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## Women's Rights in International Law

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# Women's Rights in International Law: A Prediction Concerning the Legal Impact of the United Nations' Fourth World Conference on Women

## ABSTRACT

*This Note contains a detailed review of state responses to the Platform for Action produced at the United Nations' Fourth World Conference on Women. The Author finds that this consensus was reached on most of the proposals outlined in the Platform for Action. Certain proposals, however, regarding reproductive and inheritance issues, were subject to a great deal of dispute during the drafting of the Platform for Action, and many countries ultimately registered reservations as to these proposals. While the news reports of the Fourth World Conference on Women focused on the lobbying activities of both Islamic countries and Catholic countries, particularly the Vatican, this Note finds that ultimately most of the damage done to consensus on these controversial proposals was caused by the Islamic countries. This group of countries' objections to the controversial proposals were based in religious and cultural beliefs. The Author analyzes the pattern of reservations to the Platform for Action according to a set of factors designed to help predict the legal result of non-binding international conferences. On the basis of this analysis, this Note predicts that, while the number of objecting states was small relative to the whole, on the basis of the way customary international law is developed, the existence of this one highly interested group of states opposing some proposals will likely stall the further development of these proposals as legal norms for the foreseeable future. For the rest of the proposals in the Platform, which were subject to a great deal of consensus, adoption of these proposals at the Conference should enhance their development into customary international law norms. None of the proposals will develop into law, however, absent state practice at this time, and this Note finds that this required state practice is not at all assured, based upon states' actions so far.*

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## I. INTRODUCTION

Amid fanfare and controversy, the United Nations' Fourth World Conference on Women (hereinafter Conference) convened in Beijing, China, on September 4, 1995.<sup>1</sup> The event attracted 25,000 registered delegates<sup>2</sup> from 190 countries.<sup>3</sup> Over 36,000 additional people<sup>4</sup> attended a related meeting of non-governmental organizations in nearby Huairou, China, between August 30 and September 8, 1995. The Conference ended on September 15, 1995, with all attending states approving the adoption of the Conference's final document, the Platform for Action and Beijing Declaration (hereinafter Platform). Although the objectives stated in the Platform are not binding legal obligations of the participating states, the Platform is to serve as a guideline for the development of women's human rights. One and one-half years later, the import of the Conference remains unclear. Ultimately, what impact, if any, will the Conference have on international law regarding women's rights? Are any portions of the Platform likely to result in new international legal norms relating to women? Using a framework of predictors about the legal impact of such conferences, this Note attempts to answer these questions.

Part II of this Note discusses the Conference and the contents of the Platform, indicating which countries made interpretive statements or stated reservations to various sections of the Platform. Part III analyzes the level of state support for the proposals expressed in the Platform and applies a predictive analytical framework to the information from and regarding the Conference. Based on the results of this analysis, Part IV predicts the ultimate legal impact of the Conference. This Note finds that international consensus was strong for most sections of the Platform. Given state practice, the proposals contained in these widely supported sections should attain the status of law more quickly as a result of their endorsement at a multilateral forum. Opposition to the contested proposals in the Platform, however,

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1. Gayle Reaves, *Barriers to Beijing; Organizers Struggle to Keep U.N. Women's Conference on Track Amid Last-Minute Snags*, DALLAS MORNING NEWS, Aug. 28, 1995, at 1A.

2. Dr. James Dobson Charges Clinton Administration with Betraying American Families in Beijing, PR Newswire Association, Inc., Oct. 2, 1995, available in LEXIS, Nexis Library, WIRES File; Joan Chittister & Tom Fox, *Amid High Hopes, U.N. and NGOs Aim to Create New Generation of Women*, NAT'L CATHOLIC REP., Sept. 15, 1995, at 11, available in 1995 WL 12420761.

3. *Report of the Fourth World Conference on Women*, at 138, U.N. Doc. A/CONF.177/20 (1995) [hereinafter Conference Report].

4. Pamela Burdman, *At Last, Women Gather in China; 36,000 Expected for Grass-Roots Forum Beset by Controversy*, S. F. CHRON., Aug. 30, 1995, at A1.

was strong. News reports of the Conference emphasized the role that Catholic and Islamic countries played in opposing aspects of the Platform. As the analysis of this Note shows, however, most of the damage done to consensus on the Platform provisions was done by the Islamic countries. The contingent of countries that opposed the controversial provisions is likely to remain stalwart in its objections. On the basis of the predictive factors reviewed in Part II, this Note concludes that these controversial proposals are not likely to become international legal norms soon.

## II. BACKGROUND

### A. The Beijing Conference

There have been three previous U.N.-sponsored conferences on women's rights, the most recent of which was held in Nairobi in 1985.<sup>5</sup> One of the goals of the Fourth World Conference on Women in Beijing was to follow up on the progress that had been made by the world community on the "Forward Looking Strategies" drafted by the Nairobi Conference in the decade since that meeting.<sup>6</sup>

However, the heart of the activity and effort at the Beijing Conference was the articulation of its own goals for the future. During the twelve days of the Conference, delegates negotiated and drafted the main Conference document—the Platform. The Platform focused generally upon the economic and personal empowerment of women.<sup>7</sup> Extensive negotiations went into the drafting of the Platform, and its provisions regarding some subjects were decided only after heated debate among the delegates.<sup>8</sup> Many nations stated or recorded "reservations" to the controversial portions of the Platform, thereby indicating their lack of acceptance of those sections.<sup>9</sup> Most of those dissenting countries had strong Christian, particularly Roman Catholic, and/or Islamic traditions,<sup>10</sup> and their dissents arose from moral beliefs based in their respective religions.

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5. Chittister & Fox, *supra* note 2.

6. *Id.*

7. *Key Points from Women's Conference*, N.Y. TIMES, Sept. 15, 1995, at A3.

8. Loretta Tofani, *Forum's Plan for Improving Women's Lot Not Approved by All*, Knight-Ridder News Service, Sept. 16, 1995.

9. *Id.*

10. *Id.*

## 1. Contents of the Platform for Action

The Platform was adopted by resolution of the national delegates to the Conference on September 15, 1995.<sup>11</sup> It identified twelve critical areas of concern for women:<sup>12</sup> (1) women and poverty;<sup>13</sup> (2) education and training of women;<sup>14</sup> (3) women and health;<sup>15</sup> (4) violence against women;<sup>16</sup> (5) women and armed conflict;<sup>17</sup> (6) women and the economy;<sup>18</sup> (7) women in power and decision-making;<sup>19</sup> (8) institutional mechanisms for the advancement of women;<sup>20</sup> (9) the human rights of women;<sup>21</sup> (10) women and the media;<sup>22</sup> (11) women and the environment;<sup>23</sup> and (12) issues surrounding the female child.<sup>24</sup> Thus the topics that the Platform covered were varied, including educational, health, and economic issues. In general, the Platform focused on the issue of power and control in these many areas and called for the direction of greater resources to women and girls. The Platform stated objectives and proposed governmental action for all twelve areas.<sup>25</sup>

## 2. Debate Over the Platform Objectives

The scope of the Platform was broad, and prior to the Conference, fully 50% of the draft Platform was under objection by one member state or another.<sup>26</sup> During the drafting that took place at the Conference, the fiercest debates arose surrounding the provisions of the section on women and health (hereinafter "Health section")<sup>27</sup> and language condemning discrimination on the basis of sexual orientation.<sup>28</sup> The language on sexual

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11. Conference Report, *supra* note 3, at 157.

12. *Id.* at 19.

13. *Id.* at 21.

14. *Id.* at 29.

15. *Id.* at 37.

16. *Id.* at 51.

17. *Id.* at 59.

18. *Id.* at 68.

19. *Id.* at 82.

20. *Id.* at 87.

21. *Id.* at 92.

22. *Id.* at 102.

23. *Id.* at 106.

24. *Id.* at 112.

25. See generally *id.* at 19-121.

26. Rone Tempest, *Fight Brewed Before Beijing Conference, but it Never Percolated*, L.A. TIMES, Sept. 9, 1995, at A18.

27. *Id.*; see also Tiffany Bown, AGENCE FRANCE-PRESSE, Sept. 14, 1995, available in 1995 WL 7856342.

28. Tempest, *supra* note 26, at A18.

orientation was eventually dropped from the document under firm pressure from the Vatican and the Islamic states.<sup>29</sup>

In spite of the debate on these key areas, however, apparently much of the Platform was subject to consensus by the attending delegations since no serious debates were reported during the drafting of most of the Platform sections.<sup>30</sup> Additionally, of the reservations and consensus-damaging interpretive statements made by states after the adoption of the Platform, most were focused squarely on the limited areas that were subject to debate during the Conference.<sup>31</sup>

### 3. Reservations and Statements Made About the Platform

At the final meeting of the Conference, at which the Platform was adopted, several governments' delegates made oral statements about the Platform.<sup>32</sup> Some of these statements were general in nature, while others were interpretive of specific provisions of the Platform. Additionally, a number of states expressed reservations about certain aspects of the Platform.<sup>33</sup>

#### a. Reservations and Interpretive Statements of the United States

The United States, a Western state with a progressive approach toward women's issues, was an important presence at the Conference and a key supporter of the Platform.<sup>34</sup> In spite of this fact, the United States recorded interpretive statements or reservations to twenty-three paragraphs of the Platform, more

29. *Id.*

30. See generally *id.*; see also Bown, *supra* note 27.

31. Most reservations were made regarding aspects of the Health section (including paragraphs 94-96, 106(j), 106(k), and 232(f)). See *infra* note 109.

32. Conference Report, *supra* note 3, at 157.

33. Tempest, *supra* note 26. For the purposes of this Note, interpretive statements and reservations will be called "objections," although interpretive statements are not all negative in nature or effect. See *infra* text accompanying *infra* notes 144-48 (illustrating that some interpretive statements do not undermine the paragraph to which they are directed.)

34. See Jim Landers, *U.S. Women Push 'Progressive' Agenda, Conservatives Attack Detachment's Plan for U.N. Conference in China*, DALLAS MORNING NEWS, Aug. 25, 1995, at 18 (quoting a U.S. official as saying that, "U.S. participation in previous U.N. conferences was largely responsible for declarations supporting human rights," and that, "[i]f the United States were not to go to Beijing . . . the very progressive spirit and progressive voice of these conferences and of these ideas would not be heard[;]" see also Tempest, *supra* note 26 (noting that the Vatican and the United States led "opposite camps" at the Conference.).

than any other state except the Vatican.<sup>35</sup> However, of that number, the United States recorded only one actual reservation,<sup>36</sup> and this reservation did not directly implicate any potential legal norms regarding women's rights that might spring from the Conference. Furthermore, this U.S. reservation did not undermine any principle underlying the objectives articulated in the Platform. In addition, the eleven interpretive statements of the United States were all of such a nature that they either (1) did not undercut the provision they addressed,<sup>37</sup> or (2) did not address an issue that implicated women's issues (but instead addressed broader gender-neutral concerns that impact women as well as men).<sup>38</sup>

Although the United States' reservations and interpretations did not affect any provision specifically implicating women's rights norms, its comments did tend to undercut the necessary forward-looking commitment to implementation of the Platform objectives. The United States stated that the Platform is merely a set "of recommendations" and that its commitment to implement the Platform was not "a specific commitment to implement each element of the Platform[,] but rather, was a generalized commitment to the Platform overall."<sup>39</sup> Although the impact of this language is not fully clear, a commitment to implement each element of the Platform would have been a stronger showing of support than the language cited above. Implementation of the

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35. See generally Conference Report, *supra* note 3, at 157-77 (listing the reservations and interpretive statements recorded by the United States and all other states).

36. The United States reserved its position as to paragraph 5, regarding commitment of resources. *Id.* at 173.

37. See *id.* at 174-76 (noting the interpretive statements of the United States regarding the following paragraphs: 17 ("radical transformation of the relationship between women and men" interpreted to mean "realization of full equality between women and men"); 26 (supporting the commitment to facilitate NGO work); 46 (stating that the omission of reference to discrimination on the basis of sexual orientation in the Platform does not justify such discrimination in any country); 96 (assuming that the paragraph applies existing norms of human rights law to the issue of equal relationships between men and women); 166(l) ("equal remuneration for men and women for work of equal value" interpreted to mean "equal pay for equal work"); 206(b)(e) & (f) (promising to develop better knowledge about unwaged work); 234-45 (stating that references to media actions are understood as suggestions that may not impinge on the freedom of the press); 293 (interpreting the word "require" consistent with the fact that the Conference is not binding); 353 (reiterating that the United States does not have an "agreed target" for official development assistance)).

38. See *id.* at 174-75 (noting the interpretive statements of the United States regarding paragraphs 131 (discussing the issue of foreign occupation as a human rights violation *per se*); and 247 (regarding environmental degradation and nuclear weaponry)).

39. *Id.* at 173.



Platform would lead to the state practice that will be crucial to the development of the proposals as legal norms.

However, this lesser commitment by the United States almost certainly did not reflect any disagreement with the underlying principles of the disputed provisions, since these principles are in accordance with the prevailing U.S. cultural values. As stated above, the U.S. delegation was a strong advocate of the Platform objectives.<sup>40</sup> More likely, this language reflected a lack of willingness on the part of the United States to commit financial resources to the implementation of the extensive Platform provisions.<sup>41</sup>

The objections made by the United States did not fit the pattern of the rest of the objecting countries. The United States consistently objected to the Platform's language regarding commitment of financial resources,<sup>42</sup> but it was a staunch supporter of all of the Platform goals in the abstract.<sup>43</sup> For these reasons, the reservations and interpretive statements of the United States will be excluded from the discussion below regarding reservations made by other states, but the impact of the United States' reluctance to commit resources will be discussed in the final analysis of this Note.

#### b. Reservations and Interpretive Statements of All Other Countries

The rest of the countries that had objections to the Platform were mostly concerned with portions of the Health section. Of the Platform paragraphs that had multiple reservations and interpretive statements made against them, only one—paragraph 274(d), regarding equal inheritance rights for women—fell outside the Health section.<sup>44</sup>

#### (1) Total Number of Reservations Made

In total, sixty-five states made oral statements or orally expressed reservations about aspects of the Platform.<sup>45</sup> This total

40. See *supra* text accompanying note 34.

41. Bolstering this interpretation is the United States' explicit reluctance to commit resources to implementation. See *supra* text accompanying note 39.

42. See Conference Report, *supra* note 3, at 173-75 (including statements of the United States that the Platform is not legally binding, and that the United States did not agree to a 'target' for official development assistance).

43. See *supra* note 34.

44. See *infra* note 109.

45. Conference Report, *supra* note 3, at 157. Many countries requested that their statements be recorded in the Conference Report, but many others did not. Therefore, while the Conference Report lists all of the countries that made

amounted to roughly one-third of the participating states. Many of these statements, however, were neutral or affirmative in nature. In fact, the statements of twenty-eight countries did not negatively impact consensus on any part of the Platform.<sup>46</sup>

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statements at the final meeting of the Conference, *see infra* note 109, it does not contain the text of some countries' statements. For those countries whose statements were not recorded, the United Nations press release regarding the last meeting is used in this Note as the source of those countries' statements. The press release includes all of the oral statements made by countries on that day. *See United Nations Fourth World Conference on Women Press Release, WOM/BEI/38, Sept. 15, 1995* [hereinafter Press Release 38].

A review of the Conference Report and Press Release 38 reveals that apparently some paragraph numbers changed between the time of the last meeting and the printing of the Conference Report. *Compare* Press Release 38, *supra* at 4 (Kuwait listed as reserving its position as to paragraphs 107(k), 96, and 97) *with* Conference Report, *supra* note 3, at 167 (Kuwait listed as reserving its position as to paragraphs 106(k) and 94 to 96); Conference Report, *supra* note 3, at 169 *with* Press Release 38, *supra* at 5 (Malaysia listed as reserving its position as to paragraphs 107(k) and 109(k) in Press Release 38 but paragraphs 106(k) and 108(k) listed in the Conference Report); Conference Report, *supra* note 3, at 166 *with* Press Release 38, *supra* at 5 (paragraphs 97 and 231(f) listed by Iran in Press Release 38 but paragraphs 96 and 232(f) listed in the Conference Report). For the purposes of this Note, the text of the official Conference Report, and the paragraph references contained therein, will control, and all analysis is based upon the paragraph numbers—and the corresponding paragraphs—cited in the Conference Report.

In accordance with this scheme, all references to paragraph 231(f) in Press Release 38 have been interpreted to refer to paragraph 232(f); all references to paragraph 97 have been interpreted to refer to paragraph 96; all references to paragraph 107(k) have been interpreted to refer to paragraph 106(k); and all references to paragraph 109(k) have been interpreted to refer to paragraph 108(k). Additionally, the reference by Djibouti in Press Release 38 to paragraphs 95-97 have been interpreted to refer to paragraphs 94-96.

Such an interpretation makes sense in that it brings Djibouti and all of the other Muslim countries that objected to paragraph 97 (according to the press release) into accordance with all of the other Muslim countries listed in the Conference Report, all of which objected to some or all of paragraphs 94-96, but none of which mentioned paragraph 97. Additionally, it is corroborated by the recurring, identical discrepancies between the paragraph numbers listed in the oral statements found in Press Release 38 and those listed (for countries who had their statements recorded) in the Conference Report.

46. Twenty-one countries made completely neutral or affirmative statements regarding potential norms involving women's rights: France, Costa Rica, Guatemala, India, Ethiopia, Bolivia, Colombia, Bangladesh, Ghana, Cambodia, South Africa, United Republic of Tanzania, Brazil, Panama, El Salvador, Madagascar, Chad, Cameroon, Vanuatu, and Gabon, *see generally*, Press Release 38, *supra* note 45, and Canada, *see* Fiona Muldrew, *Women Still Hold Up Half the Bruised Sky (Feminist Activity in Canada)*, CANADIAN DIMENSION, Feb. 12, 1996, at 13, available in 1996 WL 9252071.

Another seven countries made statements that were either neutral or affirmative, but which included a reiteration of their stance against abortion: Ecuador, Argentina, Venezuela, Nicaragua, Honduras, the Philippines, *see* Press Release 38, *supra* note 45, at 5-10, 11, and the Dominican Republic, *see* Conference Report, *supra* note 3, at 159. This did not impact any potential norms

Thirty-seven states made or recorded comments or reservations that were consensus-damaging on one or more points.<sup>47</sup> States with predominantly Muslim populations represented the main block of countries objecting to portions of the Platform. Twenty-four states with a strong connection to Islam made consensus-damaging interpretive statements or expressed reservations to the Platform.<sup>48</sup> This block of Muslim states represented almost thirteen percent of the total number of states participating in the Conference. Additionally, two more countries with a mix of strong Roman Catholic and Islamic influences expressed reservations to portions of the Platform.<sup>49</sup>

States whose religion is dominated by Roman Catholicism, including the Vatican, represented the other main block of countries<sup>50</sup>—mainly Latin American—who were outspoken in the debates during the drafting of the Platform and who made statements after the Conference. Of those states, however, only three<sup>51</sup> actually made consensus-damaging statements. Many of

arising from the Conference since a right to obtain a legal abortion was not asserted in the Platform. See *infra* note 54.

47. Those states were: Central African Republic, Kuwait, Egypt, the Holy See, Malaysia, Iran, Libya, Indonesia, Mauritania, Oman, Malta, Peru, Brunei Darussalam, Yemen, Sudan, the United Arab Emirates, Bahrain, Lebanon, Tunisia, Mali, Benin, Algeria, Iraq, Morocco, Djibouti, Qatar, Togo, Liberia, Syria, Pakistan, Nigeria, Comoros, Jordan, Maldives, and Niger, see generally Press Release 38, *supra* note 45, and Paraguay and the United States, see Conference Report, *supra* note 3, at 170 and 173.

48. Those countries were: Algeria, Bahrain, Brunei Darussalam, Comoros, Egypt, Indonesia, Iraq, Iran, Jordan, Kuwait, Libyan Arab Jamahiriya, Maldives, Mali, Mauritania, Morocco, Niger, Oman, Pakistan, Qatar, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, and Yemen. See Conference Report, *supra* note 3, at 157, for a listing of the countries that made oral statements and reservations, and OUR SUNDAY'S VISITORS 1996 CATHOLIC ALMANAC 333-67 (Felician A. Foy, O.F.M., Rose M. Avato, eds.) (1996) (hereinafter 1996 CATHOLIC ALMANAC) for a list of the religious affiliations of the countries of the world.

49. Lebanon and Nigeria. See Press Release 38, *supra* note 45, at 8, 10 (reporting the statements of these countries); see also 1996 CATHOLIC ALMANAC, *supra* note 48, at 333-67 (listing the religious affiliations of these countries).

50. That block of countries included: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, the Holy See, Honduras, Malta, Nicaragua, Panama, Peru, the Philippines, and Venezuela. See Conference Report, *supra* note 3, at 157 (listing all of the countries that made oral statements of interpretation and reservations.) At least 84% of the citizens of all of these countries are Catholic. See 1996 CATHOLIC ALMANAC, *supra* note 48, at 333-67 (listing the religious affiliations of the countries of the world.)

51. The Holy See reserved its position to the entire Health section of the Platform and Paraguay included language in its statement that undercut paragraph 94, interpreting it "in conformity with its national legislation." Conference Report, *supra* note 3, at 163, 171. Peru included language in its oral statement that seemed to undercut paragraph 94 also. Peru stated that "[c]oncepts on reproductive health and rights cannot be used to regulate fertility or family planning." Press Release 38, *supra* note 45, at 6.

the Roman Catholic states eventually supported the Platform in full.<sup>52</sup> The rest supported the Platform, but made statements reiterating their opposition to abortion.<sup>53</sup> The Platform does not actually propose or endorse a right to obtain a legal abortion, however, so those statements did not impact consensus for any of the Platform proposals.<sup>54</sup>

## (2) Reservations and Interpretive Statements Made Against the Health Section

The parts of the Health section that drew reservations and interpretive statements were: paragraph 94, regarding access to family planning methods;<sup>55</sup> paragraph 95, regarding the right to decide family planning matters;<sup>56</sup> paragraph 96, regarding the

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52. Those Roman Catholic states were: Bolivia, Brazil, Colombia, Costa Rica, El Salvador, Guatemala, and Panama. *See generally* Press Release 38, *supra* note 45.

53. Those Roman Catholic states were: Ecuador, Argentina, Venezuela, Nicaragua, Malta, the Philippines, and Honduras, *see generally* Press Release 38, *supra* note 45, at 4, 6-9, 11, and the Dominican Republic, *see* Conference Report, *supra* note 3, at 159.

54. The Conference Report deals with the issue of abortion in paragraphs 106(j) and 106(k). Those paragraphs deal with the health impact of unsafe abortion and suggest that countries may consider reviewing laws that punish women for undergoing illegal abortions. *See* Conference Report, *supra* note 3, at 43. The language of the paragraphs leaves the determination of this issue to the individual states, stipulating that "[a]ny measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process." *Id.* These two paragraphs cannot be read as asserting that a right to obtain a legal abortion is an international human right; at most, they advocate only weakly for a domestic legal right to obtain an abortion. Therefore, any language generally reiterating a country's stance against allowing legal abortions would not implicate any norm proposed by the language of the Platform.

55. *See infra* note 159 (listing the states that objected to paragraph 94.) Paragraph 94 reads:

Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when, and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law.

*Id.* at 38.

56. *See infra* note 160 (listing the states that objected to paragraph 95.) Paragraph 95 reads in pertinent part:

right to decide sexual and reproductive matters free of coercion, discrimination, or violence;<sup>57</sup> paragraph 106(j), regarding the health impact of unsafe abortions;<sup>58</sup> paragraph 106(k), calling for safe abortions in states where they are not illegal, and calling for the repeal of punitive measures against women who have had abortions;<sup>59</sup> and paragraph 232(f), which calls for the implementation of the objectives stated in paragraphs 94 through 96.<sup>60</sup>

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[Reproductive rights] rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.

*Id.* at 39.

57. See *infra* text accompanying notes 150-51 (listing the states that objected to paragraph 96.) Paragraph 96 reads:

The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behavior and its consequences.

*Id.* at 39.

58. See *infra* note 161 (listing the states that objected to paragraph 106(j).) Paragraph 106(j) reads: "[Governments should recognize and deal with the health impact of unsafe abortion as a major public health concern, as agreed in paragraph 8.25 of the Programme of Action of the International Conference on Population and Development." Conference Report, *supra* note 3, at 43.

59. See *infra* note 162 (listing the states that objected to paragraph 106(k).) Paragraph 106(k) reads:

Women who have unwanted pregnancies should have ready access to reliable information and compassionate counseling. Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process. In circumstances where abortion is not against the law, such abortion should be safe. In all cases, women should have access to quality services for the management of complications arising from abortion. Post-abortion counseling, education and family-planning services should be offered promptly, which will also help to avoid repeat abortions. [States should] consider reviewing laws containing punitive measures against women who have undergone illegal abortions.

*Id.* at 43.

60. See *infra* note 163 (listing the states that objected to paragraph 232(f).) Paragraph 232(f) reads: "[Governments should:] Take action to ensure that the human rights of women, including the rights referred to in paragraphs 94 to 96 above, are fully respected and protected." *Id.* at 100.

### (3) Reservations and Interpretive Statements Made Against Paragraph 274, Regarding Inheritance Rights

Besides the provisions of the Health section, multiple states sounded reservations and interpretations regarding the Platform provisions involving inheritance and sovereignty issues. Paragraph 274(d) of the Platform calls for states to enact and enforce legislation that guarantees equal rights of succession regardless of gender.<sup>61</sup> Nine Muslim states made reservations or damaging interpretations on the topic of inheritance, and six additional Muslim states made blanket reservations against any provisions of the Platform in contravention of the Islamic Shariah.<sup>62</sup> The Shariah is the body of Islamic religious law<sup>63</sup> and forms the basis of many Islamic states' legal systems.<sup>64</sup> The inheritance guidelines of paragraph 274(d) contradict the provisions of the Shariah, which under some interpretations provides that women receive just half of the inheritance share of a man who is to the same degree related to the decedent.<sup>65</sup>

### (4) Statements Made Regarding Sovereignty

Finally, multiple states made comments reiterating the sovereignty of the state in regulating its domestic affairs.<sup>66</sup> All of

61. Paragraph 274(d) reads:

Eliminate the injustice and obstacles in relation to inheritance faced by the girl child so that all children may enjoy their rights without discrimination, by, inter alia, enacting, as appropriate, and enforcing legislation that guarantees equal right to succession and ensures equal right to inherit, regardless of the sex of the child[.]

*Id.* at 115.

62. See *infra* note 164 (detailing the objections to paragraph 274(d)).

63. 7 ENCYCLOPEDIA OF RELIGION 431, 431 (1993).

64. *Id.*

65. Adrien K. Wing, *Custom, Religion, and Rights; the Future Legal Status of Palestinian Women*, 35 HARV. INT'L. L.J. 149, 158-59 (1994). Interpretations of the Shariah may vary between schools of Islamic law. See *infra* text accompanying note 127. This fact may in turn vary women's inheritance rights according to the dominant interpretation within the area. However, it is clear that the Quran itself does stipulate fixed shares of the estate be awarded to female relatives, with the residue going to male relatives. Bharathi Anandhi Venkatraman, *Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women: Are the Shari'a and the Convention Compatible?* 44 AM. U. L. REV. 1949, 1967 (1995). This in itself may be inconsistent with the equality in succession laws called for by the Platform.

66. See generally Conference Report, *supra* note 3, at 157-77 (containing comments by Egypt (stating that Egypt's compliance is conditional upon respect for the rights of national sovereignty and moral and religious values), Guatemala (noting its sovereign right to implement the Platform in accordance with its

these comments came from states with a strong Roman Catholic or Muslim influence that were apparently concerned about the effect of international pressure on their cultural norms and heritage.

Because these comments do not specifically identify which provisions, if any, the state may not implement in light of its sovereign rights, they do not undermine consensus as established at the Conference for any particular provision or provisions.<sup>67</sup>

### B. *The Creation of Customary International Law*

Customary international law has traditionally evolved as a result of state practice.<sup>68</sup> Under this construct, states help to create international law through their actions, and once enough states follow a practice for it to be considered an obligatory norm, it becomes binding international law.<sup>69</sup> Acceptance by all individual states has not traditionally been necessary for an international practice to develop into law.<sup>70</sup>

International law continues to develop in this traditional way, but multilateral forums increasingly play a role in the shaping development of customary international law.<sup>71</sup> Consensus evidenced by agreement at an international forum can ultimately be evidence of a binding legal obligation, combined with other

Constitution), Libya (stating that it does not accept the right of any nation or civilization to impose its cultural, political, etc., orientations on another nation), and Peru (agreeing with the Platform to the extent that it is in accord with Peru's Constitution)); *see also* Press Release 38, *supra* note 47, at 7-12 (containing comments of the Dominican Republic (stating it will implement the Platform to the extent that it is in accord with its constitution and laws), Vanuatu (noting that it endorsed the Platform "with full respect for [Vanuatu's] constitutional, legal and religious principles"), Djibouti (noting that the Platform "will be dealt with in the context of national sovereignty of Djibouti"), and Palestine (stating that it will "control" its own "destiny" regarding womens' issues.)).

67. However, these comments may be indicative of a lack of commitment to implement some Conference provisions, which would diminish the state practice necessary to move the proposals toward the status of international law.

68. The position of customary international law on an issue was determined by looking at what states had done in the past regarding that issue. Ted L. Stein, *The Approach of the Different Drummer: The Principle of the Persistent Objector in International Law*, 26 HARV. INT'L L. J. 457, 465 (1985).

69. Jonathan I. Charney, *Universal International Law*, 87 AM. J. INT'L L. 529, 536 (1993).

70. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES [hereinafter RESTATEMENT] § 102 cmt. b (1987). Once the norm is considered by the international community to be international law, individual states that may not have been part of developing the norm and that do not individually accept the norm as law may be bound by it anyhow. Charney, *supra* note 69, at 536.

71. Charney, *supra* note 69, at 543; *see also* Stein, *supra* note 68, at 463-66 (discussing the trend toward "conscious" law creation.).

forms of evidence.<sup>72</sup> If solutions proposed and widely accepted at an international forum are also manifested in practice by the international community (as exhibited by domestic implementation of the solution or other shows of support), they will quickly become international law, regardless of their legal status as they emerged from the multinational forum.<sup>73</sup> Thus, although a solution proposed at an international forum, such as the Conference, may not be binding as international law, having come out of such a forum lends legitimacy to the solution and adds impetus to its development into international law.<sup>74</sup>

It is clear from the construct described above that a determination of the legal impact of the Conference will turn on whether the objectives of the Conference were endorsed by the nation-participants.<sup>75</sup> A reading of the news reports of the Conference, as well as the reservations and statements made by the states, makes clear that some provisions of the Platform were endorsed, but others were not.

#### 1. Potential International Legal Norms that were Endorsed at the Conference

The Platform contained many objectives, stated in normative terms, that were candidates for becoming international human rights norms. Most of these objectives were approved by all states without any debate. Although all of the potential norms that received full endorsement by the Conference are too numerous to list, an examination of the Platform reveals many potential candidates within the fully-endorsed sections of the Platform, such as:

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72. According to this rationale, the adoption of a proposal at a multinational conference is actually a form of state practice that becomes evidence of customary international law in that area. See RESTATEMENT, *supra* note 70, § 102 n.2 ( "The practice of states that builds customary law takes many forms and includes what states do in or through international organizations[;] . . . statements and votes of governments are kinds of state practice.").

73. Charney, *supra* note 69, at 545.

74. See RESTATEMENT, *supra* note 70, at § 103 cmt. c ("Resolution of universal international organizations, if not controversial and if adopted by consensus or virtual unanimity, are given substantial weight" as evidence of international law.).

75. Of course, state domestic practice and other forms of evidence could independently form the basis of new customary international law on any of the topics covered in the Platform, but as a practical matter it is clear that states will not implement that which they did not even support in theory as part of the Platform.



1. The right of women to equal access to society's resources—for example, to health care,<sup>76</sup> or to education;<sup>77</sup> and,
2. The right of women to be free from violence, including different types of violence that are specific to women.<sup>78</sup>

No nations objected to any of the paragraphs setting forth these rights.<sup>79</sup> This lack of objection amounts to consent to the proposals.<sup>80</sup> Therefore, this general endorsement from the Conference, a multinational forum, should help to develop the law regarding these issues. Additional evidence of approval in the form of state practice would accelerate the movement of the potential norms toward the status of law.

Other paragraphs that could give rise to international norms, however, were the subject of objections by many nations. As noted above, seven paragraphs of the Platform drew objections by multiple states.<sup>81</sup> Those paragraphs broadly represent three potential international human rights norms:

1. The right of all persons to reproductive and sexual freedom (hereinafter "reproductive rights");<sup>82</sup>

76. Such a norm may be derived from paragraph 89, which states that "[w]omen have the right to the enjoyment of the highest attainable standard of physical and mental health." Conference Report, *supra* note 3, at 37.

77. Such a norm may be derived from paragraph 69, which states that "[e]ducation is a human right and an essential tool for achieving the goals of equality, development and peace." *Id.* at 29.

78. Such a norm may be derived from paragraphs 112-13, which state in part that "[v]iolence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms." *Id.* at 51.

79. It would be too extensive to detail all of these potential norms that were not subject to reservation by states at the Conference. This Note will consolidate all of these potential norms for the purposes of analysis. Since the analysis set forth below evaluates the impact of consensus on norms springing from the Conference, this approach is acceptable, because all of these norms received the same level of consensus (i.e., full consensus). Of course, the different proposals will necessarily travel at different paces toward status as international law because state practice will almost certainly vary from proposal to proposal.

80. Charney, *supra* note 69, at 544.

81. See *supra* text accompanying notes 55-65.

82. Such a norm may be derived from paragraphs 94-96 of the Platform. Paragraph 94 refers to the "right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning . . . as well as other methods of their choice . . . which are not against the law, and the right of access to . . . health-care services that will enable women to go safely through pregnancy and childbirth[;]". See Conference Report, *supra* note 3, at 38. Paragraph 95 refers to

2. The right of women to equality in succession and inheritance laws;<sup>83</sup> and,
3. The right to protection against unsafe abortions and complications arising from abortion (though not the right to have a legal abortion).<sup>84</sup>

The future of proposed norms that are subject to dissent at an international forum is bleaker than for those that receive strong support. Commentators have suggested that international law in recent years has increasingly taken form pursuant to the goals of normative development articulated at multilateral forums, including diplomatic conferences,<sup>85</sup> of which the Conference is an example. In order to help predict the legal impact of the efforts made at these forums, Professor Jonathan Charney has articulated a multi-factored analysis<sup>86</sup> whose indicators, when

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reproductive rights . . . [that] rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. [Reproductive rights] also includ[e] [the right of couples and individuals] to make decisions concerning reproduction free of discrimination, coercion and violence[;]

*Id.* at 39.

Paragraph 96 states that the "human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health." *Id.* Paragraph 232(f) incorporates paragraphs 94-96 by reference, noting that governments should "[t]ake action to ensure that the human rights of women, including the rights referred to in paragraphs 94 to 96 . . . are fully respected and protected[.]" *Id.* at 100.

83. Such a norm may be derived from paragraph 274(d), which states that governments should take action to "[e]liminate the injustice and obstacles in relation to inheritance faced by the girl child so that all children may enjoy their rights without discrimination, by, *inter alia*, enacting, as appropriate, and enforcing legislation that guarantees equal right to succession and ensures equal right to inherit, regardless of the sex of the child[.]" *Id.* at 115.

84. Such a norm may be derived from paragraph 106(j), which calls on governments to "[r]ecognize and deal with the health impact of unsafe abortion as a major public health concern," and paragraph 106(k), which states that:

Women who have unwanted pregnancies should have ready access to reliable information and compassionate counselling . . . [and,] in circumstances where abortion is not against the law, such abortion should be safe. In all cases, women should have access to quality services for the management of complications arising from abortion. Post-abortion counselling, education and family-planning services should be offered promptly[.]

*Id.* at 43.

85. Charney, *supra* note 69, at 543-44; see also Stein, *supra* note 68, at 465.

86. See Charney, *supra* note 69, at 544-45.

applied to the results of a conference, may shed some light on this question. Using Professor Charney's analytical framework, this Note will evaluate: (1) the likely future, as a general matter, of potential norms contained in the fully-supported sections of the Platform; and (2) the likely future of potential norms contained in the portions of the Platform that were subject to reservation or consensus-damaging interpretation.<sup>87</sup>

### III. INDICATORS OF WHETHER THE POTENTIAL NORMS PROPOSED IN THE CONFERENCE WILL EVENTUALLY BECOME INTERNATIONAL LAW

The first factor that may indicate a proposal's future is "how clearly it is communicated to the [states participating in the forum] that the rule under consideration reflects a refinement, codification, crystallization or progressive development of international law."<sup>88</sup>

#### A. *Clarity with Which Participating States Understood the Potential Legal Impact of the Adoption of the Platform Objectives*

The Platform was admittedly non-binding on its members.<sup>89</sup> None of the participating states were under an international legal obligation to implement any aspect of the Platform.<sup>90</sup> Wide endorsement at a multinational forum, however, will go far toward proving the type of international consensus needed for proposals to harden into law.<sup>91</sup> Given the importance of consensus in

87. This Note will not include in its analysis the statements made about three paragraphs:

- (1) paragraph 5 (regarding commitment to allocation of resources), which was subject to reservation by the United States for the reasons detailed above, *see supra* text accompanying notes 37-46;
- (2) any paragraph of the Health section that did not receive a reservation aside from that of the Vatican (which reserved its position as to the whole section, *see* Conference Report, *supra* note 3, at 163; and,
- (3) paragraph 132, which received only one reservation, by the Central African Republic.

In the latter two cases, the fact that the paragraphs received just one reservation each indicates near-universal positive consensus on these paragraphs.

88. Charney, *supra* note 69, at 544.

89. *See, e.g.*, Conference Report, *supra* note 3, at 173 (statement of the United States noting that its interpretation of "commit[ment]" as used in the document is "consistent with the fact that the Platform, Declaration and commitments made by States . . . are not legally binding, and that they consist [only] of recommendations").

90. *Id.*

91. Charney, *supra* note 69, at 546; *see also* RESTATEMENT, *supra* note 70, at § 102 n.2 ("International conferences . . . provide occasions for expressions by

developing international law, it is unlikely that any state participating in the Conference would be unaware of the potential legal ramifications of adoption by the Conference of any proposals for inclusion in the Platform.

As indicated above, some provisions of the Platform were hotly debated among the member states<sup>92</sup> before compromise and acceptance into the Platform. This fact can be read as evidence that member states viewed the adoption of the Platform seriously. One reason that states would take the Platform seriously is the knowledge that international consensus on a point indicates the progressive development of international law in that area.

It is important to note, however, that some powerful countries, such as China, did not state any reservations to the Platform, though they had and continue to have state policies that are in contravention of Platform tenets.<sup>93</sup> For example, while not stating or recording any reservation to paragraph 94 of the Platform, which supports the right of people to have "the freedom to decide if, when, and how often to" reproduce,<sup>94</sup> China announced that it would not revise its "one child" policy, and continues its practice of forced sterilizations and abortions to enforce that policy.<sup>95</sup> Thus, although China publicly endorsed the goals of the Platform, its level of commitment to putting them in practice is subject to question.

Overall, however, open discussion of principles at an international conference where 190 nations have delegates in attendance is a strong publication of the fact that a norm may be in the making.<sup>96</sup> States may choose to say one thing and do another, but regardless of their ultimate practice, they most likely were aware of the potential ramifications of the Conference.

### *B. Level of Support Given the Platform by Conference Participants; Number of Objecting States*

A second factor to be weighed is "the amount of support given to the rule under consideration."<sup>97</sup> An element of this consideration is the number of states that have made objections

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states as to the law on particular questions. General consensus as to the law at such a conference confirms customary law or contributes to its creation.").

92. Bown, *supra* note 27.

93. Tofani, *supra* note 8.

94. Conference Report, *supra* note 3, at 38.

95. Tofani, *supra* note 8.

96. One commentator has noted that, "[a] rule adopted at a UN conference or embodied in a General Assembly resolution is presented as a target for all those who have objections to voice. Its adoption is a public, community act and everyone involved knows of it." Stein, *supra* note 68, at 466.

97. Charney, *supra* note 69, at 544.

to the proposal under analysis.<sup>98</sup> As applied to the proposals of the Conference, this predictor offers mixed results.

Most elements of the platform were non-controversial and were widely supported.<sup>99</sup> The absence of controversy or reservation regarding these sections is an indicator of international consensus on the ideas underlying these provisions. Additionally, it is fundamental that states must object to norms they find objectionable during the development process if they wish to halt the progression of international law towards that norm.<sup>100</sup> Thus, "the absence of objections . . . amounts to tacit consent by participants" to an articulated developing norm.<sup>101</sup>

Other matters, however, particularly those concerning reproductive issues, sovereignty, and inheritance, were highly contested among the delegates during the drafting process.<sup>102</sup> The following discussion will focus on those contested provisions.

### 1. Paragraphs Subject to Debate, Interpretation, or Reservation

As noted above, the final versions of these contested provisions were subject to reservations and interpretive statements by many countries that otherwise agreed to the overall Platform.<sup>103</sup> Of course, for purposes of consensus, while a reservation necessarily undermines a provision, not all interpretive statements work to undermine the efficacy of the language upon which they focus.<sup>104</sup> However, the purpose of interpretive statements is often to water down the impact of a provision's wording.<sup>105</sup> It is also possible that any interpretation,

98. *Id.*

99. See *supra* text accompanying notes 30 and 31.

100. RESTATEMENT, *supra* note 70 § 102 cmt. d.

101. Charney, *supra* note 69, at 544.

102. Tofani, *supra* note 8.

103. Most of these reservations came from countries with a strong Islamic tradition. See *supra* text accompanying notes 47-54.

104. For example, Japan's interpretive statement about paragraph 106(k) did not undermine that paragraph; nor did South Africa's interpretation of paragraph 96. See *infra* text accompanying notes 145-48 (discussing Japan's statement) and *infra* note 105 (discussing South Africa's statement).

105. For example, both Iran and Iraq recorded statements indicating that they interpreted paragraph 274(d) such that it does not conflict with the Islamic Shariah. But the Shariah, which stipulates that fixed shares of the estate be distributed to female and male relatives, is inconsistent with paragraph 274(d), which calls for equal, gender-neutral rights of succession and equal rights to inherit. See JOHN L. ESPOSITO, WOMEN IN MUSLIM FAMILY LAW 5 (1982) (stating that the Koran introduced "the primacy of distribution of certain fixed shares to several categories of Quranically designated heirs comprised mainly of the nearest female relatives . . . [and, a]fter these Quranic claims have been satisfied, the residue of the estate is awarded to the nearest male . . . relatives"); Conference Report, *supra* note 3, at 115 (language of paragraph 274(d)).

regardless of its impact on the meaning of the provision, undermines consensus in being a deviation from the norm of interpretation by most states.<sup>106</sup>

Statements of reservation to a provision are a clear strike against positive consensus. The large number of states that made oral reservations or interpretations to some portion of the Platform—over one-third<sup>107</sup> of the total number of participants—would seem to indicate a lack of overall consensus on the Platform. When broken down, however, the number of countries stating reservations or consensus-damaging interpretive statements to each provision was small relative to the total number of states that approved the Platform.<sup>108</sup>

Additionally, excluding the blanket reservation that the Vatican alone made to all twenty-two paragraphs of the Health section, the number of provisions that were subject to reservation by any state (ten in total)<sup>109</sup> was very small in comparison with the hundreds of paragraphs and sub-paragraphs that the Platform contains.<sup>110</sup> Even including the Vatican's blanket reservation, only twenty-six provisions in total were objected to by any one state or another.<sup>111</sup> The Platform contains 361 paragraphs, most of which are broken down into sub-

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In contrast, however, South Africa's interpretation of paragraph 96, interpreting "discrimination" to include discrimination on the basis of sexual orientation, only serves to expand, and even strengthen, the scope of the provision. Conference Report, *supra* note 3, at 157-77.

106. With the exception of interpretations such as Japan's, which merely reiterated the same ideas contained in paragraph 106(k). See *infra* discussion of Japan's statement in text accompanying notes 145-48.

107. See *supra* text accompanying notes 45-54. Sixty-five states made comments, many of them objections, to the Platform. See Conference Report, *supra* note 3, at 157.

108. The total number of states making reservations or consensus-damaging interpretive statements to the contested paragraphs were as follows: paragraph 5 received 1 such statement or reservation; paragraph 94 received 5; paragraph 95 received 6; paragraph 96 received 19; paragraph 106(j) received 4; paragraph 106(k) received 14; paragraph 108(k) received 2; paragraph 132 received 1; paragraph 232(f) received 17; and paragraph 274(d) received 18, including those countries that may be understood to have reserved as a result of their blanket reservation to anything in contravention of the Shari'ah. See *generally* Conference Report, *supra* note 3, at 157-77; Press Release 38, *supra* note 47. For a detailed list of what countries made these statements, see *infra* notes 149-64. One hundred and ninety countries took part in the Conference. Conference Report, *supra* note 3, at 138-40.

109. Paragraphs 5, 94, 95, 96 and 132, and sub-paragraphs 106(j), 106(k), 108(k), 232(f), and 274(d) were all subject to reservations by one or more states. See *generally* Conference Report, *supra* note 3, at 157-77.

110. See *generally* Conference Report, *supra* note 3.

111. That number includes all 22 paragraphs of the Health section plus paragraphs 5, 132, and 232, and sub-paragraph 274(d). See *generally* Conference Report, *supra* note 3, at 157-77; Press Release 38, *supra* note 45.

paragraphs,<sup>112</sup> and any one of these provisions could have been subject to reservation.

The Islamic block of countries stated reservations against portions of the Health section of the platform (paragraphs 94-96, 232(f) and 106(j) and (k)), and also stated reservations or interpretations generally to the detriment of the inheritance language in the Platform (paragraph 274(d)).<sup>113</sup> The Roman Catholic block of countries that made statements largely did not state reservations to specific paragraphs of the Platform,<sup>114</sup> but reiterated their stance against abortion,<sup>115</sup> which is mentioned, but not endorsed, in the Platform in paragraphs 106(j) and (k).<sup>116</sup> However, the Vatican, as noted above, reserved its position as to the entire Health section of the Platform, and the influence of Roman Catholic doctrine is clearly felt in some of the domestic, legal, and social norms of these countries.<sup>117</sup>

## 2. Level of Support Overall

An analysis of this factor indicates that the level of support given by Conference participants varies from provision to provision. The support for the Platform overall, as indicated by the lack of reservations to most of the provisions, is strong, but that support drops off for certain provisions mainly because of the objections of Islamic countries. Overall, the adoption of most of the Platform without reservation is a positive sign for consensus on many women's issues.

Although the number of objections stated to a proposal is an important predictive factor, the question of whether a rule eventually becomes law turns on other key information. Factors relevant to this analysis include the "nature of [the states'] objections [and] the importance of the interests they seek to protect [with their objections.]"<sup>118</sup>

112. See generally Conference Report, *supra* note 3.

113. See generally *id.* at 156-61.

114. The Holy See, Paraguay and Peru did, however, reserve their positions as to specific paragraphs. See *supra* note 51.

115. See *supra* note 53.

116. See *supra* notes 58-59 (reprinting paragraphs 106(j) and 106(k)). For further discussion on the question of abortion rights and paragraphs 106(j) and 106(k), see *supra* note 54.

117. At least one Latin American state, for example, includes the right to life of a fetus in its national constitution. See Conference Report, *supra* note 3, at 158 (statement of Argentina that no reference in the Platform should be interpreted as "abrogating the condemnation of abortion . . . in accordance with article 75 . . . of the Constitution of Argentina"). Roman Catholic doctrine opposes the practice of abortion, and Argentina's population is 91% Roman Catholic. 1996 CATHOLIC ALMANAC, *supra* note 48, at 334.

118. Charney, *supra* note 69, at 544-45.

C. *Nature of the States' Objections and Importance of the Interests They Were Protecting*

1. *Objections Based on Religious Beliefs*

As noted above, many provisions of the Platform were not objectionable to any of the nations,<sup>119</sup> but other provisions were challenged by many states. For this latter group of provisions, the objections they received could pose a substantial obstacle to the progression of the proposals toward international legal norms because the objections were religious in nature.<sup>120</sup>

Many of the states issuing reservations and consensus-damaging interpretations explicitly cited religious beliefs as the cause of their dissent.<sup>121</sup> It is intuitive that religious interests are important to the followers of any faith; this fact holds true even more so in countries where the state itself has a religious affiliation. Most of the dissenting countries with a high Islamic population either identify themselves as Islamic states or state that Islam is their state religion.<sup>122</sup> For the Vatican, Catholicism is the whole purpose of its existence, so religious concerns are of paramount importance.

Such religious considerations could not be easily overcome short of doctrinal reinterpretation by the Vatican of its position on issues such as birth control and abortion, or reinterpretation of the Islamic Shariah. In both cases, such interpretation is possible, but probably not likely in the near future. Of course, changes have been made in both Catholic and Islamic religious doctrines in the past. Between 1962 and 1965, the Catholic Church held the Vatican II Council, which recognized substantial changes in church doctrine.<sup>123</sup> However, the Catholic Church

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119. See *supra* text accompanying note 31.

120. Tofani, *supra* note 8.

121. See Conference Report, *supra* note 3, at 157-177 (reservations and interpretations of the Vatican, Iraq, Kuwait, Libya, Mauritania, Morocco, Tunisia).

122. At least 13 of the 25 Islamic countries noting reservations identify themselves as an Islamic state or Islam as their state religion: Algeria, Bangladesh, Brunei Darussalam, Egypt, Iran, Jordan, Kuwait, the Libyan Arab Jamahiriyah, Mauritania, Morocco, Pakistan, Sudan, and Yemen. The remainder have a very high percentage of citizens who practice Islam: Bahrain (100%); Indonesia (90%); Iraq (90%); Maldives (100%); Oman (100%); Qatar (100%); and the United Arab Emirates (100%). Comoros, Mali, Niger, Syrian Arab Republic, and Tunisia all are predominantly Islamic countries also. See Conference Report, *supra* note 3, at 157 (listing all of the countries that made oral statements and reservations); 1996 CATHOLIC ALMANAC, *supra* note 48, at 333-67 (listing the religious affiliations of the countries of the world).

123. 15 ENCYCLOPEDIA OF RELIGION 201 (1987). Changes were made to core religious issues such as, for example, the possibility of salvation. *Id.* at 204-05.



has been stalwart in its positions on both birth control<sup>124</sup> and abortion,<sup>125</sup> even in the face of substantial opposition by members of its faith.<sup>126</sup> So it does not seem likely that the Vatican will adjust its position on these issues soon, absent a major shift in position by the powerful members of the Church hierarchy.

The potential for change in Islamic doctrines is slightly more complex. Islam is not hierarchical and centralized in the way Catholicism is, and interpretations of the Shariah vary among different schools of Islamic law. Thus there is no totally uniform Shariah law that governs all Islamic countries. It is clear that many Islamic countries have changed their traditional Shariah law to conform to international norms in some areas. Shariah law, however, is divided into two spheres—public and private—and public law reform has come much more easily to Muslim nations than private law reform.<sup>127</sup> The public law sphere includes areas such as constitutional order, criminal law, international law, and public-sphere human rights, while the private law sphere covers religious practice and personal life.<sup>128</sup> The only areas that have been effectively reformed thus far have been in public law.<sup>129</sup> Shariah law governing religious practice and personal life (into which category these disputed reforms would fall)<sup>130</sup> has traditionally been much more difficult to reform.<sup>131</sup>

Because of the religious component underlying the bulk of the reservations to the Platform, the interest the states wish to protect with their reservations is an important one. In the main block of countries that opposed specific provisions of the Platform—the Islamic countries—such large portions of the

124. The Catholic Church's position on birth control is contrary to the ideals espoused in Platform paragraphs 94-96 and 232(f).

125. The Catholic Church's position on abortion may be contrary to the ideals espoused in Platform paragraphs 106(j) and 106(k).

126. American Catholics, in particular, oppose the Vatican positions on birth control and abortion. Stevenson Swanson & Vincent J. Schodolski, *Changing Faces, Faith of Catholic Church*, TIMES UNION, January 19, 1997, at A1. A recent poll showed that 82% of Catholic Americans believe that women should be able to obtain legal abortions. *Veto Unlikely to Affect Most Catholics' Votes*, COLUMBUS DISPATCH, May 23, 1996, at A8.

127. Bharathi Anandhi Venkatraman, *Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women: Are the Shari'a and the Convention Compatible?* 44 AM. U. L. REV. 1949, 1970-76 (1995).

128. *Id.* at 1971.

129. *Id.* at 1971-72.

130. Reproductive issues, addressed in contested paragraphs 94-95, 233(f), 106(j) and 106(k)), for example, are clearly personal in nature. Succession rights, addressed in paragraph 274(d), are family-oriented and thus personal in nature as well.

131. Venkatraman, *supra* note 127, at 1972.

population are members of Islam that the religion is deeply embedded in the culture. Cultural and religious standards are clearly important interests to states. As a result, states will vigorously seek to protect their autonomy in such areas. Because of their importance and intransigence, objections based in religious beliefs pose a substantial hurdle to the ultimate development of a proposed rule into international law.

## 2. Objections Based On Cultural Norms

Almost all of the countries with objections to parts of the Platform were non-Western or developing countries.<sup>132</sup> Commentators have voiced concerns in the past about attempts by Western countries to impose a foreign set of values on the generally more-conservative Third World countries.<sup>133</sup> Malaysia explicitly addressed this concern in its statement, noting that the negotiations of the Platform revealed

a number of differences among delegations arising from the stand on certain issues by one group of countries (impliedly the West). While this group may adopt their own cultural standards and priorities, their insistence on others [adopting their standards] has inevitably resulted in the Platform . . . being accompanied by a number of reservations.<sup>134</sup>

Partially reinforcing this insistence on cultural autonomy were the statements made by several nations reiterating state sovereignty.<sup>135</sup> Several more states explicitly made statements alluding to or asserting their own cultural autonomy in their comments.<sup>136</sup> Inclusion of such comments in the statements of so many countries indicates that there was a groundswell of concern among these states about having foreign values thrust upon them.

These concerns reflect a cultural relativist<sup>137</sup> argument against the forced adoption of certain norms. The theory of

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132. The bulk of the objections came from Middle Eastern and Latin American countries. See *supra* note 47 (listing all of the states that made consensus-damaging statements.)

133. Pope John Paul II has said that the attempt by First World nations to impose Western, non-traditional values on the Third World is a "form of neo-colonialism." Gregory M. Saylin, *The United Nations International Conference on Population and Development: Religion, Tradition, and Law in Latin America*, 28 *VAND. J. TRANSNAT'L L.* 1245, 1263 (1995).

134. Conference Report, *supra* note 3, at 168-69.

135. See *supra* note 66, detailing such statements.

136. Those countries were: Egypt, Guatemala, Iran, Malaysia, Mauritania, and Morocco. See generally Press Release 38, *supra* note 45.

137. The theory of cultural relativism states that "substantive human rights standards vary among different cultures and necessarily reflect national

cultural relativism, of course, is not without opposition among academics and the international community.<sup>138</sup> Even at the Conference, there was some support for the idea that cultural traditions are not sufficient reason to support ongoing discrimination and human rights violations. Norwegian Prime Minister Gro Harlem Brundtland noted in her statement to the Conference that "[t]here are limits to the practices that countries can expect the international community to accept, or condone, even when such practices have deep cultural roots. This is where human rights enter the picture."<sup>139</sup>

Cultural relativism is an argument that cuts to the core of international human rights law and has the power to negate human rights standards that contradict traditional state practices. It is particularly destructive to norms regarding discrimination or human rights violations specific to women, because such violations may arise in contexts that are traditionally social or personal. For example, domestic relations have traditionally been thought of as personal in nature, or within the personal or social realm. The problem of spousal violence, a prominent women's issue, likely comes under the rubric of domestic relations, and so arises in a traditionally social-personal context. In contrast, a human rights issue such as the torture of political prisoners, for example, is clearly not personal in nature; rather, it is political. Thus a claim of cultural tradition in this area would be weaker than in an area that implicates social standards and norms. In fact, because of the traditional identification of women with domesticity and family life, any international norm regarding women's issues or status could carry the imprimatur of the personal or social, and thus could be more vulnerable to attack on the basis of a cultural relativism argument.

### 3. Strength of the Objections

The vehemence with which both the Islamic and Catholic contingents fought various provisions of the Platform is one final indicator that the interests protected by the dissents were

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idiosyncrasies," and that "[t]olerance and respect for self-determination preclude cross cultural normative judgments . . . [or, in the alternative, that] even if, as a matter of customary or conventional international law, a body of substantive human rights norms exists, its meaning varies substantially from culture to culture." Fernando R. Tesón, *International Human Rights and Cultural Relativism*, 25 VA. J. INT'L L. 869, 871 (1985).

138. See *id.* at 873-75 (stating that human rights standards are universal, not impacted by cultural differences, and are uniform across national borders).

139. Tofani, *supra* note 8.

important to the states involved.<sup>140</sup> The Vatican delegation to the Conference, citing its "well-known position[s]"<sup>141</sup> on reproductive and sexual matters, was untiring in its advocacy on many issues throughout the drafting period at the Conference.<sup>142</sup> At this same time, the Islamic countries were also actively lobbying against certain provisions.<sup>143</sup> If these countries had not considered their interests important, they would not have been so active in their advocacy of their viewpoints. All of the factors above point to the fact that the interests that the states were protecting with their objections to the final Platform language were of great importance to them.

#### D. *Whether the Substance of Objections to the Platform Goes to the Heart of the Proposed Rule or to Subsidiary Issues*

Another indicator is whether the substance of the objections made by the states goes to the heart of the proposal or only stems from objections regarding subsidiary issues.<sup>144</sup> This factor indicates support or a lack thereof for the underlying principles of the potential norm.

Japan's interpretive statement regarding paragraph 106(k) is one example of a statement involving a subsidiary issue. Paragraph 106(k) stated in pertinent part that countries should "consider reviewing laws containing punitive measures against women who have undergone illegal abortions" [and that] [a]ny measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process."<sup>145</sup> Japan's interpretive statement noted that "relevant national laws [on the abortion issue] can only be reviewed at the national or local level with due regard to national and legislative circumstances[.]"<sup>146</sup> thereby expressing its sensitivity to the issue of cultural autonomy regarding the interpretation of that paragraph. In the context of paragraph 106(k), since the paragraph explicitly states that "[a]ny measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process,"<sup>147</sup> (a direct acknowledgment of

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140. Some proposed provisions were ultimately removed from the Platform as a result of these contingents' opposition. Bown, *supra* note 27.

141. Conference Report, *supra* note 3, at 163.

142. Bown, *supra* note 27.

143. Tofani, *supra* note 8.

144. Charney, *supra* note 69, at 545.

145. Conference Report, *supra* note 3, at 43.

146. *Id.* at 167.

147. *Id.* at 43.

national sovereignty in this area), the statement of Japan was generally consistent with, and was simply a reiteration of, the message of the paragraph. Many of the interpretive statements went to subsidiary issues or nuances of understanding that did not substantially affect the impact of the paragraph overall.<sup>148</sup>

However, all of the reservations where the reason behind the reservation was articulated, clearly could be seen to go to the substance of the paragraph they were addressing. It is useful in this analysis to look in detail at the language used by states when stating their reservation or interpretation. For example, reservations were stated against paragraph 96<sup>149</sup> by nineteen countries: Iraq, Kuwait, Libya, Mauritania, Morocco, Iran, the Vatican, Malaysia, Tunisia,<sup>150</sup> Yemen, Sudan, the United Arab Republic, Lebanon, Benin, Djibouti, Syria, Pakistan, Jordan, and Maldives.<sup>151</sup> Iraq, Kuwait, Libya, Mauritania, Morocco, Yemen, Sudan, United Arab Republic, Lebanon, Benin, Djibouti, Syria, Jordan, and Maldives all stated that paragraph 96 was incompatible with their social, cultural or religious values, or with the Islamic Shariah, or with their national law generally. All of the states presented this incompatibility as the reason for their reservations.<sup>152</sup> Such a wholesale rejection of the provision on the basis of this incompatibility clearly indicates that the objections went to the heart of the issue.

Iran reserved its position regarding the paragraph as applied outside the confines of marriage.<sup>153</sup> It is debatable whether Iran's reservation undercut a central tenet of the norm. On the one hand, Iran accepts the proposal for that portion of women who are married, and so seemingly does not have an objection to the basic concept of reproductive autonomy. The counter-argument, however, would focus on the fact that paragraph 96 calls the "right to have control over . . . matters related to . . . sexuality" a "human righ[t] of women."<sup>154</sup> Denial of this right to one segment (the unmarried segment) of the population is inconsistent with the idea that the right is a human right, which should be available to all. So Iran's statement can also be seen as fundamentally running counter to the proposed rule.

148. See generally *id.* at 157-77; see also *supra* text accompanying note 46 (listing the countries whose statements did not damage positive consensus on any portions of the Platform.)

149. Again, paragraph 96 concerns sexual and reproductive health and autonomy. See *supra* note 57 for the full text of paragraph 96.

150. See Conference Report, *supra* note 3, at 157-77.

151. See Press Release 38, *supra* note 45, at 7-11.

152. *Id.*

153. Conference Report, *supra* note 3, at 166.

154. *Id.* at 39.

The Vatican reserved its position to the entire section that contained paragraph 96, citing the section's "totally unbalanced attention to sexual and reproductive health in comparison to women's other health needs[.]"<sup>155</sup> The import of this language is unclear. While the Vatican's opposition to most forms of fertility control is well known, the language used here, combined with its broad reservation, is not specific enough to aid in this analysis. Pakistan did not state a reason for its reservation.<sup>156</sup> Two other countries made interpretive statements regarding paragraph 96. Of those two, Malaysia's did not undercut the central tenet of the proposal,<sup>157</sup> while the impact of Tunisia's statement is not clear because of the generality of its language.<sup>158</sup> However, wherever an actual reservation was stated, if a reason was given for the reservation, it did cut at the central ideas of the proposal. Thus, putting aside the two interpretive statements, fifteen of the seventeen reservations stated by countries against paragraph 96 went to the heart of the proposed rule; and in the case of those other two reservations, the reasons underlying them were simply unclear.

A similar analysis of the other provisions with multiple objections reveals that two of five of the reservations to paragraph 94,<sup>159</sup> four of six objections to paragraph 95,<sup>160</sup> three of four of

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155. *Id.* at 163-64.

156. Press Release 38, *supra* note 45, at 10.

157. Malaysia stated that its acceptance of paragraph 96 "does not signify [its] endorsement . . . of sexual promiscuity, any form of sexual perversion or sexual behaviour that is synonymous with homosexuality or lesbianism." Conference Report, *supra* note 3, at 169. In light of the fact that the Platform overall did not endorse homosexuality, this likely does not take away anything from the intended meaning of paragraph 96.

158. Tunisia stated that it would interpret the paragraph within its "fundamental laws and texts," language which lends itself to speculation, but ultimately is not sufficiently detailed to allow for analysis. *Id.* at 172.

159. Kuwait's reservation indicated that the paragraph was "in contravention of the Islamic Shariah[.]" Conference Report, *supra* note 3, at 167. Similarly, Qatar stated that the paragraph ran "counter to Islamic law." Press Release 38, *supra* note 45, at 9. As with paragraph 96, such a blanket statement of incompatibility between the proposal and the Shariah as the basis of the reservation seems a clear rejection of the proposal's core tenets.

Paraguay interpreted "methods" of family planning as including only those in conformity with its national legislation. Conference Report, *supra* note 3, at 171. Obviously some methods of birth control are not legal in Paraguay, and this limitation effectively nullifies the provision for any woman who does not have access to those methods that are acceptable. However, since Paraguay is supportive of the proposal in at least some settings, its interpretation cannot be said to cut against the heart of the proposal.

Djibouti did not state the reason for its reservation. See Press Release 38, *supra* note 45, at 9. Finally, the Vatican's blanket statement regarding the whole Health section is not detailed enough to bear analysis. See text accompanying *supra* note 156.

the objections to paragraph 106(j),<sup>161</sup> at least nine of the fourteen objections to paragraphs 106(k),<sup>162</sup> and at least eleven of the seventeen objections to paragraph 232(f) went to the important substance of the proposals.<sup>163</sup> Additionally, at least fourteen of

160. Kuwait's reservation indicated that the paragraph was "in contravention of the Islamic Shariah[.]" and Iran and Iraq accepted the paragraph only within the framework of marriage, which as stated in the text accompanying note 152, effectively undermines the substance of the proposal. Conference Report, *supra* note 3, at 157-77. Qatar stated that the paragraph ran "counter to Islamic law[.]" and Djibouti did not state the reason for its reservation. Press Release 38, *supra* note 46, at 9. The Vatican's blanket statement regarding the whole Health section is not detailed enough to bear analysis. See text accompanying *supra* note 156.

161. Libya rejected "everything included in and intended by" both 106(k) and 106(j). Conference Report, *supra* note 3, at 168. Mauritania rejected "any matter that conflicts with the Islamic Shariah and Islamic values, especially . . . paragraph 106(j)." *Id.* at 170. The United Arab Emirates reserved its position as to paragraph 106(j) as well as "all others that are contrary to Islamic law." Press Release, *supra* note 45, at 8. All three of these objections go to the heart of the proposed norm, declaring as they do either explicit outright rejection of the proposal or that the proposal is contrary to Islamic law. The Vatican's blanket statement regarding the whole Health section is not detailed enough to bear analysis. See text accompanying *supra* note 156.

162. The interpretive statements of Japan and Malaysia were innocuous. Japan noted, with regard to paragraph 106(k), that the relevant laws regarding abortion are "a matter of domestic policy and circumstances[.]" and Malaysia stated that, while agreeing with the paragraph's proposal to prevent unsafe abortions and provide health care for post-abortion complications, it reiterated its anti-abortion stance, none of which contradicts the message of the paragraph. Conference Report, *supra* note 3, at 167, 169. Kuwait, however, stated that it reserved against "anything which constitutes a contravention of the Islamic Shariah . . . particularly paragra[h] . . . 106(k)[.]" which constituted an outright rejection of the paragraph. *Id.* at 167. Libya rejected "everything included in and intended by" both 106(k) and 106(j). *Id.* at 168. Morocco stated that it reserved its position on paragraph 106(k) because it was "in contradiction with the precepts of Islam and not in conformity with its spiritual values and cultural traditions." *Id.* at 170. Lebanon, Benin, Qatar, Jordan, and Maldives all rejected the provision outright because it did not conform with national or Islamic law, or their religious and cultural beliefs. Press Release 38, *supra* note 47, at 8, 9, 11. These five objections struck at the core of the proposal. Yemen, Sudan, and Djibouti did not state the reasons for their reservations. *Id.* at 7, 9. The Vatican's blanket statement regarding the whole Health section is not detailed enough to bear analysis. See text accompanying *supra* note 156. Thus, of the fourteen consensus-damaging statements or reservations regarding paragraph 106(j), nine went to the heart of the proposal; and of the other six reservations and statements, four of the countries did not give reasons for their reservations and so cannot be evaluated.

163. Yemen, Sudan, Djibouti, and Pakistan did not state reasons for their reservations. Press Release, *supra* note 45, at 7, 9, 10. United Arab Emirates, Lebanon, Benin, Syria, and Jordan, see *id.* at 8, 10, 11, and Iraq, Kuwait, Libya, Mauritania, and Morocco, see Conference Report, *supra* note 3, at 167, 168, 170, all reserved their positions because the paragraph was deemed contrary to Islamic or national law or the state's religious and cultural values. *Id.* at 8, 10, 11. Those reservations clearly go to the substance of the proposal. The Vatican's

the eighteen objections to paragraph 274(d)<sup>164</sup> struck at the central meanings of the rules proposed in those paragraphs.

Thus, for paragraphs 94-96, 232(f), 274(d), and 106(j) and (k) (implicating the proposed "reproductive rights" norm, equality in succession norm, and abortion/health concerns norm respectively), either all or a majority of state objections went to the heart of the rules proposed, a factor that argues against their rapid inclusion into international law.

#### F. *Relative Geopolitical Standing of the States Opposing and Supporting the Disputed Platform Provisions*

Another important factor in this analysis is the relative geopolitical standing of the states opposing and supporting the disputed Platform provisions. As stated above, most provisions

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blanket statement regarding the whole Health section is not detailed enough to bear analysis. See text accompanying *supra* note 156. Iran made the same statement regarding paragraph 232(f) as it did regarding paragraph 96, see *supra* note 153, and according to the same analysis as in the text accompanying notes 153-54, its statement is seen to be a rejection of the fundamental substance of the proposal. Tunisia interpreted paragraph 232(f) within its "fundamental laws and texts." Conference Report, *supra* note 3, at 172. In this context, the import of this general statement is too unclear to provide information for analysis.

164. Paragraph 274(d) deals with the inheritance rights of women. *Id.* at 115. Morocco reserved its position without comment. *Id.* at 170. Iraq, Libya and Sudan accepted the provision under their interpretation that it does not conflict with the Islamic Shariah. See Conference Report, *supra* note 3 at 167-68 and Press Release, *supra* note 47 at 7. The Shariah does, however, conflict with the provision at a basic level. See *supra* text accompanying note 65. So these interpretations do go to the heart of the proposal. Egypt said that it would interpret the provision in accordance with the Shariah, which likely does go to the substance of the proposal since the Shariah is at odds with the principles of strict equality underlying the provision. Conference Report, *supra* note 3, at 160. Tunisia, an Islamic country, interpreted the provision "within [its] fundamental laws and texts[.]" Conference Report, *supra* note 3, at 172. Similarly, Iran, also an Islamic country, interpreted the references to inheritance in the Platform "in accordance with the principles of the economic system of Iran." *Id.* at 166. The statements of Tunisia and Iran likely do run counter to the principles of the provision, but absent a study of those countries' inheritance laws, which this Author has not undertaken, such statements cannot be used in this analysis. Mauritania rejected the provision because it "conflicts with the Islamic Shariah and Islamic values." *Id.* at 170. The United Arab Emirates and Syria also rejected the paragraph because it conflicted with Islam. See Press Release 38, *supra* note 45, at 8, 10. Djibouti did not state the reason for its reservation. See *id.* at 9. Oman, Brunei Darussalem, Yemen, Bahrain, Comoros and Qatar all make blanket objections to any provision contrary to Islamic law, see generally Press Release 38, *supra* note 45, as did Kuwait, see Conference Report, *supra* note 3, at 167. Paragraph 274(d) is almost certainly contrary to Islamic law. See *supra* note 65 and accompanying text. Such a blanket rejection must strike at the heart of the proposal. Thus at least 14 of the countries' objections went to the substance of the proposed rule.



enjoyed the full support of all of the states at the Conference. For those provisions that were subject to dispute, however, the most powerful states were generally still supporters. The United States, as noted above, was a powerful supporter of the Platform in spite of its one reservation and many interpretive statements.<sup>165</sup>

Additionally, most politically powerful states, including most Western countries, and powerful Eastern countries like Russia, Japan,<sup>166</sup> India, and China,<sup>167</sup> supported the Platform in full.<sup>168</sup> Full support was extended by all permanent members of the United Nations Security Council<sup>169</sup> (with the exception of the United States, whose comments and reservation were not consensus-damaging, as noted above).<sup>170</sup> Additionally, all members of the Group of Seven<sup>171</sup> leading industrial nations, except the United States, had no reservations.<sup>172</sup>

With regard to the disputed provisions of the Platform, the countries that objected to those provisions were generally developing countries, who tend to have less political influence due

165. See *supra* text accompanying notes 35-36.

166. Japan did record an interpretive statement to paragraph 106(k), but the overall effect of the statement was not to undermine the impact of the paragraph. See Conference Report, *supra* note 3, at 167. Japan noted that "relevant national laws [on the abortion issue] can only be reviewed at the national or local level with due regard to national and legislative circumstances[.]" *id.*, in response to paragraph 106(k)'s suggestion that countries "consider reviewing laws containing punitive measures against women who have undergone illegal abortions[.]" *id.* at 43. Paragraph 106(k) also states that "[a]ny measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process." *id.* Thus Japan's statement did not go beyond emphasizing and reiterating what the paragraph said itself.

167. Although, as stated above, China may not have actually been as supportive of the Platform as its public statements indicated. See *supra* text accompanying notes 93-95.

168. Tofani, *supra* note 8; Conference Report, *supra* note 3, at 157-77.

169. See generally Conference Report, *supra* note 3, at 157-77; see also *infra* note 170 (detailing the comments of France). The permanent members of the United Nations Security Council are China, France, Great Britain, Russia, and the United States. U.N. CHARTER art. 23.

170. See *supra* text accompanying notes 37-39.

171. The Group of Seven, or G-7, comprises the seven countries with the largest economies. Jonathan E. Sanford, *Foreign Debts to the U. S. Government: Recent Rescheduling and Forgiveness*, 28 GEO. WASH. J. INT'L L. & ECON. 345, 348 (1995).

172. The Group of Seven includes Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. *AG-7 to Start 3-Day Summit in Lyons with Working Dinner*, Japan Economic Newswire, June 27, 1996, available in LEXIS, News Library, JEN File.

to their lesser economic power.<sup>173</sup> The exceptions to this observation are the Middle Eastern countries, most of which stated or recorded reservations or interpretive statements<sup>174</sup> and which are powerful because of their important role in the world fuel economy. By and large, however, the balance of power of countries was in favor of full support of the Platform.

#### G. *Whether Support for the Platform Cuts Across Interest Groups*

A final and important consideration is whether support for the rule cuts across all interest groups, with dissenters being relatively isolated states, or whether the pattern of dissents indicates that an important group of states does not support the rule.<sup>175</sup> In analyzing the disputed portions of the Platform, it is clear that the dissents to the proposed norms cluster around one main group of states.

Objections to paragraphs 94-96 and related paragraph 232(f), implicating the proposed "reproductive rights" norms, were made by the Vatican and a block of Islamic countries.<sup>176</sup> Additionally, Paraguay and Peru made damaging statements regarding paragraph 94; however, no objections to these paragraphs were made by any of the other predominantly Catholic states recording their statements. Assuming, then, that only the Islamic countries objected as a block to these provisions, it remains the case that a clearly definable and united block of countries objects to the potential norm.

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173. Nearly all countries that stated reservations or made interpretive statements were small or developing countries. See Conference Report, *supra* note 3, at 157 (listing all countries that stated oral reservations or interpretive statements to the Platform). Exceptions to this rule were Canada, France, Japan, and the United States. However, none of the comments of any of these countries undercut consensus for any of the Platform provisions. Regarding the comments and reservation of the United States, see *supra* text accompanying notes 37-39, and regarding the comments of Japan, see *supra* note 166. France's statement was that paragraph 247—regarding, in pertinent part, the use and testing of nuclear weapons—did not accurately reflect the work of the drafting committee. Press Release 38, *supra* note 45, at 3 and 7. For the text of paragraph 247, see Conference Report, *supra* note 3, at 106. Canada's statement was against discrimination on the basis of sexual orientation. Muldrew, *supra* note 46, at 13. Thus the statements of France and Canada did not diminish consensus for any of the norms under discussion here.

174. See Conference Report, *supra* note 3, at 157 (listing all countries that stated oral reservations or interpretive statements to the Platform, including: Bahrain, Brunei Darussalam, Egypt, Iraq, Iran, Jordan, Kuwait, Libyan Arab Jamahiriya, Morocco, Oman, Qatar, Syrian Arab Republic, Tunisia, and Yemen).

175. Charney, *supra* note 69, at 545.

176. See *supra* text accompanying notes 149-58 and *supra* text of notes 159-63, for details of the objections to paragraphs 94-96, 106(j) and (k), and 232(f).

Regarding paragraph 274(d), a block of countries—Muslim countries—objected to the proposed rule.<sup>177</sup> Thus, again, a definable block of related countries objected to the potential norm implicated by paragraph 274(d) (the equal succession rights norm). Almost all Islamic countries objected to this norm, either explicitly stating a reservation or a contradictory interpretation to the paragraph, or by making a statement or reservation against anything that contradicts Islamic law.<sup>178</sup>

Regarding paragraphs 106(j) and (k), again, except for the Vatican, exclusively Islamic countries stated reservations to these provisions.<sup>179</sup> The objections to these two paragraphs implicate a unified, well-defined group of states (*i.e.*, the Muslim states). Thus support does not cut across all interest groups for any of these disputed norms; one global interest group of states—the Islamic states—is opposed to all of these proposed norms.

#### IV. THE LEGAL IMPACT OF THE CONFERENCE

Based on the framework stated by Professor Charney, the non-disputed provisions of the Platform are in a position to shape and become international law. States participating in the discussions of the Conference were clearly aware of the potential impact of the discourse on international law, and the international support given these provisions was complete. Support for these norms cut across all state interest groups. Given state practice, the non-disputed provisions of the Platform should reach the status of international law with little delay. Of course, this state practice is not at all assured.

In contrast, the analysis of Professor Charney's factors produces mixed signals for norms springing out of the disputed provisions of the Platform. The overall outlook for those norms to develop in the near future is poor.

Regarding the disputed provisions of the Health section (paragraphs 94-96, related paragraph 232(f),<sup>180</sup> and paragraphs 106(j) and 106(k)), the level of full support enjoyed by most other provisions of the Platform decreased notably. A united block of

177. See *supra* note 164 and accompanying text.

178. See *id.*

179. Many Catholic countries chose to reiterate their stance against abortion generally in their statements. Of course, the right to obtain a legal abortion was never proposed in the Platform, but obviously the language of the Platform regarding these issues was still too liberal for some states.

180. Paragraph 232(f) lists "actions to be taken" by governments and incorporates by reference paragraphs 94-96. Conference Report, *supra* note 3, at 100.

countries—the Muslim states—objected to the paragraphs. Additionally, the Vatican objected to the whole of the Health section as well as related paragraph 232(f). In the case of both the Muslim states and the Vatican, the cultural and religious interests that the states sought to protect with their objections are important interests that the states will likely seek to protect vigorously. The states' objections tended to go to the substance of the provisions and not to less important or negotiable subsidiary issues. Additionally, support for the disputed provisions does not run through all interest groups because at least one interest group is uniformly opposed to the provisions.

Regarding paragraph 274(d), implicating a potential norm for equal succession rights, the analysis is much the same as above, except that only the Muslim countries were opposed to the provision. Once again, however, the states' objections were religious in nature; paragraph 274(d), if it progressed to the status of an international norm, would endanger succession rules that are embedded in Islamic tradition and are also specifically dictated by Shariah law. Thus, it is clear that the Islamic states seek to protect important cultural and religious interests with their objections, and their objections go to the heart of the proposed rule. State support for this provision of the Platform is not broad-based because it does not include the support of the Islamic states, which constitute a unified interest group.

On the other hand, for all of the disputed provisions discussed above, the countries that were supporters of those provisions were generally more geopolitically powerful than the countries that opposed the provisions. Also, as stated above, the number of states that objected to each disputed provision was very small in relation to the total number of states that participated in the Conference. In fact, paragraphs 232(f) and 274(d) had the most consensus-damaging statements or reservations with eighteen; paragraph 96 had seventeen; paragraph 106(k) had fourteen; paragraph 95 had six; paragraph 94 had five; paragraph 106(j) had four; and paragraph 108(k) had two.<sup>181</sup> Obviously, the greater the number of reservations to each particular paragraph, the greater damage there is to positive international consensus on the potential norm it contained. Reservations to paragraph 232(f), which includes by reference paragraphs 94-96, implicates consensus for all of those paragraphs. Additionally, in each case, a unified block of countries, not just unaffiliated states, opposed the provision and thus the potential norm it implicated. This in itself is a strong

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181. See *supra* note 108.

factor against the consensus necessary for the provisions to grow into international law.

Professor Charney has expressed skepticism regarding the legal import of majority votes at international forums such as the Conference.<sup>182</sup> Charney notes that "decisionmaking in multilateral forums can be abused and the results may fail to reflect political, economic or military realities . . . Thus, voting majorities that exclude certain groups of states, or fail to reflect geopolitical power or the views of the most interested states, are highly suspect."<sup>183</sup>

One political reality that cannot be overlooked is the domestic resistance that will likely be faced by the changes proposed in the Platform. As noted above, cultural relativism undercuts those norms that are personal in nature most severely. This is particularly crucial because of the way that international law usually works, especially in the area of human rights. Compliance with norms is often achieved by placing international pressure on rogue states. It is difficult to imagine the full weight of international political pressure being brought to bear upon a state over an issue such as access to family planning methods.<sup>184</sup> Nevertheless, access to appropriate family planning methods likely impacts the individual woman in terms of day-to-day living as much as, to use an example of a "public" arena human right concern, living under a repressive regime.

Another political reality is the cost of implementing many of the Platform's objectives. All of the Western states, including the United States, were under the pinch of domestic budget constraints and would not commit substantial additional resources for helping other countries implement the Platform, especially the Third World.<sup>185</sup> The United States would not even

182. The RESTATEMENT also makes such a suggestion, noting that:

[Majorities [of international organizations] may be tempted to declare as existing law what they would like the law to be, and less weight must be given to such a resolution when it declares law in the interest of the majority and against the interest of a strongly dissenting minority.

RESTATEMENT, *supra* note 70, at § 103 n.2.

The disputed provisions of the Platform do have a "strongly dissenting minority": the Muslim states. This fact only underlines the uncertainty of those provisions' futures.

183. Charney, *supra* note 69, at 545 n.62.

184. Although, in light of the increasing rate of human population growth, burgeoning environmental problems may ultimately make this a pressing international concern.

185. Bown, *supra* note 27.

commit to full implementation of the objectives within its own borders.<sup>186</sup>

Additionally, some states ostensibly supported provisions of the Platform, raising no objection to them, while maintaining domestic practices that contravene those very provisions. The example of China, with its one-child policy, has already been noted above.<sup>187</sup> Another example of this phenomenon is that the Islamic states, so far as the recorded objections show, did not raise any objection to paragraph 274(e), which states that marriage is only entered into with the free and full consent of the intending spouses. . . .<sup>188</sup> However, at least one Muslim country, Morocco, allows for marriages to be arranged against a woman's will, even if she is an adult, unless she has been previously married.<sup>189</sup> Examples such as these raise the question of whether these states were sufficiently focused on the drafting of the Platform or viewed its impact seriously. If they did not, they certainly will not implement its objectives now.

One intended indicator of whether states would implement the Platform was the Commitments Scoreboard developed by the non-governmental organizations at their meeting and posted for viewing at the Conference. All states were to make public their specific commitments to implementing the Platform's objectives. Only one-third of the states actually made such a statement.<sup>190</sup> Thus there may be valid concern as to the development of the state practice required to solidify the proposals of the Conference as international legal norms. If states do not take their endorsement of the Platform objectives seriously, or if domestic financial constraints dampen commitment or hamper enforcement of these human rights, then state practice may not follow. This eventuality would not bode well for the progression of the Platform's provisions towards international legal norms.

It has been noted that "the reform of personal status codes appears to many men not as an advantage but as a loss of rights and powers[;] deep psychological biases and fears mesh with religion and tradition and with the total organization of society to form a barrier [to change]."<sup>191</sup> In the human rights arena, agreement to and implementation of women's rights face unique

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186. See *supra* text accompanying note 39.

187. See *supra* text accompanying notes 93-95.

188. Conference Report, *supra* note 3, at 115.

189. Venkatraman, *supra* note 127, at 1978.

190. *Promises for Women: Will they be kept after Beijing?*, AP, Sept. 14, 1995, available in 1995 WL 4406159.

191. WOMEN IN THE MUSLIM WORLD 1, 27-28 (Lois Beck & Nikki Keddie eds., 1978).

obstacles. These obstacles will serve as impediments to the progression of both the disputed and non-disputed provisions of the Platform toward international norms.

#### V. CONCLUSION

Most of the Catholic countries, but particularly the Vatican, maintained a high profile at the Conference because of their active lobbying against certain provisions. The international press devoted much attention to the activities of the Vatican in particular. However, the Islamic countries ultimately did the most damage to positive consensus on the disputed provisions of the Platform. Because of the existence of this unified and highly interested group of states opposing these provisions, the potential norms that could spring from those provisions are not likely to move forward toward status as international human rights norms in the near future. Most provisions of the Platform, though, were subject to full support, and any potential norms springing from those provisions have the potential to move into customary international law on the basis of their endorsement in this international forum. However, it remains to be seen whether state practice at the domestic level will actually reflect and reinforce the consensus achieved for those norms at the Conference.

Without additional support from domestic implementation, the potential norms born from the Conference will almost certainly not develop into law. However, if states honor their commitment to the Platform by implementing its objectives, the Conference will have made important progress toward the betterment of women worldwide.

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