*, in HUMAN RIGHTS: THIRTY YEARS AFTER THE UNIVERSAL DECLARATION 21, 25 (B.G. Ramcharan ed., 1979).

3. Universal Declaration of Human Rights, *supra* note 1, art. 1.

4. *Id.*

know that such word use is significant in reinforcing hierarchies based on gender, even if the drafters intended the language to be generic. The origins of the use of the masculine as generic were to give prominence and deference to men.<sup>5</sup> It is still often unclear whether a writer's intention in using masculine terms is to signify a generic category. As Helen Bequaert Holmes writes regarding the use of "generic" masculine terms, "[a] man is sure that he is included; a woman is uncertain."<sup>6</sup>

The Universal Declaration does, however, implicitly or explicitly acknowledge women in a number of articles. Article 2 promises entitlement to the rights set out in the Universal Declaration "without distinction of any kind," including sex.<sup>7</sup> A more general guarantee of nondiscrimination in article 7 does not refer to any categories of discrimination.<sup>8</sup> Article 16 sets forth the right for "[m]en and women of full age" to marry and to have a family.<sup>9</sup> The right to an adequate standard of living in article 25 refers specifically to the need for security in the event of widowhood.<sup>10</sup> It also states that "[m]otherhood and childhood are entitled to special care and assistance."<sup>11</sup>

The Universal Declaration's acknowledgment of women's lives clearly is quite limited. Women enter the picture only insofar as they are connected to men. The Universal Declaration depicts women as wives and mothers and, in the latter capacity, as particularly vulnerable individuals. The constant references to the family in the Universal Declaration reinforce the restricted image of women. In fact, the Universal Declaration presents the family as "the natural and fundamental group unit of society" and as a unit that is "entitled to protection by society and the State."<sup>12</sup> The language of the Universal Declaration suggests that a family comprises only a heterosexual married couple and their offspring. Indeed, the Universal Declaration assumes that the primary purpose of marriage is to have children. In a marriage, a woman will be economically dependent on her husband such that, if she is widowed, she will have a special claim to social security.<sup>13</sup> One could interpret the Universal Declaration as indicating that the right to leave a marriage is very limited, although the Universal Declaration does provide equal rights to men and

5. DALE SPENDER, *MAN MADE LANGUAGE* 147-48 (1980).

6. Helen Bequaert Holmes, *A Feminist Analysis of the Universal Declaration of Human Rights*, in *BEYOND DOMINATION: NEW PERSPECTIVES ON WOMEN AND PHILOSOPHY* 250, 259 (Carol C. Gould ed., 1983).

7. Universal Declaration of Human Rights, *supra* note 1, art. 2.

8. *See id.* art. 7 (implying that women and men enjoy same protections under law).

9. *Id.* art. 16.

10. *See id.* art. 25 (stating that everyone has right to adequate standard of living).

11. *Id.*

12. *Id.* art. 16.

13. *Id.* art. 25.

women on dissolution of marriage.<sup>14</sup> The Universal Declaration's emphasis on the family as the foundation of society also may suggest that human rights are not applicable within the family context. The sacrosanct image of the family in the Universal Declaration discourages proper scrutiny of whether the rights to life, liberty, freedom from slavery, and security of the person are realized within particular family contexts.<sup>15</sup>

Fifty years after its drafting, we can see that the Universal Declaration has limits. For example, the Universal Declaration contains no reference to self-determination nor to the rights of minorities. Can we now single out its provisions and silences with respect to women? One might argue that this would be an unfair use of current standards to assess a fifty-year-old document. However, international concern with the position of women in particular contexts was well-established at the time of the drafting of the Universal Declaration. For example, prior to the Universal Declaration, there were conventions on trafficking in women and on women in the work place.<sup>16</sup> This suggests that human rights relevant to women's lives were seen as a discrete and separate category to the "general" human rights guarantees that were designed with men in mind. Moreover, the Universal Declaration's image of women is reflected in all of the subsequent "general" international human rights treaties. These documents similarly rely on a generalized male experience and attend to a very limited notion of women's lives. Women's submission to male authority appears as a "natural" consequence of their reproductive role.<sup>17</sup> In other words, as Spike Peterson writes, "a woman's capacity for *biological* reproduction becomes essentialized as her nature; the 'givenness' of this capacity is then extended to the entire process of *social* reproduction, thereby consigning women to a restricted 'family' domain."<sup>18</sup>

The Universal Declaration, then, began its life with a limited acknowledgment of women's lives and of the different human rights issues that women face. Much of the extensive literature on the Universal Declaration reinforces this lack of relevance that the Universal Declaration has to women's lives. For example, a volume of essays published to commemorate the thirtieth anniversary of the Universal Declaration did not contain any reference to women's human rights.<sup>19</sup> It identified the major unfinished business as implemen-

14. *Id.* art. 16.

15. *See* Holmes, *supra* note 6, at 253.

16. *See, e.g.*, International Convention for the Suppression of the Traffic in Women and Children, 9 L.N.T.S. 415 (1921); Underground Work (Women) Convention, 1935, International Labour Organisation <[http://www.ilo.org/public/english/90travail/cis/ilo\\_standards/c045.htm](http://www.ilo.org/public/english/90travail/cis/ilo_standards/c045.htm)>.

17. *See* V. Spike Peterson, *Whose Rights? A Critique of the "Givens" in Human Rights Discourse*, XV ALTERNATIVES 303, 314-15 (1990).

18. *Id.*

19. *See generally* HUMAN RIGHTS: THIRTY YEARS AFTER THE UNIVERSAL DECLARATION, *supra* note 2.

tation.<sup>20</sup> According to these essays, the first standard-setting phase of the human rights system was largely complete. The only question that the authors raised regarding the nature of the standards was a concern about the differing concepts of human rights that were held by Western, Socialist, and Third World states.<sup>21</sup> The contributors to the book cautioned against abandoning the notion of universality of rights and argued that "certain common values . . . transcend differences of race, faith, political structure, culture and economic development . . . which are based on the equality, freedom and solidarity of all men."<sup>22</sup>

### III. Feminist Critiques of the U.N. Human Rights System

Although treaties devoted to particular rights of women were adopted by the U.N. system in the 1950s,<sup>23</sup> recognition that the U.N. human rights system did not adequately respond to women's situations did not begin until after the 1975 Mexico World Conference on the International Women's Year that launched the U.N. Decade for Women (1976-85).<sup>24</sup> The adoption of the Convention on the Elimination of All Forms of Discrimination Against Women in 1979 elaborated on the norm of nondiscrimination on the basis of sex.<sup>25</sup> It took another decade for women to begin interrogating the generally applicable human rights instruments and to show that, in fact, they gave particular prominence and protection to men's lives.

There is now significant literature critiquing the international system for the protection of human rights from a feminist perspective.<sup>26</sup> Following are the main themes of this work:

20. See, e.g., Kamleshwar Das, *Some Reflections on Implementing Human Rights*, in HUMAN RIGHTS: THIRTY YEARS AFTER THE UNIVERSAL DECLARATION, *supra* note 2, at 131, 133-34.

21. H. Gros Espiell, *The Evolving Concept of Human Rights: Western, Socialist and Third World Approaches*, in HUMAN RIGHTS: THIRTY YEARS AFTER THE UNIVERSAL DECLARATION, *supra* note 2, at 41, 41-42.

22. Nicolas Valticos, *The Role of the ILO: Present Action and Future Perspectives*, in HUMAN RIGHTS: THIRTY YEARS AFTER THE UNIVERSAL DECLARATION, *supra* note 2, at 211, 213.

23. See, e.g., Convention on the Political Rights of Women, Mar. 31, 1953, 193 U.N.T.S. 135.

24. *Report of the World Conference of the International Women's Year*, July 2, 1975, U.N. Doc. E/CONF. 66/34.

25. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, art. 3, 1249 U.N.T.S. 13.

26. See generally HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES (Rebecca J. Cook ed., 1994) (evaluating international human rights from feminist perspective); WOMEN'S HUMAN RIGHTS: A REFERENCE GUIDE (Kelly Askin & Dorean Koenig eds., forthcoming 1998); WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES (Julie Peters & Andrea Wolper eds., 1995).

1. Feminist activists and scholars point out that there exists an absence of women in the processes of defining and implementing human rights standards. For example, none of the human rights treaty-monitoring bodies (apart from the Committee on the Elimination of Discrimination Against Women) have an equal number of women and men members.<sup>27</sup> Many see this non-participation by women as a human rights issue in itself. Many scholars also conclude that the lack of participation by women is connected to the lopsided concerns of the traditional human rights canon.<sup>28</sup>

2. The monitoring and enforcement of the specialized women's treaties is weaker than that of their "general" counterparts. For example, the Convention on the Elimination of All Forms of Discrimination Against Women is monitored only through a reporting system.<sup>29</sup> The International Convention on the Elimination of All Forms of Racial Discrimination,<sup>30</sup> the International Covenant on Civil and Political Rights,<sup>31</sup> and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>32</sup> on the other hand, offer reporting as well as individual<sup>33</sup> and state complaint<sup>34</sup> mechanisms. Moreover, the institutions designed to promote and monitor the observance of women's human rights have less resources than the comparable institutions of "general" human rights.<sup>35</sup>

3. The traditional human rights canon does not cover issues that have a particular significance for women. For example, the issues of illiteracy, development, and sexual violence are dealt with in "soft" law instruments but are not addressed in legally binding norms. Moreover, international law focuses on states as the primary violators of human rights. More significant are the activities of nonstate actors, such as international monetary institutions, which have the power to impose social and economic conditions that can

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27. See Hilary Charlesworth, *Transforming the United Men's Club: Feminist Futures for the United Nations*, 4 TRANSNAT'L L. & CONTEMP. PROBS. 421, 423-24 (1994).

28. *Id.* at 438-39.

29. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 25, art. 18.

30. International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195.

31. International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171.

32. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 23 I.L.M. 1027.

33. International Covenant on Civil and Political Rights, *supra* note 31, arts. 14, 22.

34. *Id.* art. 41.

35. See Andrew C. Byrnes, *The "Other" Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women*, 14 YALE J. INT'L L. 1, 56-58 (1989) (discussing lack of resources available to committees working to protect human rights of women); Laura Reanda, *The Commission on the Status of Women*, in THE UNITED NATIONS AND HUMAN RIGHTS 265, 300-01 (Philip Alston ed., 1992).

adversely affect women's lives through their loans.<sup>36</sup>

4. The ideas of equality and nondiscrimination that animate the Convention on the Elimination of All Forms of Discrimination Against Women, the flagship of women's human rights, are very limited in the sense that they promise equality on male-defined terms only. The terms of the Convention require that women be treated in the same way as a similarly situated man. The Convention does not recognize the effects of structural discrimination against women.<sup>37</sup>

5. Feminists have argued that the focus on activities that occur in the public sphere introduces a significant bias against women into human rights law. For example, the accepted international definition of "torture" requires the involvement of a "public official."<sup>38</sup> Also, the guarantee of a right to work applies to the paid, public workforce only.<sup>39</sup> Although many women do suffer from this public type of human rights violation, the violations of rights that take place in the "private" sphere are much more significant in women's lives globally.<sup>40</sup>

6. More generally, the model of human nature that underlies the human rights tradition is gendered and cannot claim to have an "objective" core. The Western, liberal, and individualistic underpinnings of human rights law all contribute to its male bias.<sup>41</sup> Feminists from the South have particularly criticized the Western framework of human rights law and indeed of much feminist criticism.<sup>42</sup>

36. Anne Orford, *Contesting Globalization: A Feminist Perspective on the Future of Human Rights*, 8 TRANSNAT'L L. & CONTEMP. PROBS. (forthcoming 1998).

37. See Hilary Charlesworth, Christine Chinkin, and Shelley Wright, *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 631-32 (1991) (discussing "equality" as proposed by Convention on the Elimination of All Forms of Discrimination Against Women).

38. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra* note 32, art. 1.

39. International Covenant on Economic, Social and Cultural Rights, art. 7, Dec. 16, 1966, 993 U.N.T.S. 3.

40. See, e.g., Hilary Charlesworth, *Worlds Apart: Public/Private Distinctions in International Law*, in PUBLIC AND PRIVATE: FEMINIST LEGAL DEBATES 243, 248-51 (Margaret Thornton ed., 1995) (discussing neglect of women's private rights in international laws); Celina Romany, *State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES, *supra* note 26, at 85, 85-87 (discussing neglect of women's human rights in private sphere of familial relationships). Not all feminist critics of international human rights law share this view. Karen Engle, for example, argues that it may be in women's best interests to resist legal incursions into the "private" sphere. Using the analogy of international trade law, she speculates that the province of the most powerful may be outside of the scope of international legal regulation. Karen Engle, *After the Collapse of the Public/Private Distinction: Strategizing Women's Rights*, in RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW 143, 149-50 (Dorinda G. Dallmeyer ed., 1993).

41. See Peterson, *supra* note 17, at 308-32.

42. See, e.g., J. Oloka-Onyango & Sylvia Tamale, "The Personal Is Political," or Why



7. Even when women can be shown to have suffered violations of human rights in the traditional, male-defined sense, these violations are given much less attention and publicity than is accorded to violations of men's rights. For example, the reports by the special rapporteurs of the Commission on Human Rights have typically ignored human rights violations against women.<sup>43</sup> The methods of investigating and documenting human rights abuses can often obscure or even conceal abuses against women. As a result, the U.N.'s "fact finding" in Rwanda in 1994 did not detect systematic sexual violence against women until nine months after the attack and genocide, when women began to give birth in unprecedented numbers.<sup>44</sup>

8. Society justifies many violations of women's rights on the grounds that the violations are an aspect of particular religious or cultural practices.<sup>45</sup> States, religious communities, and individuals invoke the rights to religious freedom or cultural integrity as "trumping" women's rights.<sup>46</sup> The pattern of reservations to the Convention on the Elimination of All Forms of Discrimination Against Women provides a good example of this phenomenon.<sup>47</sup>

#### IV. U.N. Responses

How has the U.N. system responded to the wave of feminist critiques of its protection of human rights? On one level, the response has been surprisingly rapid and impressive. For example, at the United Nations World Conference on Human Rights in 1993, the international community formally recognized that the human rights system did not adequately respond to women's lives.<sup>48</sup> The community committed itself to the furtherance of the belief that the human rights of women were "an inalienable, integral and indivisible part of universal human rights."<sup>49</sup> It also accepted that gender-specific violations

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*Women's Rights Are Indeed Human Rights: An African Perspective on International Feminism*, 17 HUM. RTS. Q. 691, 697-705 (1995).

43. See INTERNATIONAL HUMAN RIGHTS LAW GROUP, REPORT NO. 1, TOKEN GESTURES: WOMEN'S HUMAN RIGHTS AND UN REPORTING 5-6 (1993).

44. Anne Gallagher, *Ending the Marginalization: Strategies for Incorporating Women into the United Nations Human Rights System*, 19 HUM. RTS. Q. 283, 292 n.31 (1997).

45. Arati Rao, *The Politics of Gender and Culture in International Human Rights Discourse*, in WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES, *supra* note 26, at 167, 167.

46. *Id.* at 167-69.

47. Belinda Clark, *The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women*, 85 AM. J. INT'L L. 281, 297-98 (1991); Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 VA. J. INT'L L. 643, 673-78 (1990).

48. Vienna Declaration and Programme of Action, Oct. 13, 1993, U.N. Doc. A/CONF.157/24 ¶ 18, at 33, *reprinted in* 32 I.L.M. 1661.

49. *Id.*

of human rights were part of the human rights agenda.<sup>50</sup> Another significant development was the adoption by the U.N. General Assembly of the Declaration on the Elimination of Violence Against Women in December 1993.<sup>51</sup> The Declaration contains a broad definition of the notion of gender-based violence.<sup>52</sup> It acknowledges gender-based violence as an international issue and more specifically, as an issue of sex discrimination.<sup>53</sup> The Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women in September 1995, identifies the human rights of women as a critical area of concern.<sup>54</sup>

While these developments have generally been hailed by feminist scholars and activists, they are worth a closer look. How far do they respond to the criticisms of the international human rights system outlined above? It is striking that the assertion that "[w]omen's rights are human rights," while contained in the Beijing Declaration,<sup>55</sup> is not reiterated in the more action-oriented Platform for Action because of an apparent anxiety of states about recognizing "new" human rights.<sup>56</sup> Thus, the Platform distinguishes between human rights of women (meaning the application of the traditional human rights canon to women), which are universal and women's rights (meaning rights that are of especial relevance to women only), which are not universal. Moreover, the model of women's existence presupposed by the Beijing Platform is quite restricted. Although the Platform for Action gives a nod in the direction of the diversity of women's experiences,<sup>57</sup> it nevertheless presents

50. *Id.* art. 2.

51. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. GAOR, 48th Sess., 85th plen. mtg. at 217, U.N. Doc. A/48/49 (1993).

52. *Id.* art. 2.

53. *Id.* art. 5.

54. Beijing Declaration and Platform for Action, U.N. Doc. A/CONF. 177/20 (1995), reprinted in 35 I.L.M. 401, 405.

55. *Id.* ¶ 14.

56. Dianne Otto, *A Post-Beijing Reflection on the Limitations and Potential of Human Rights Discourse for Women*, in WOMEN'S HUMAN RIGHTS REFERENCE GUIDE (Kelly Askin & Dorean Koenig eds., forthcoming 1998).

57. Paragraph 46 of Chapter IV of the Beijing Platform for Action states:

The Platform for Action recognizes that women face barriers to full equality and advancement because of such factors as their race, age, language, ethnicity, culture, religion or disability, because they are indigenous women or because of other status. Many women encounter specific obstacles related to their family status, particularly as single parents; and to their socio-economic status, including their living conditions in rural, isolated or impoverished areas. Additional barriers also exist for refugee women, other displaced women, including internally displaced women as well for immigrant women and migrant women, including women migrant workers. Many women are also particularly affected by environmental disasters, serious and infectious diseases and various forms of violence against women.

Beijing Declaration and Platform for Action, *supra* note 54, ¶ 46.

women in a very limited and encumbered way. The major role for women remains that which is described in the Universal Declaration – wife and mother. As Dianne Otto points out in her analysis of the Beijing negotiations, the only acknowledged development in the role of women is that women are expected to participate in decision-making structures and to play a part in the free market economy.<sup>58</sup> Attempts to raise the diversity of women's identities, most particularly with respect to sexual orientation, were unsuccessful at Beijing.<sup>59</sup>

The new international concern with women's rights also is limited in the way it understands the notion of equality. Although there have been significant moves to recognize some gendered harms, particularly violence against women, the major remedy for the global subordination of women has been to increase women's roles in decision-making.<sup>60</sup> This simply allows women access to a world that is already constituted by men. Dianne Otto argues that "[i]n the absence of a recognition that the decision-making structures must themselves change, it is not clear what difference women's equal participation could make. Ultimately, it may merely equally implicate women in the perpetuation of the masculinist liberal forms of minimalist representative democracy and capitalist economics."<sup>61</sup> The new international discourse on women's rights also gives prominence to civil and political rights of women at the expense of economic and social rights. Health and reproductive rights are much more likely to be controversial in international fora than civil rights.<sup>62</sup> Although the feminization of poverty clearly is acknowledged in the Beijing Platform,<sup>63</sup> it was not placed squarely in a rights context.<sup>64</sup> It has been noted that the Platform "assumes . . . that capitalism has the ability to deliver economic equality to the poor women of the world and . . . that the obligation of states to guarantee certain economic and social rights is made redundant by the more 'efficient' processes of free market forces."<sup>65</sup> The practices of international monetary institutions such as the World Bank and International Monetary Fund also have serious implications for economic and social rights. The narrow notion of development that animates these institutions elevates private

58. Dianne Otto, *Holding Up Half the Sky, But for Whose Benefit?: A Critical Analysis of the Fourth World Conference on Women*, 6 AUSTRALIAN FEMINIST L.J. 7, 25-27 (1996).

59. *Id.* at 25.

60. Beijing Declaration and Platform for Action, *supra* note 54, ¶¶ 142(a), 253(a).

61. Otto, *supra* note 56.

62. See Beijing Declaration and Platform for Action, *supra* note 54, ¶¶ 162-164 (expressing Holy See's reservation on Beijing Platform's section on women and health).

63. *Id.* ¶¶ 47-57.

64. *Id.* But see *id.* at 27 (referring, in Strategic Objective A.2, to women's equal rights to economic resources but refraining from elaborating on that idea).

65. Otto, *supra* note 56.

sector interests over public funding for food, health, education, and social security.<sup>66</sup>

In the last few years, the various levels of the U.N. human rights machinery have shown an interest in women's rights. In March 1994, the CHR appointed Radhika Coomaraswamy as Special Rapporteur on Violence Against Women. Coomaraswamy is the first Special Rapporteur with a gender-specific mandate.<sup>67</sup> Some of the human rights treaty monitoring bodies have announced changes to their procedures in order to better respond to women's concerns. In 1995, for example, the Centre for Human Rights in collaboration with the United Nations Development Fund for Women organized a meeting of experts to create guidelines for "mainstreaming" gender perspectives into the human rights system.<sup>68</sup> Also, the CSW currently is considering a draft Optional Protocol to the Women's Convention that would allow individual and group complaints of noncompliance with the Convention.<sup>69</sup>

Thus, the international community seems to have accepted the rhetoric of women's rights. What effect has this had in practice? I will focus on the commitment to "gender mainstreaming" in the U.N. human rights treaty bodies. The treaty monitoring bodies' responses to calls for "gender mainstreaming" have been varied. The reactions differ depending on the presence of at least one or two committee members who have a true commitment to the issue. At one end of the spectrum, there have been significant advances. For example, the Committee on Economic, Social and Cultural Rights, which monitors the International Covenant on Economic, Social and Cultural Rights, has taken the task of gender mainstreaming seriously, referring to the position of women in its concluding observations on states parties' reports and in general comments.<sup>70</sup> Its reporting guidelines, however, are uneven with respect to gender issues. Gender is not referred to with respect to some important articles, such as the right to free primary education set out in article 14 of the International Covenant on Economic, Social and Cultural Rights.<sup>71</sup> In contrast, the Commit-

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66. See Orford, *supra* note 36.

67. See *Report on the Fiftieth Session*, U.N. ESCOR, Comm'n on Human Rights, 50th Sess., Supp. No. 4, at 140-41, U.N. Doc. E/CN.4/1994/132 (1994) (renewing Coomaraswamy's gender-specific mandate).

68. Follow-Up to the Fourth World Conference on Women: Review of Mainstreaming in Organizations of the United Nations System, U.N. ESCOR Commission on the Status of Women, 40th Sess., ¶ 20, U.N. Doc. E/CN.6/1996/9 (1996).

69. Convention on the Elimination of All Forms of Discrimination Against Women, Including the Elaboration of a Draft Optional Protocol to the Convention, U.N. ESCOR Commission on the Status of Women, 42d Sess., art. 2, U.N. Doc. E/CN.6/1998/WG/L.2 (1998).

70. International Covenant on Economic, Social and Cultural Rights, *supra* note 39, arts. 3, 7.

71. See Gallagher, *supra* note 44, at 301.

tee on the Elimination of Racial Discrimination, which monitors the International Convention on the Elimination of All Forms of Racial Discrimination, does not include gender considerations at all in its concluding observations or in its general comments, although the intersection of race and sex discrimination is an important and controversial area.<sup>72</sup> The Chairman of CERD stated in 1996 that directives to integrate gender into states parties' reports were "fundamentally misconceived."<sup>73</sup> Similarly, the Committee Against Torture has not displayed any concern with the gendered aspects of torture.<sup>74</sup>

The Human Rights Committee, the committee that monitors the International Covenant on Civil and Political Rights, is regarded as one of the most progressive of the treaty monitoring bodies with respect to women, due at least recently in large part to its distinguished women members such as Elizabeth Evatt and Cecilia Medina. It has adopted a number of useful general comments on articles of the International Covenant on Civil and Political Rights that show a sensitivity to gender issues. Also, in 1995, the Committee amended its reporting guidelines to request states parties to provide information on the position of women.

As Jane Connors observes, however, the Committee is not consistent in its concern with gender.<sup>75</sup> Most of the Committee's general comments do not address the position of women. A 1994 general comment on torture did not examine the gendered dimensions of the right to be free from torture, although it did refer to the need for states parties to address the infliction of torture or cruel, inhuman, or degrading treatment by private actors.<sup>76</sup> On the other hand, the Committee has used its concluding observations in a number of cases in a progressive way. For example, in 1996, the Committee's concluding comments on Peru's periodic report under the International Covenant on Civil and Political Rights express concern "about criminalization of abortion even in cases of rape," which results in "backyard" abortions as the major cause of maternal mortality.<sup>77</sup> The Committee stated that "these provisions not only mean that women are subject to inhumane treatment but are possibly incompatible with articles 3, 6 and 7 of the Covenant."<sup>78</sup>

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72. See *id.* at 304.

73. See *id.*

74. See *id.*

75. Jane Connors, *General Human Rights Instruments and Their Relevance to Women*, in *ADVANCING THE HUMAN RIGHTS OF WOMEN: USING INTERNATIONAL STANDARDS IN DOMESTIC LITIGATION* 27, 33 (Andrew C. Byrnes et al. eds., 1997).

76. *Compilations of General Comments and General Recommendations Adopted by the Human Rights Treaty Bodies*, General cmt. 20(44), U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994).

77. Christine Ainetter Brautigam, *Mainstreaming a Gender Perspective in the Work of the United Nations Human Rights Treaty Bodies*, in *PROCEEDINGS OF THE 91ST ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW* 389, 392-93 (John Lawrence Hargrove ed., 1997).

78. *Id.* at 393.

The Committee has given a mixed reception to complaints under the Optional Protocol involving gender issues. The Committee has found that cases of direct discrimination on the basis of sex – for example, a Mauritian law that gave greater status to foreign wives of Mauritian men than to foreign husbands of Mauritian women<sup>79</sup> – breach the article 26 guarantee of nondiscrimination. However, in other cases of direct discrimination on the basis of sex, the Committee has permitted a considerable margin of appreciation to states. For example, in *Vos v. The Netherlands*,<sup>80</sup> the Committee found that a Dutch law that allowed disabled men to retain a disability allowance on the death of their wives but that did not allow disabled women to retain disability on the death of their husbands was not a violation of article 26.<sup>81</sup> The Committee also has had much more difficulty with cases that involve laws or practices that are facially gender neutral but that, in effect, discriminate against women.

Overall, gender mainstreaming has had a mixed fate. It has been relatively easy to obtain a revision of reporting guidelines but much more difficult to obtain practical follow-through on these revisions, such as through the systematic questioning of states.<sup>82</sup>

#### *V. Future Development of Women's Rights in International Law*

The sheaf of resolutions that the various U.N. bodies adopted in commemoration of the fiftieth anniversary of the Universal Declaration acknowledge in various ways that there are significant problems with the international protection of rights. These resolutions outline the major concerns with the Universal Declaration's protection of rights as nondissemination and non-implementation of the pertinent Universal Declaration provisions.<sup>83</sup> In other words, the problems are external to the Universal Declaration and to the U.N. human rights system itself. The U.N. bodies see the Universal Declaration as having a continuing and universal relevance. To these U.N. bodies, then, the cure for the mid-life crisis is better coordination, better promotion, better evaluation, better information, and better implementation. I argue, in contrast, that for women, the Universal Declaration and its progeny themselves may be the problem.

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79. *Aumeeruddy-Cziffra v. Mauritius*, Communication No. 35/1978, in 1 SELECTED DECISIONS UNDER THE OPTIONAL PROTOCOL 67, 71 (1985).

80. Communication No. 218/1986, U.N. Doc. A/44/40, Annex XI.G, at 232.

81. *Vos v. The Netherlands*, Communication No. 218/1986, U.N. Doc. A/44/40, Annex XI.G, at 232.

82. See Brautigam, *supra* note 77, at 394.

83. See, e.g., G.A. Res. 51/88, U.N. GAOR, 51st Sess., 82d plen. mtg. at 231, U.N. Doc. A/51/49 (1996) (stating that it recognizes "the Declaration as the source of inspiration and the basis of subsequent progress in the field of human rights" and that it is "[c]oncerned that international human rights standards are not fully and universally respected, that human rights continue to be violated in all parts of the world").

The U.N. human rights system and the Universal Declaration have grown into middle age. Like many fifty-year-old men today, the Universal Declaration is rather smug in its attitude towards women. The U.N.'s reactions to criticism of the Universal Declaration include simply ignoring the issue and hoping that, in time, it will go away. Another argument sometimes made is that taking the specificity of women's lives into account will undermine the objectivity and universality of the system. Yet another reaction is that of the double message—the public use of "politically correct" language acknowledging the problem and the announcement of special programs to alleviate it, but failure to tailor the programs to the specific problem or to give enough weight or resources to the programs to ensure their success. The human rights system appears to have learned that the art of politically correct rhetoric is an effective tool in silencing potential critics. It finds it very hard, however, to institute significant change. The human rights system's responses to the criticisms of feminist activists and scholars have been very mixed. Generally, the human rights system has only recognized claims of women that involve rights violations akin to those that men might sustain.<sup>84</sup> Recognition of rights violations in the "private" sphere are still the exception. For example, the negotiations on the text of the Declaration on the Elimination of Violence Against Women, in which some states resisted the definition of violence against women as a human rights issue on the grounds that this would water down the concept of human rights,<sup>85</sup> indicate the problems of enlarging the androcentric focus of human rights law. The overarching slogan of the U.N. human rights system with respect to women seems to be just "add women and stir."<sup>86</sup> A mid-life crisis is necessary for the system to change course in a more radical way to ensure that there is substantive change.

There has been much debate among feminists about whether human rights discourse is a useful strategy. Many have argued, for example, that civil and political rights are manipulable, individualistic, and unlikely to respond to the more general structural disadvantages that women face.<sup>87</sup> In my view, however, the significance of human rights discourse outweighs its disadvantages. Human rights provide an alternative language and framework to the existing welfare and protection approach to the global situation of women as victims or dependents.<sup>88</sup> Human rights allow women to claim specific entitlements from a specified obligation-holder. Moreover, there are international, regional, and national systems in place that can be invoked to protect human rights.

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84. Connors, *supra* note 75, at 37.

85. See Hilary Charlesworth & Christine Chinkin, *Violence Against Women: A Global Issue*, in *WOMEN, MALE VIOLENCE AND THE LAW* 13, 24-25 (J. Stubbs ed., 1994).

86. See Christine Chinkin, *Feminist Interventions Into International Law*, 19 *ADEL. L. REV.* 13, 18 (1997).

87. CAROL SMART, *FEMINISM AND THE POWER OF LAW* 138-57 (1989).

88. See Brautigam, *supra* note 77, at 390.

Human rights discourse is the dominant progressive moral philosophy operating at the global level.<sup>89</sup> It is important for women to engage in such discourse and contest its parameters.

What might the Universal Declaration's mid-life crisis produce? One outcome could be attention to the gendered model of human nature embedded in the human rights system. Just as some men at fifty suddenly regret the limitations of traditional male roles, the human rights system should develop rights responding to the life experiences of women, rather than forcing women to articulate their concerns in terms of rights based on male lives. Radhika Coomaraswamy, the U.N. Special Rapporteur on Violence Against Women, proposes the creation of a "fourth generation" of women's rights.<sup>90</sup> This "fourth generation" of rights includes "new" rights such as the right to sexual autonomy as well as a reinterpretation of the earlier generations of rights in order to respond to women's concerns.<sup>91</sup>

The use of an equality paradigm in women's human rights law needs to be reassessed. While it can offer some progress for women, it also can rationalize the deeper inequities in social structures around the world. As Nicola Lacey writes, the idea of equality as sameness cuts little ice when men and women are simply running different races.<sup>92</sup> Dianne Otto proposes that women reclaim the language of equity from states that have used it to signal a lesser standard than equality to achieve substantive redistributive outcomes.<sup>93</sup> She also emphasizes the need to respond to the diversity of women's experiences in a meaningful way.<sup>94</sup> One way to do this is to focus on economic and social rights that would draw attention to "the operation of systems of privilege among women" and the inequitable structures of global capital.<sup>95</sup>

A mid-life crisis of the Universal Declaration may cause the U.N. to rethink the significance of arguments of cultural relativism with respect to women's rights. Radhika Coomaraswamy argues that, in Asia, the next decade especially will be marked by the collision of national cultural movements and the development of women's rights.<sup>96</sup> The debate about cultural difference in the human rights arena tends to accept male-defined versions of culture as

89. RADHIKA COOMARASWAMY, *REINVENTING INTERNATIONAL LAW: WOMEN'S RIGHTS AS HUMAN RIGHTS* 4 (1997); Peterson, *supra* note 17, at 303-04. See generally Anne Orford, *Locating the International: Military and Monetary Interventions after the Cold War*, 38 *HARV. INT'L L.J.* 443 (1997) (investigating way in which moral philosophies have been generated in international sphere).

90. COOMARASWAMY, *supra* note 89, at 25.

91. *Id.*

92. Nicola Lacey, *Legislation Against Sex Discrimination: Questions from a Feminist Perspective*, 14 *J.L. & SOC'Y* 411, 420 (1987).

93. Otto, *supra* note 56.

94. *Id.*

95. *Id.*; see Orford, *supra* note 36.

96. COOMARASWAMY, *supra* note 89, at 27.



authoritative. New feminist understandings of culture need to be developed. Arati Rao proposes that we pay close attention to the politics of arguments based on culture in human rights discourse.<sup>97</sup> For Rao, a critical assessment of claims based on culture requires investigating the status of the speaker, in whose name the argument from culture is advanced, and the degree of participation in culture formation of the social groups primarily affected by the cultural practices in question.<sup>98</sup>

Another outcome of a mid-life crisis would be thoroughgoing gender mainstreaming in the U.N. human rights system, both in the way that the rights protected by human rights treaties are understood and in the way that the U.N. human rights machinery deals with them. The development of an optional complaints procedure to the Women's Convention through the CSW may have radical potential, especially if such a development allows consideration of structural gender inequality.

### VI. Conclusion

One might say that a basic flaw in my analogy of the Universal Declaration to a man's life is that the Universal Declaration was created to be both universal and eternal. As Sean MacBride said at the time of the thirtieth anniversary of the Universal Declaration, "the precepts of the [U]niversal Declaration are immutable and will remain valid forever: the right to life, freedom from torture, the right to be free from arbitrary arrest and detention and other such rights know no bounds of time."<sup>99</sup> Emphasis on its middle age may imply that the Universal Declaration will naturally fade away sometime before its centenary. But the language of rights cannot be fixed. It will always be contested and its meaning constantly renegotiated. A popular guide to coping with middle age quotes Carl Jung's statement that: "We cannot live the afternoon of life according to the programme of life's morning; for what was great in the morning will be little at evening, and what in the morning was true will at evening have become a lie."<sup>100</sup> In this spirit, I argue that the Universal Declaration is not based on immutable truth. It is a product of a situated and partial understanding of the human condition generated by men. If we understand the implicit commitments of the Universal Declaration, we open up transformative terrain.

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97. Rao, *supra* note 45, at 168.

98. *Id.*

99. Sean MacBride, *Message, in* HUMAN RIGHTS: THIRTY YEARS AFTER THE UNIVERSAL DECLARATION, *supra* note 2, at ix.

100. HERANT A. KATCHADOURIAN, FIFTY: MIDLIFE IN PERSPECTIVE 13 (1987) (quoting CARL JUNG, THE PORTABLE JUNG (Joseph Campbell ed., 1971)).