

An Inter-American human rights system without the United States? Understanding why the United States has not ratified the Belém do Pará Convention

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An Inter-American Human Rights System Without the United States?
Understanding Why the United States Has Not Ratified the Belém do Pará Convention

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I. Introduction

Violence against women and femicide, the gender-related killing of women, are global issues that especially afflict the Americas. According to a *Global Americans* report, “among 25 countries with the highest rates of femicide in the world, 14 are from Latin America and the Caribbean.”¹ While there is still no common methodology to generate standardized statistics on violence against women and femicide, the Economic Commission for Latin America and the Caribbean (ECLAC) found in 2021 that at least 12 women die every day as victims of femicide across the region.² However, the issues of violence against women and femicide are not only limited to Latin America and the Caribbean; they are issues of the whole American region.

Though data specifically collected on femicide in the United States is scarce (which is another problem in and of itself), domestic violence and female homicide victimization rates indicate a high prevalence of these crimes even in the United States. According to the most recent report from the U.S. Centers for Disease Control and Prevention (CDC) on the National Intimate Partner and Sexual Violence Survey from 2016/2017, almost one in two women experience severe intimate partner physical violence, sexual violence, and stalking at some point in their lifetime.³ Additionally, the Violence Policy Center’s latest edition of *When Men Murder Women*, which analyzes 2018 homicide data from the FBI Supplementary Homicide Report, found that for the homicides in which the victim’s relationship to the offender could be

¹ “Femicide and International Women’s Rights,” *Global Americans* (blog), July 5, 2017, <https://theglobalamericans.org/reports/femicide-international-womens-rights/>.

² ECLAC, “ECLAC: At Least 4,473 Women Were Victims of Femicide in Latin America and the Caribbean in 2021,” press release, November 24, 2022, <https://www.cepal.org/en/pressreleases/eclac-least-4473-women-were-victims-femicide-latin-america-and-caribbean-2021#:~:text=About%20ECLAC-.ECLAC%3A%20At%20Least%204%2C473%20Women%20Were%20Victims%20of%20Femicide%20in,and%20the%20Caribbean%20in%202021.>

³ Ruth W. Leemis et al., “The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Intimate Partner Violence,” (2022): 4.

identified, 92 percent of female victims were murdered by a man they knew.⁴ Data comparing the United States to other high-income countries is even more difficult to come by, though the *Journal of the American Medical Women's Association* published a study in 2002 that is still cited.⁵ According to this study of 25 high-income (classified by the World Bank) and populous (more than two million inhabitants) countries, "The United States accounted for 32 percent of the female population in these high-income countries, but for 70 percent of female homicides and 84 percent of all female firearm homicides."⁶ Violence against women and femicide are clearly a significant problem in the United States as well as in the American region at large.

With femicide and violence against women being so prevalent in the Americas, there has been a regional initiative to develop international law for its prevention, eradication, and punishment. Within the Inter-American human rights system established through the Organization of American States (OAS), states created a convention with international protocols to investigate and prevent femicide and violence against women more generally. Though this convention is unique to the Inter-American system and widely ratified across the region, one state is notably absent as a signatory—the United States.

Despite being a founding member and key funder of the OAS, the United States has not ratified major human rights conventions created by the OAS's internal bodies. In this study, I will focus on the Inter-American Commission of Women's 1994 Belém do Pará Convention—

⁴ Violence Policy Center, *When Men Murder Women: An Analysis of 2018 Homicide Data*, September 2020, <https://vpc.org/studies/wmmw2020.pdf>.

⁵ Vera Jonsdottir, "Is the US Still Too Patriarchal to Talk About Women? The Silent Epidemic of Femicide in America," *Chicago Policy Review*, July 7, 2022, <https://chicagopolicyreview.org/2022/07/07/is-the-us-still-too-patriarchal-to-talk-about-women-the-silent-epidemic-of-femicide-in-america/>.

⁶ David Hemenway et al., "Firearm availability and female homicide victimization rates among 25 populous high-income countries," *Journal of the American Medical Women's Association* 57, no. 2 (2002).

the first legally binding international treaty to criminalize violence against women. While 32 of the 35 OAS member states having ratified this convention, the United States has failed to do so.⁷

International norms serve to create an international standard for human rights that holds states accountable, and failing to ratify the conventions that embody these norms is cause for criticism at the international level. This paper will explore the potential explanations for why the United States, a regional hegemon regarded as a leader within the Western Hemisphere and ostensibly a proponent for human rights, has failed to ratify the first major legally binding and widely ratified international treaty for the prevention and eradication of violence against women. To answer this question, I consider the existing scholarship regarding why the United States has been reluctant to ratify human rights treaties at the global international level, applying these arguments to the Inter-American human rights system and the specific case of the Belém do Pará Convention. In considering existing explanations, I will be primarily focused on the UN's Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as this is also a major international convention pertaining to women's rights that parallels well with the regional Belém do Pará Convention. I also regard the federalist structure of the U.S. government and the Constitution's limitations to ratifying international treaties and international human rights treaties more specifically. Lastly, I will examine the U.S. government's response to the petition of Jessica Lenahan—a U.S. citizen and mother mourning the murder of her three daughters—against the United States before the Inter-American Commission of Human Rights

⁷ Inter-American Commission on Human and Inter-American Court of Human Right, eds., "Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women 'Convention of Belem Do Para,'" in *Inter-American Yearbook on Human Rights / Anuario Interamericano de Derechos Humanos, Volume 12 A (1996)* (Brill | Nijhoff, 1998), 194–215, https://doi.org/10.1163/9789004470767_009.; While Canada has also not ratified the Belém do Pará Convention, the Canadian case will not be analyzed within the scope of this paper. Nor will Cuba, given its liminal status as an OAS member state. However, I do acknowledge that femicide and violence against women are also prevalent issues within these two countries.

after her domestic violence case was dismissed by the Supreme Court. By examining these three areas, I conclude that despite the United States being restricted in ratifying international treaties by the constitutional system and the federalist structure of its government, an attitude of U.S. exceptionalism for its own domestic law and practice is ultimately what drives the United States to avoid ratification of the the Belém do Pará Convention.

The rest of the paper is structured as follows. First, in the background section, I will describe the origins of the Belém do Pará Convention and how it came about to prevent, punish, and eradicate violence against women in the Western Hemisphere. I trace the Belém do Pará Convention within the history of the OAS and the creation of the Inter-American human rights system. I then examine the United States' broader pattern of avoiding ratification of regional international human rights treaties within the OAS-created Inter-American system. I highlight that while there seems to be a general pattern to U.S. reluctance to ratify these treaties, in the case of the Belém do Pará Convention the U.S. government did not even consider ratification. I also describe the real consequences this negligence to ratify regional human rights treaties has for women in the United States by regarding U.S. dismissal and impunity in the first and only case of U.S. domestic violence, *Jessica Lenahan (Gonzales) v. United States of America*, to be brought before the Inter-American Commission on Human Rights.

In section III, I discuss why the failure to ratify the Belém do Pará Convention is particularly puzzling, given how the United States claims to promote women's rights in the hemisphere and tout itself as progressive, as well as how critical the United States is of other countries' human rights practices. I describe how the United States has been criticized internationally for its failure to ratify international human rights treaties and how, despite this criticism, it has not altered its behavior. In section IV, I consider three potential explanations for

why the United States has not ratified the Belém do Pará Convention: (i) the U.S. posture towards CEDAW, (ii) the limitations for ratifying international treaties that are imposed by the U.S. federalist system and the constitutional treaty ratification process, and (iii) the attitude of U.S. exceptionalism for its own domestic violence against women legislation. Through these considerations, I find that the United States did not consider ratifying the Belém do Pará Convention with reservations or even through the senatorial supermajority consent process that it has deferred to for human rights treaties; rather, though the restrictions for ratifying international human rights treaties still play a role in its reticence, the United States has avoided ratification of the Belém do Pará Convention with the justification of its own domestic exceptionalism in the area of women's rights to protection from violence.

II. Background

The OAS, CIM, and the Issue of Violence Against Women

On April 30, 1948, the Organization of American States (OAS) was founded as an international intergovernmental organization and regional agency of the United Nations for all its member states in the North, South, and Central Americas, and 35 independent states of the Americas have since ratified the OAS Charter.⁸ According to the Council on Foreign Relations, the OAS is a “multilateral regional body focused on human rights, electoral oversight, social and economic development, and security in the Western Hemisphere.”⁹ The idea behind creating a

⁸ OAS :: SLA :: Department of International Law (Dil) :: Inter-American ...,” accessed March 30, 2023, https://www.oas.org/en/sla/dil/inter_american_treaties_a-41_charter_oas.asp.

⁹ “The Organization of American States,” Council on Foreign Relations, accessed February 10, 2023, <https://www.cfr.org/background/organization-american-states>.

regional system was to create a system of governance and management that is more finely attuned to the unique issues and particular needs of states within the Americas, specifically with regards to fostering a regional human rights system and both an Inter-American Commission and Court on Human Rights.¹⁰ The OAS has also created specialized Inter-American commissions—one of which, the Inter-American Commission of Women (*Comisión Interamericana de Mujeres*, CIM), would develop a treaty for advancing women's rights in the region.

As an organization, the CIM originally descended from suffragist movements across the Americas back in the 1920s and was eventually reconstituted as an autonomous specialized commission of the OAS with its creation in 1948.¹¹ From the outset, the CIM worked to improve women's legal status at the international level by advocating to define women's rights in pathbreaking, legally-binding conventions that would serve to pressure governments to bring national laws into compliance with these international commitments.¹² The CIM presented the Equal Rights Treaty at the 1928 Sixth International Conference of American States in Havana, and although this was not ratified, CIM advocates were victorious at the 1933 Seventh International Conference of American States in Montevideo, when the Inter-American Convention on the Nationality of Women was adopted and became the first international legal instrument to address the rights of women, protecting women's right to nationality.¹³ In 1948, CIM's continued work in international law led to the passage of two more conventions for the

¹⁰ Victor H. Condé and Charles F. Gelsinger, "Chapter 7: Organization of American States: The U.S. & the Inter-American Human Rights System," in *Human Rights and the United States*, vol. Third edition, Human Rights and the United States (Amenia, NY: Grey House Publishing, 2017), 497, <https://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=1687726&site=bsi-live&scope=site>.

¹¹ Mary K. Meyer, "Negotiating International Norms: The Inter-American Commission of Women and the Convention on Violence Against Women," *Aggressive Behavior* 24, no. 2 (1998): 141, [https://doi.org/10.1002/\(SICI\)1098-2337\(1998\)24:2<135::AID-AB4>3.0.CO;2-L](https://doi.org/10.1002/(SICI)1098-2337(1998)24:2<135::AID-AB4>3.0.CO;2-L).

¹² Meyer, 138.

¹³ "OAS : CIM : Brief History," accessed March 29, 2023, <https://oea.org/en/cim/history.asp>.

political and civil rights of women—the Inter-American Convention on the Granting of Political Rights to Women and Inter-American Convention on the Granting of Civil Rights to Women, which catalyzed many governments in the region to recognize women’s suffrage.¹⁴ The CIM went on to contribute to other projects in women’s education among other things, but it reinvigorated its role in the late 1980s in pressing for the codification of women’s rights into international law.¹⁵

During the 1980s and 1990s, the subject of violence against women began to enter public discourse, especially in Latin America.¹⁶ With this new attention to the issue of violence against women, in both the home and in public, the women’s movement throughout the region was spurred to action. Combined with significant democratic opening in many Latin American countries after long-standing military dictatorships, the women’s movements throughout the region suddenly seized this moment to pressure civilian governments to respond to violence against women in their respective countries, effectively elevating the issue of violence against women to the regional political agenda.¹⁷ Within this context, in 1988 the CIM began to explore ways to combat violence against women in the Western Hemisphere, as there was no existing treaty to address this specific issue.¹⁸ Thus, consideration for an Inter-American convention on violence against women began.

At the beginning of 1988, the CIM Executive Committee called for action regarding the problem of domestic violence and the lack of adequate national laws for its prevention in the

¹⁴ Meyer, 138.

¹⁵ Ibid, 139.

¹⁶ Ibid, 140.

¹⁷ Ibid.

¹⁸ Ibid, 141.

Americas.¹⁹ The CIM convened a Meeting of Consultation in 1990, at which it was concluded that an Inter-American convention on violence against women needed to be drafted, reasoning that “an international convention specifically devoted to the topic could establish violence as the most serious, severe and persistent form of discrimination against women which, due to its erroneous perception as a private problem, constitutes a violation of human rights with special characteristics.”²⁰ Most importantly, the CIM identified the need for “States to take legislative, legal or administrative measures for the investigation, prevention, and punishment of violence against women,” as well as to evaluate States’ implementation of these measures and “to establish effective measures as a means of international denunciation of States for their shortcomings in this regard.”²¹

Following this initiative, the CIM drew together a Meeting of Experts to draft the text of what would later become the Belém do Pará Convention, first convening in August 1991 in Caracas, Venezuela and then in October 1993 at the CIM headquarters in Washington, DC.²² Finally, on June 9, 1994, in Belém do Pará, Brazil, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women—also referred to as the Belém do Pará Convention—became the first legally binding international treaty for the prevention of violence against women when it was adopted by acclamation at the 24th regular session of the General Assembly of the OAS.²³ Following its adoption and entrance into force,

¹⁹ Ibid..

²⁰ Ibid. Though I was unable to access the original source, Meyer cites the source of the quote as follows: Comisión Interamericana de Mujeres/Inter-American Commission of Women (1990): “Conclusions and Recommendations of the Inter-American Consultation on Women and Violence.” Adopted by the fourth plenary session of the Twenty-fifth Assembly of Delegates of the Inter-American Commission of Women held in Washington, DC, on October 19, 1990. Washington, DC: General Secretariat of the OAS.

²¹ Ibid, 141–42. Same as the entry above; I was unable to access the original source, though Meyer references it.

²² Ibid, 142.

²³ Ibid, 139; “Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (‘Convention of Belem Do Para’),” *International Legal Materials* 33, no. 6 (1994): 1534–39.

the Belém do Pará Convention became the most ratified treaty in the Inter-American human rights system, and only the United States, Canada, and Cuba have not ratified it.²⁴

The Belém do Pará Convention

The Belém do Pará Convention itself consists of a preamble and five chapters, which define violence against women, women's rights protected by the treaty, duties of the state to protect these rights, and inter-American mechanisms to protect these rights, as well as general provisions. Chapters I and II of the convention define the scope of application of the treaty as well as the rights protected under its provisions. Chapter I of the Belém do Pará Convention defines violence against women as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”²⁵ A notably inclusive and encompassing definition, in Article 2 the Convention considers violence against women within interpersonal relationships, as perpetrated by anyone within the community, and “that is perpetrated or condoned by the state or its agents regardless of where it occurs.”²⁶ The scope of this definition is groundbreaking for an international human rights treaty, as it considers interpersonal and domestic violence, public acts of violence, and even state-sanctioned acts of violence against women as matters of international jurisdiction. Chapter II goes on to define the rights protected by the convention, including the right of every woman to “have her life respected,” “have her physical, mental and moral integrity respected,”

²⁴ Ciara O’Connell, “Women’s Rights and the Inter-American System,” in *International Human Rights of Women*, ed. Niamh Reilly, International Human Rights (Singapore: Springer, 2018), 141, https://doi.org/10.1007/978-981-10-4550-9_10-1.

²⁵ “Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (‘Convention of Belem Do Para’),” 1535.

²⁶ *Ibid.*

and “The right to simple and prompt recourse to a competent court for protection against acts that violate her rights,” among others.²⁷ While some scholars argue that the breadth of this definition has made it difficult to pinpoint and define clear rights in legal matters, it is still considered a formative treaty for outlining women’s rights as human rights in international law.²⁸

Chapter III outlines the Duties of the States to take the necessary measures to condemn, punish, and eradicate all forms of violence against women, such as including provisions in domestic legislation and adopting the appropriate administrative measures where necessary.²⁹

Article 7 in this chapter is arguably the most important article of the treaty, as it declares the states’ obligations for which they can be petitioned against if found in violation:

“The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: (a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; (b) apply due diligence to prevent, investigate and impose penalties for violence against women; (c) include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary; (d) adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property; (e) take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women; (f) establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; (g) establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and (h) adopt such legislative or other measures as may be necessary to give effect to this Convention.”³⁰

²⁷ Ibid., 1535–36.

²⁸ O’Connell, 144.

²⁹ “Convention of Belem Do Para”, 1536–37.

³⁰ Ibid, 1536.

As seen above, Article 7 is quite thorough in its definition of state responsibility, calling for states to “apply due diligence” in the prevention and investigation of violence against women, to adopt the appropriate administrative and legal measures that are fair, effective, and timely, and even to actively review already existing legislation and commit itself to advancing women’s rights within their domestic law. Article 8 takes this commitment even further, pledging states to undertake specific measures and programs for raising awareness of violence against women, promoting education and counteracting sexist prejudices within the educational process, providing specialized services for women who have been subjected to violence through public and private sector agencies.³¹ Clause h even includes an obligation for states “to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes.”³² Furthermore, the treaty’s language goes the extra mile to be inclusive and intersectional, as Article 9 emphasizes that states “shall take special account of the vulnerability of women to violence by reason of, among others, their race, or ethnic background or their status as migrants, refugees or displaced persons.”³³

Finally, Chapter IV and V declare the Inter-American Mechanisms of Protection and General Provisions respectively. Chapter IV details how states will report to the CIM, and Article 12 specifically outlines the ability of “Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization” to “lodge petitions with the Inter-American Commission on Human Rights containing

³¹ Ibid., 1536–37.

³² Ibid., 1536–37.

³³ Ibid., 1537.

denunciations or complaints of violations of Article 7 of this Convention by a State Party.”³⁴ In other words, Article 12 allows for petitions to be brought to the IACHR against a state in violation of Article 7. Notably within the General Provisions, the Convention is open to signature and ratification by all member states of the OAS, and according to Article 13 “No part of this Convention shall be understood to restrict or limit the domestic law of any State Party that affords equal or greater protection and guarantees the rights of women and appropriate safeguards to prevent and eradicate violence against women.”³⁵

The Inter-American Court of Human Rights has also interpreted the Convention of Belém do Pará in several important cases of human rights violations against women. Following the adoption of the Belém do Pará Convention in 1994, the Inter-American Commission on Human Rights established the office of Rapporteur on the Rights of Women, which became tasked with analyzing OAS member states’ compliance in relation to the elimination of gender-based discrimination and violence against women under the more general regional human rights treaties, such as the ACHR, as well as under the terms of the Belém do Pará Convention.³⁶ The Inter-American Commission on human rights has since interpreted a number of cases with the Belém do Pará Convention, such as *Maria da Penha Maia Fernandes v. Brazil* (2001), the first case to interpret the Belém do Pará Convention and invoke state responsibility to implement laws to protect women against violence effectively, and *Gonzalez et al. (“Cotton Field”) v. Mexico* (2009), a case in which Mexico was found to have failed to protect, investigate, and prosecute femicide and violence against women.³⁷

³⁴ Ibid.

³⁵ Ibid.

³⁶ Dauer, “Human Rights Responses to Violence against Women,” 12.

³⁷ Dauer, 11.

The United States Within the Inter-American Human Rights System

Despite how groundbreaking the Belém do Pará Convention is in providing a legally binding basis for protecting women from violence within the Inter-American human rights system, the convention has not been ratified by the whole region. Out of the 35 member states of the Western Hemisphere which comprise the OAS, only 32 member states have ratified the Belém do Pará Convention.³⁸ The Belém do Pará Convention is the most widely ratified treaty within the Inter-American human rights system, yet one of the three countries to have not ratified it is the United States.³⁹ Furthermore, the United States still has not ratified many human rights treaties in general, the Belém do Pará Convention only being one instance of this broader trend of its reluctance within the regional Inter-American human rights system. Though U.S. reticence to ratify human rights treaties is not unusual given this pattern, what is peculiar is how the Belém do Pará Convention, the only regional convention for women's rights to protection from violence, has been dismissed. The only documented attempt to consider ratification of the Belém do Pará Convention was a concurrent resolution submitted from the House of Representatives (H. Con. Res. 182 - 104th Congress), which was sponsored by former representative Esteban Edward Torres [D-CA-34] and co-sponsored by eight other representatives on June 6, 1996. The resolution expressed "the need for the President to seek the Senate's advice and consent for ratification of the 1994 Inter-American Convention on the Prevention, Punishment, and

³⁸ Inter-American Commission on Human and Inter-American Court of Human Right, eds., "Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women 'Convention of Belem Do Para,'" in *Inter-American Yearbook on Human Rights / Anuario Interamericano de Derechos Humanos, Volume 12 A (1996)* (Brill | Nijhoff, 1998), 194–215, https://doi.org/10.1163/9789004470767_009.

³⁹ O'Connell, 141.

Eradication of Violence Against Women.”⁴⁰ Though referred to both the House Committee on International Relations and the Subcommittee on International Operations and Human Rights, the resolution was never pursued further.

Shortly after the OAS came into existence on May 2, 1948, the OAS proclaimed the American Declaration of the Rights and Duties of Man (“American Declaration”, ADHR), which notably became “the first regional human rights instrument applicable to the United States.”⁴¹ Interestingly, when the United States moved to ratify the OAS Charter in 1951, it made a reservation stating that “none of its provisions shall be considered as enlarging the powers of the Federal Government of the United States or limiting the powers of the several states of the Federal Union with respect to any matters recognized under the Constitution as being within the reserved powers of the several states.”⁴² Therefore, the one Inter-American human rights treaty that the United States *has* ratified was done so with reservation.

Around a decade later in 1959, the OAS founded the Inter-American Commission on Human Rights (IACHR) and established the body’s headquarters in Washington, D.C; then, in 1969, the OAS adopted the American Convention on Human Rights (“American Convention”, ACHR), which entered into force for its signatories in 1978.⁴³ Within the human rights system of the OAS, the IACHR reviews cases to then be interpreted in light of the ACHR by the Inter-American Court of Human Rights, creating an international human rights tribunal for the region.

⁴⁰ U.S. Congress, Senate, House - International Relations, *H. Con. Res. 182 - Expressing the sense of the Congress regarding the need for the President to seek the Senate’s advice and consent for ratification of the 1994 Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women*, 104th Cong., 2d sess., 1996, H. Con. Res. 182, <https://www.congress.gov/bill/104th-congress/house-concurrent-resolution/182/text>.

⁴¹ Condé and Gelsinger, “Chapter 7: Organization of American States: The U.S. & the Inter-American Human Rights System,” 497.

⁴² “OAS :: SLA :: Department of International Law (DIL) :: Inter-American ...,” accessed March 29, 2023, https://www.oas.org/en/sla/dil/inter_american_treaties_a-41_charter_oas.asp.

⁴³ *Ibid.*

⁴⁴ The ACHR “sets forth a set of regional human rights substantive norms binding upon states that ratify it,” and while the U.S. signed the ACHR in 1977, the convention was never ratified in the U.S. Senate.⁴⁵

The difference between the earlier ADHR (which the U.S. has ratified) and the later ACHR is that the ACHR added protocols for economic and social rights, as well as abolishing the death penalty.⁴⁶ While there is certainly an explanation for why the U.S. chose not to ratify the ACHR as well given its concern for the rights of state governments, what is striking is how failed ratification of the ACHR gives the Inter-American Convention on Human Rights no legal bearing on the U.S. government. Because the United States has only signed but not ratified the ACHR, cases filed against the U.S. have never been filed in the Inter-American Court, rather it can only be given recommendations in the Inter-American Commission of Human Rights under the ADHR.⁴⁷ In 1970, the OAS Charter was amended so that ADHR became the legal basis in Commissions for the purpose of “adjudicating petitions claiming violations,” and the IACHR still uses the ADHR as the legal basis for deciding cases against states not party to the ACHR.⁴⁸ Some scholars maintain that the absence of U.S. participation in the Inter-American human rights system ultimately undermines the system’s authority and makes the U.S. appear fearful of having to conform to human rights norms; Condé and Gelsinger comment that “The U.S. failure to fully participate in this system, especially by not ratifying the binding legal instrument, makes

⁴⁴ Sheila Dauer, “Human Rights Responses to Violence against Women,” in *International Human Rights of Women*, ed. Niamh Reilly, International Human Rights (Singapore: Springer, 2019), 11, https://doi.org/10.1007/978-981-10-4550-9_16-1.

⁴⁵ “OAS :: SLA :: Department of International Law (DIL) :: Inter-American ...,” accessed March 29, 2023, https://www.oas.org/en/sla/dil/inter_american_treaties_a-41_charter_oas.asp.

⁴⁶ Condé and Gelsinger, “Chapter 7: Organization of American States: The U.S. & the Inter-American Human Rights System,” 497.

⁴⁷ Condé and Gelsinger, 498.

⁴⁸ Condé and Gelsinger, 497.

the system less effective and leads to the contention of U.S. exceptionalism.”⁴⁹ Because the United States has not ratified the American Convention, it is not fully involved nor subject to the legal implementation of the IACHR as well as the Belém do Pará Convention, demonstrating U.S. impunity to regional international human rights norms.

IACHR Petition Against the United States: Jessica Lenahan v. USA

The consequences for women due to the failure of the United States to ratify integral human rights conventions within the Inter-American human rights system, both the ACHR and the Belém do Pará Convention, is particularly apparent in the first case challenging violence against women in the United States through the Inter-American Commission. The United States was brought before the Inter-American Commission for a case of domestic violence, *Jessica Lenahan (Gonzales) v. United States of America* (2011).⁵⁰ Back in June 1999, Jessica Lenahan (formerly Gonzales) of Castle Rock, Colorado repeatedly called the police to no avail after her estranged husband, whom she had a restraining order against, abducted her three young daughters, Leslie, Katheryn, and Rebecca.⁵¹ After hours of police inaction, Mr. Gonzales drove

⁴⁹ Condé and Gelsinger, 498.

⁵⁰ Dauer, 11.

⁵¹ OAS, IACHR, *Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding Jessica Gonzales Petition # P-1490-05*, September 25, 2006, 8, <https://www.aclu.org/cases/jessica-gonzales-v-usa?document=jessica-gonzales-v-usa-government-response>.; In the police reports, she had given her husband permission to take the children out that night, as the restraining order pertained to her and still allowed him some scheduled parenting time with his children. Some of the complexity of this case comes from the argument that the husband was not in violation of the restraining order. The U.S. government’s response also refers to CRPD records that “indicate that Ms. Gonzales did not appear to be concerned about the safety of her children, but was troubled instead by the fact that she did not know where her husband had taken them.” Despite Jessica Lenahan having called the police department repeatedly for hours on end, they considered her not to be concerned about her children’s safety, though she clearly was even if she did not explicitly state as much. Equally egregious, the U.S. government also mentions in its response to the IACHR petition that the fact that Mr. Gonzales was still granted parenting time under the restraining order “would lead a reasonable person to conclude that at the time the restraining order was modified to permit such custodial arrangements neither Ms. Gonzales nor the court considered Mr. Gonzales a threat to his children.”

up to the police department, open-fired, and was shot dead, after which the police discovered that he had murdered his daughters and thrown them in the back of his pick-up truck.⁵² Jessica Lenahan filed a lawsuit against the Castle Rock police department for their failure to respond and enforce her restraining order, but unfortunately in June 2005, six painful years later, the Supreme Court ruled that she did not have any constitutional right for the police to enforce her restraining order.⁵³

Jessica Lenahan 's case did not stop there; representatives of the American Civil Liberties Union petitioned against the United States to the Inter-American Commission on Human Rights in 2006 on Jessica Lenahan's behalf.⁵⁴ The U.S. government responded to the Inter-American Commission on Human Rights' petition request with the argument that "No provision of the American Declaration [the ADHR] imposes a duty on the United States to have successfully prevented the murders of the Gonzalez daughters," reasoning that the "Petitioner's inability to prevail in her complaint filed in U.S. federal court and her failure to pursue all available forms of domestic relief do not mean that she lacked access to the courts or that victims of domestic violence lack effective remedies or access to the courts to pursue them."⁵⁵ The U.S. government's statement here is clearly insensitive to Jessica Lenahan's inability to find an effective remedy to her case in federal court and arrogant in not acknowledging how the U.S. fails women victims in protecting them against and preventing domestic violence. That Ms. Lenahan felt the need to petition to the IACHR in the first place indicates the lack of available

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ronagh J. A. McQuigg, "Domestic Violence and the Inter-American Commission on Human Rights: Jessica Lenahan (Gonzales) v United States," *Human Rights Law Review* 12, no. 1 (2012): 122.

⁵⁵ OAS, IACHR, *Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding Jessica Gonzales Petition # P-1490-05*, September 25, 2006, 1, <https://www.aclu.org/cases/jessica-gonzales-v-usa?document=jessica-gonzales-v-usa-government-response>.

forms of domestic relief for her case. Blaming her for not being able to advocate for herself in an inaccessible system, the U.S. government deflects the responsibility to protect women from violence and reinforces the fact that it has not taken on this responsibility domestically by only ratifying the ADHR, indicating a need for the U.S. ratification of the Belém do Pará Convention and ACHR to truly protect U.S. women.

Because the U.S. government determined that it was not subject to due diligence on Jessica Lenahan's behalf under the human rights treaty that it has ratified, "the United States respectfully request[ed] that the petition be determined inadmissible and the request for relief [be] denied."⁵⁶ The *Lenahan* case demonstrates how the United States does not take criticism from the international community for its inaction and does not prioritize the protection of women from violence if this interferes with its narrative that the U.S. government can do no wrong. The *Lenahan* case is only one instance that demonstrates the consequences of state impunity and the importance of international law in holding states accountable to human rights standards in this realm.

III. The Puzzle

The Belém do Pará Convention's preamble declares that all states party to the convention are "convinced that the adoption of a convention on the prevention, punishment and eradication of all forms of violence against women within the framework of the Organization of American States is a positive contribution to protecting the rights of women and eliminating violence

⁵⁶ Ibid, 3.

against them.”⁵⁷ This begs the question, why has the United States not been convinced of this and ratified the convention?

Despite its pattern of failing to ratify most Inter-American human rights treaties, it is unusual that the United States would not even consider ratification of the Belém do Pará Convention, given that the values of the Convention seem to align with U.S. claims of promoting women’s rights in the hemisphere and touting itself as progressive. It is also particularly paradoxical that, despite international criticism for its failure to ratify international human rights law, the United States still has not altered its behavior and continues to hypocritically judge other countries for their human rights practices. This is especially peculiar considering how vastly ratified the Belém do Pará Convention is within the region—the United States has not ratified this Convention to this day, whereas 32 OAS member states across Latin America and the Caribbean have.

The United States, and in particular Eleanor Roosevelt, are seen as having led the way in establishing the United Nations, as well as the non-binding Universal Declaration of Human Rights that the General Assembly adopted in 1948.⁵⁸ But how willing was the United States *really* to establish and codify legally binding international treaties and monitoring bodies? The United States’ relationship with international human rights treaties is often “described as paradoxical and even hypocritical, in that the United States prides itself on being a champion of human rights and pressures other countries to improve their human rights practices, and yet

⁵⁷ “Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (‘Convention of Belem Do Para’),” 1535.

⁵⁸ Bradley, “The United States and Human Rights Treaties: Race Relations, the Cold War, and Constitutionalism,” 324.

appears less willing than other nations to embrace international human rights treaties.”⁵⁹ The United States takes on an attitude of exceptionalism in international human rights policy, not formally accepting or enforcing international human rights norms itself but still seeming to support human rights “in the form of judicial enforcement of human rights at home and unilateral action to promote civil and political rights abroad.”⁶⁰

Other countries criticize the United States’ isolation from the international human rights treaty framework.⁶¹ The main criticism lies in the fact that other countries perceive the United States as it “seeks to sit in judgment on others but will not submit its human rights behavior to international judgment.”⁶² And rightfully so it seems, as the United States seems to vigorously enforce global human rights standards on any country other than itself “through rhetorical disapproval, foreign aid, sanctions, military intervention, and even multilateral negotiations.”⁶³

U.S. reluctance to ratify Inter-American human rights treaties is also puzzling when you consider how much of a role the United States plays in financing the OAS and, subsequently, the IACHR and CIM. The OAS General Assembly’s regular fund budget for support of the General Secretariat is financed by setting country quotas based on each country’s capacity to pay. Out of the \$81 million allocated to the regular fund of the OAS’s 2022 budget, “the United States is required to provide a little more than \$45 million, or about 56 percent.”⁶⁴ Why, given its

⁵⁹ Ibid, 321.

⁶⁰ Andrew Moravcsik, “The Paradox of U.S. Human Rights Policy,” in *American Exceptionalism and Human Rights*, ed. Michael Ignatieff (Princeton University Press, 2009), 134, <https://doi.org/10.2307/j.ctt7skx6>.

⁶¹ Koh, 269.

⁶² Henkin, 344.

⁶³ Andrew Moravcsik, 134.

⁶⁴ Council on Foreign Relations, “*Backgrounder: The Organization of American States*,” accessed February 10, 2023, <https://www.cfr.org/backgrounder/organization-american-states>.; “Approved Program Budget 2022 - OAS,” accessed March 10, 2023, https://www.oas.org/budget/approved_2022.html.

financial involvement, does the United States fail to participate in the Inter-American human rights system?

In the sections that follow, I propose three potential explanations for the United States' reticence to ratify the Belém do Pará Convention: U.S. unilateralism in international institutions, the limits on U.S. ratification of international treaties imposed by the Constitution and federalism, and false U.S. exceptionalism about domestic VAW laws and preventative programs. Each section builds off of the last, and each potential explanation qualifies the explanation before it. In doing so, I argue that while U.S. unilateralism in international institutions and the federalist system of the United States account for some of the opposition to the ratification of international human rights conventions in general, it is the United States's exceptionalist attitude which ultimately permeates its posture towards the issue of violence against women and international law for its prevention.

IV. Potential Explanations

i. U.S. Unilateralism in International Institutions

As we saw above, the United States has a storied history of neglecting to ratify major human rights treaties within the Inter-American human rights system. Because this paper specifically aims to try to explain the United States's failure to ratify the Inter-American human rights treaty for the prevention, punishment, and eradication of violence against women, I first will look at literature regarding U.S. posture for human rights treaties in the UN, particularly for CEDAW, to see if there is any explanation from this case that can be drawn in parallel to the Belém do Pará Convention. I also consider the importance of international norms and how the United States seems to go against the grain, failing to ratify international human rights treaties

such as CEDAW despite the international criticism this reticence evokes. I find that the United States, when it has ratified international human rights treaties, has made sure to qualify their ability to preclude domestic law with conditional ratification methods. However, even in the case of CEDAW when conditional ratification was proposed, the United States Senate still did not ratify it. Similarly, the Belém do Pará Convention was never ratified even with reservations attached, nor the ACHR. I then discuss the credibility of ratification in the case that many reservations are attached to it, and conclude that ratification without an effect on domestic law is inherently a rhetorical gesture alone. I posit that, in the case of the Inter-American human rights system and especially in the case of the women's rights treaties, conditional ratification is not even politically feasible due to the importance of the United States appearing to take on these international obligations. Following this section, I then discuss the senatorial ratification process as another barrier to ratification, ultimately concluding that, along with the limitations imposed by the constitutional and federalist system, the United States takes on an exceptionalist attitude to justify its failure to ratify the Belém do Pará Convention.

The United States and CEDAW: The Importance of International Norms?

At the broader global international level, the United States did not begin ratifying human rights treaties until the late 1980s, well after the development of human rights treaties really took off in the late 1940s and early 1950s. After reviewing the history of the United States not having ratified human rights treaties inherent to the Inter-American human rights system, it is also important to examine U.S. posture towards global international human rights treaties. Among the number of international human rights treaties which it has yet to ratify, the United States has not ratified some of the major treaties, including the International Covenant on Economic, Social and

Cultural Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁶⁵ Only in recent history has the issue of violence against women been recognized and drafted into international human rights law and practice, and CEDAW—adopted by the UN General Assembly on December 18, 1979 and entering into force shortly after in September 1981—was the first international convention to address women’s rights specifically and comprehensively “within political, social, economic, cultural, and family life.”⁶⁶ In this section, I focus on the potential reasons for the United States not having ratified CEDAW prior to the OAS’s adoption of the Belém do Pará Convention in order to shed light on the U.S. attitude towards international treaties for women’s rights in particular.

As a note, international human rights treaties do not have any substantial legal enforcement—“while all of these treaties formally create hard law commitments (they are legally binding), they have soft-law characteristics (they are essentially unenforceable through traditional means).”⁶⁷ Though not legally binding, meaning that by ratifying the treaty states only commit themselves to the undertaking of ending discrimination against women with “appropriate measures,” the CEDAW treaty is an “international bill of rights for women” that “defines and condemns discrimination against women and announces an agenda for national action to end such discrimination.”⁶⁸ While CEDAW does not provide for the legal enforcement of its terms,

⁶⁵ Curtis A Bradley, “The United States and Human Rights Treaties: Race Relations, the Cold War, and Constitutionalism,” *Chinese Journal of International Law* 9, no. 2 (2010): 321–22.

⁶⁶ Harold Hongju Koh, “Why America Should Ratify the Women’s Rights Treaty (CEDAW) International Crimes against Women,” *Case Western Reserve Journal of International Law* 34, no. 3 (2002): 265; Dauer, “Human Rights Responses to Violence against Women,” 4.

⁶⁷ Hathaway, 592.

⁶⁸ Koh, “Why America Should Ratify the Women’s Rights Treaty (CEDAW) International Crimes against Women,” 266.

“it does require state parties to submit reports to a designated UN committee (a reporting requirement that is often ignored with impunity.”⁶⁹

While this international treaty is in and of itself not legally binding, the UN High Commissioner of Human Rights states that CEDAW marked an important conceptual shift in international norms by framing violence against women as a human rights issue and therefore acknowledging that “violence is the result of structural, deep-rooted discrimination which the state has an obligation to address” and this requires “legislative, administrative, and institutional measures and reforms.”⁷⁰ Considering how formative the CEDAW convention was for international norms, it is even more jarring that the United States is one of the only countries to still have not ratified CEDAW, as 189 of the 193 UN Member States have ratified it to date.⁷¹

In “Why do Countries Commit to Human Rights Treaties?”, Oona A. Hathaway focuses on two ways that international law shapes what countries do: “through the legal enforcement of the terms of the treaty by domestic or international institutions and through the collateral consequences that come about when actors change the way they act toward the state as a result of the state’s decision to accept (or not accept) international legal rules.”⁷² Hathaway argues that there is a reciprocal relationship between compliance with international treaties and a country’s commitment to them; a state’s commitment to a treaty “is dependent on whether they expect to comply with the treaty and on the costs and benefits of complying with the treaty, especially

⁶⁹ Hathaway, 592.

⁷⁰ Dauer, “Human Rights Responses to Violence against Women,” 3.; UN OHCHR (n.d.-b) Violence against women. United Nations Office of the High Commissioner for Human Rights. <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/VAW.aspx>

⁷¹ United Nations, “OHCHR | Committee on the Elimination of Discrimination against Women,” OHCHR, 2022, <https://www.ohchr.org/en/treaty-bodies/cedaw>.

⁷² Hathaway, “Why Do Countries Commit to Human Rights Treaties?,” 590.

when it comes to domestic legal enforcement.”⁷³ Under this framework, one can hypothesize that the United States either does not expect to be compliant with international treaties for women’s rights against discrimination and violence, or the United States may regard more costs than benefits when domestically enforcing the treaty, or both.

Another part of Hathaway’s theory on why states decide to ratify human rights treaties refers to the “collateral consequences” of those treaties at the domestic level. Hathaway posits that these domestic level effects of treaty commitment can discourage states from ratification if there are few more collateral benefits to ratifying the international treaty.⁷⁴ Moreover, Hathaway finds that “states with strong domestic institutions and poor human rights records are less likely to join human rights treaties than states with weaker domestic institutions that have similar rights records.”⁷⁵ As this relates to the United States, there seem to be more collateral consequences for domestic law due to the self-executing principle of international human rights treaties, and the United States, at least in theory, already claims to have strong domestic institutions, making it less likely to ratify international human rights treaties under Hathaway’s theory.

Another important aspect of Hathaway’s findings is that individual countries within a region may be more likely to commit to a treaty as more and more countries within the region ratify it.⁷⁶ Per Hathaway’s findings, if human rights norms are highly valued within a region, countries “will seek to demonstrate [their] commitment to these shared norms and thereby smooth relations with other countries within the region—countries that because of their proximity are

⁷³ Hathaway, 590.

⁷⁴ Hathaway, 597.

⁷⁵ Hathaway, 613.

⁷⁶ Hathaway, 597.

more likely to engage with them in trade and security alliances.”⁷⁷ What is interesting about this theory is that the United States seems to behave in a diametrically opposed manner—despite the majority of OAS members having ratified the Belém do Pará Convention, the United States still has not ratified it in congruence with the expected pattern of seeking to commit to shared norms in the realm of international human rights law.

Setting international norms for human rights is important so that impunity in cases of violence against women does not become the norm. Violence continues when it is ignored by the government and implicitly condoned, allowing impunity and a lack of accountability for the violence to become normal and acceptable.⁷⁸ At the same time, international norms serve to create an international standard for human rights that hold states accountable, and failing to ratify the conventions that embody these norms is cause for criticism at the international level. The United States's failure to ratify CEDAW, for example, has damaged the United States global standing due to its peers questioning and criticizing its isolation from the treaty's framework.⁷⁹ So why, despite the damage it could have to its global reputation, has the U.S. not ratified important international human rights conventions? Why has it also jeopardized being the minority at the regional level and failing to ratify the Belém do Pará Convention?

Although the United States signed CEDAW in July 1980 during the World Conference of the United Nations Decade for Women at Copenhagen, it never took the next step to ratify it.⁸⁰ The United States Senate Foreign Relations Committee held hearings for the ratification of

⁷⁷ Hathaway, 597.

⁷⁸ Dauer, “Human Rights Responses to Violence against Women,” 2.

⁷⁹ Koh, “Why America Should Ratify the Women’s Rights Treaty (CEDAW) International Crimes against Women,” 269.

⁸⁰ Koh, 365.

CEDAW in 1988 and 1990, though the closest the United States came to ratifying it was under the Clinton Administration in October 1994, when the Senate Foreign Relations Committee recommended that the Senate give its advice and consent of the ratification of CEDAW, though with a package of four reservations, four understandings, and two declarations.⁸¹ The Clinton Administration claimed that ratification of CEDAW was a priority, and both First Lady Hillary Clinton and Secretary of State Madeleine Albright called for Senate ratification; however, ultimately the Senate's Republican majority and the Senate Foreign Relations Committee Chair Jesse Helms refused to vote on the treaty or hold additional hearings.⁸²

Conditional Ratification: Reservations, Understandings, and Declarations (RUDs)

When the United States has ratified international human rights treaties, it has “qualified its consent to the treaties by attaching extensive reservations, understandings, and declarations, or ‘RUDs’.”⁸³ RUDs, basically a set of conditions to ratifying an international treaty, were crafted starting in the 1970s as a way for the United States to commit to international human rights treaties while also accommodating the domestic concerns that come alongside ratification.⁸⁴ With the inclusion of RUDs in ratification, the United States can still ratify an international treaty while declining to commit to certain aspects of the treaty, and U.S. treaty makers can declare treaties as not self-executing, which makes the treaties “not enforceable in U.S. courts

⁸¹ Koh, “Why America Should Ratify the Women’s Rights Treaty (CEDAW) International Crimes against Women,” 365.

⁸² Koh, 365.

⁸³ Bradley, “The United States and Human Rights Treaties: Race Relations, the Cold War, and Constitutionalism,” 322.

⁸⁴ Bradley and Goldsmith, “Treaties, Human Rights, and Conditional Consent,” 401.

until implemented by congressional legislation” and allows for some provisions of the treaties to “be implemented by state and local governments rather than by the federal government.”⁸⁵

The proposed RUDs package of four reservations, five understandings, and two declarations considered when CEDAW was almost ratified by the United States demonstrates some of the reasons for U.S. reluctance to ratify an international human rights treaty. The four reservations advised by the Senate include:

(1) “The United States does not accept any obligation under the Convention to enact legislation or to take any other action with respect to private conduct except as mandated by the Constitution and laws of the United States.”; (2) reservations about assigning women to all military units that may involve them in direct combat; (3) “U.S. law provides strong protections against gender discrimination in the area of remuneration, including the right to equal pay for equal work jobs that are substantially similar. However, the United States does not accept any obligation under this Convention to enact legislation establishing the doctrine of comparable worth as that term is understood in U.S. practice.”; and (4) the United States does not accept any obligation “to introduce maternity leave with pay or with comparable social benefits.”⁸⁶

Evidently, the United States held reservations for any part of CEDAW which would supersede the existing laws of the United States and those established by the Constitution, such as the right to privacy and freedom from governmental interference in private conduct. The Senate also had reservations about any matter that is considered to be under the jurisdiction of the state and local governments, including pay and maternity leave benefits. This supports the hypothesis generated from Hathaway’s theory that states are less likely to comply with an international treaty if it perceives excessive costs to its domestic enforcement, as the U.S. does in the case of CEDAW.

⁸⁵ Bradley and Goldsmith, 401.

⁸⁶ U.S. Congress, Senate, Committee on Foreign Relations, *Convention on the Elimination of All Forms of Discrimination Against Women*, 11-12.

This is further exemplified by the understandings in the proposed RUDs package for the ratification of CEDAW, the first of which stating that “The United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the State and local governments.”⁸⁷ Additionally, the United States also makes overarching declarations that “for the purposes of its domestic law, the provisions of the Convention are non-self-executing” and that “The specific consent of the United States to the jurisdiction of the International Court of Justice concerning disputes over the interpretation or application of this Convention is required on a case-by-case basis.”⁸⁸ This demonstrates the United States’s qualms about ratifying any international treaty that supersedes its domestic law as well as its reluctance to be under the jurisdiction of international law in general. Reflecting Hathaway’s theory once again, the RUDs package proposed for the ratification of CEDAW suggests that the United States both perceives costs for domestic law by complying with the treaty, as well as that it potentially fears international judgment and that it may not be compliant with the treaty’s provisions.

Like CEDAW, the Belém do Pará Convention was never ratified; unlike CEDAW, the Belém do Pará Convention never had any hearings, votes, or proposed RUD packages for its ratification. The United States likely held reservations to some of the articles of the Belém do Pará Convention, though this can only be speculated since the United States Senate never followed up on the 1996 concurrent resolution requesting its advice and consent for ratification. In particular, Article 18 of Belém do Pará Convention allows any state to make reservations to the Convention but states that such reservations must be “a. not incompatible with the object and

⁸⁷ Ibid, 12.

⁸⁸ Ibid, 13.

purpose of the Convention, and b. not of a general nature and relate to one or more specific provisions.”⁸⁹ Though there is no document of proposed RUDs to reference regarding the Belém do Pará Convention, given the United States general declarations against the self-executing nature of CEDAW, it is highly likely that the United States also objected to the self-executing aspect of the Belém do Pará Convention, which would arguably preclude the purpose of the international human rights treaty in the first place by not allowing it any influence on domestic law.

RUDs to international treaties can be seen as both a positive and negative accommodation. They have been used by numerous countries for various international treaties, and most notably, some countries (particularly the Nordic countries) are committed to using RUDs as little as possible given the supposed universal applicability of human rights and countries not wanting to undermine this by opting out of any obligations.⁹⁰ RUDs accommodate competing U.S. domestic considerations with international treaty provisions and preserve U.S. sovereign prerogatives, which does allow the United States to increase its involvement in international institutions without undermining federalism and constitutionalism.⁹¹ However, RUDs have also evoked criticism for diminishing the meaningfulness of U.S. participation in international treaties, since making reservations casts the United States as rejecting higher international standards and does seem to defeat the purpose of an international treaty legally binding states to make domestic changes (in the case of the Belém do Pará Convention).

⁸⁹ “Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (‘Convention of Belem Do Para’),” 1538.

⁹⁰ Eric Neumayer, “Qualified ratification: Explaining reservations to international human rights treaties,” *The Journal of Legal Studies* 36, no. 2 (2007): 397-429.

⁹¹ Bradley and Goldsmith, 402.

Essentially, RUDs undermine the purpose of international treaties to effectively change domestic law and practice to be in adherence to the convention. The main object and purpose of international human rights conventions is for countries to assume legal obligations to recognize certain rights in accordance with international standards, legal obligations the United States rejects by making reservations that “assure that its adherence to a convention will not change, or require change, in U.S. laws, policies or practices, even where they fall below international standards.”⁹² Ratifying human rights conventions with extensive reservations has led to the critique that the United States “is pretending to assume international obligations but in fact is undertaking nothing.”⁹³ The result of a non-self-executing declaration is that U.S. citizens do not have the capacity to invoke the international treaty in U.S. courts, which basically results in the treaty being null and void for U.S. domestic law and leaves citizens without a mechanism to claim rights violations under the treaty’s protections.⁹⁴

Therefore, in only considering ratification of human rights treaties with these reservations, the United States suggests that it will only ratify a treaty that codifies existing U.S. practice and does not compel a change in U.S. behavior or domestic law. In the case of the Belém do Pará Convention, the international treaty was never considered past the initial resolution for the Senate’s advice and consent, so no RUDs were even proposed for its ratification. Therefore, I argue that, in the area of women’s rights specifically, the United States government avoids accusation of not undertaking these international obligations, but because it still has reservations to ratifying international human rights treaties because of potential domestic implications, the United States government takes on an attitude of exceptionalism and uses its own limited

⁹² Henkin, “U.S. Ratification of Human Rights Conventions,” 342–43.

⁹³ Henkin, 344.

⁹⁴ Roth, 349.

domestic laws for violence against women to justify that it is already compliant with the convention's provisions.

In the next section, I describe the U.S. ratification process for international treaties and its deferral to the senatorial supermajority requirement for ratifying human rights treaties specifically as another explanation for why ratifying the Belém do Pará Convention may be infeasible in the United States. In the section following that, I then go on to examine the U.S. government's response to Jessica Lenahan's petition to the IACHR, analyzing its exceptionalist attitude to argue that the United States avoids ratification with the justification that its domestic legislation for VAW is already adequate, a notion the *Lenahan* case contradicts.

ii. The Limits Imposed by Constitutionalism & Federalism

Since the United States never even got to the point of the Senate offering its advice and consent for ratification of the Belém do Pará Convention with a proposed package of RUDs, another possible explanation is that U.S. Constitution and federalism impose limitations on the ratification of international treaties that makes ratification politically infeasible. Throughout this section, I explore the possibility that the U.S. Constitution and federalism prevent the United States from ratifying international treaties easily and without reservations. I also analyze the difficulties presented by the senatorial supermajority consent process of ratification.

In "The United States and Human Rights Treaties: Race Relations, the Cold War, and Constitutionalism", Curtis A. Bradley argues that the historical context of the development of human rights treaties during the late 1940s and the early 1950s itself does not provide a complete explanation for the United States' complicated relationship with international human rights

treaties. While the historical context of race relations and racial segregation and discrimination in the South may explain the United States' previous resistance to taking part in the developing human rights regime, it does not account for its persisting reluctance even after the end of racial segregation [at least formally] or after the end of the Cold War.⁹⁵ Bradley posits that the more enduring aspect of why the United States has had a reserved and complicated relationship with human rights treaties is due to five features of the U.S. constitutional system: "the role of the Senate in treaty-making, the federal structure of the U.S. government, the stability of the U.S. constitutional system, the strength and independence of the U.S. judiciary, and the powerful nature of the modern U.S. presidency."⁹⁶

In my previous discussion of RUDs, I discussed the U.S. use of a non-self-executing declaration for international treaty ratification and concluded that, in the case of the Belém do Pará Convention, ratification with extensive RUDs is not a viable option for the United States due to the ramifications of being perceived in the international community as pretending to assume international obligations. As the United States never pursued ratification of the Belém do Pará Convention, I now also consider the limitations imposed by the constitutional system and federalism on the feasibility of the United States to ratify it. I discuss the U.S. ratification process of international treaties, particularly the Article II senatorial supermajority requirement, and the barriers for ratifying human rights treaties specifically.

⁹⁵ Bradley, "The United States and Human Rights Treaties: Race Relations, the Cold War, and Constitutionalism," 322.

⁹⁶ Bradley, 327.

The U.S. Ratification Process of International Treaties & Bricker Amendment Legacy

In terms of the U.S. ratifying international treaties, Article II of the U.S. Constitution requires that a two-thirds supermajority of the Senate approves the treaty.⁹⁷ Once the Senate approves the treaty and the President ratifies it, then the United States is bound internationally by the treaty.⁹⁸ In addition to this, “If the treaty is ‘self-executing,’ it also becomes part of domestic federal law, superseding both prior inconsistent federal law (treaties and statutes) and prior inconsistent state law.”⁹⁹ The supermajority requirement was adopted in part to protect domestic interests in the treaty-making process, especially given that “self-executing” international treaties supersede prior federal and state laws. Effectively, a minority of senators who are concerned about protecting U.S. sovereignty may have the ability to block treaties supported by the majority due to the supermajority senatorial consent requirement.¹⁰⁰

Many of the modern international treaties that have been ratified by the U.S. have been through executive agreements rather than the President obtaining a supermajority consent from the Senate. The constitutional treaty-making process with the supermajority requirement was designed for bilateral agreements between nations, whereas modern international treaties serve as multilateral instruments to regulate relations between nations and their citizens and are open to ratification by all nations within a multilateral institution.¹⁰¹ Executive agreements can involve unilateral executive action (an instance of “sole executive agreement”) or a majority approval

⁹⁷ Curtis A. Bradley and Jack L. Goldsmith, “Treaties, Human Rights, and Conditional Consent,” *University of Pennsylvania Law Review* 149, no. 2 (2001 2000): 399–400; Bradley, “The United States and Human Rights Treaties: Race Relations, the Cold War, and Constitutionalism,” 327.

⁹⁸ Bradley and Goldsmith, “Treaties, Human Rights, and Conditional Consent,” 399–400.

⁹⁹ Bradley and Goldsmith, 399–400.

¹⁰⁰ Bradley, “The United States and Human Rights Treaties: Race Relations, the Cold War, and Constitutionalism,” 327.

¹⁰¹ Bradley and Goldsmith, “Treaties, Human Rights, and Conditional Consent,” 400.

from the full Congress (a “congressional-executive agreement”), and a vast majority of international agreements in the past have been concluded via congressional-executive agreements, such as the GATT and NAFTA trade agreements.¹⁰²

However, this has not been the case for the sparing instances when the United States has ratified international human rights treaties. The United States has exclusively used the Article II Senate supermajority process for concluding international human rights treaties.¹⁰³ Why would the United States revert to an outdated supermajority senatorial consent requirement in the case of human rights when it otherwise has utilized executive and congressional-executive agreements? The Senate has deferred to Article II of the Constitution in matters of human rights treaties to protect its institutional prerogatives to defer these matters to the jurisdiction of the state governments by making sure a senatorial supermajority consent is reached before ratification.

Developing an international human rights regime was from the outset intensely controversial in the U.S., so much so that there were numerous proposals to the Senate throughout the 1950s to amend the U.S. Constitution to limit the government’s treaty power in order to defer matters of human rights to the state legislatures. These proposals are collectively referred to as the “Bricker Amendment,” as their chief sponsor was Republican Senator John Bricker of Ohio, and they were supported by the American Bar Association.¹⁰⁴ The Bricker Amendment’s opposition to international treaties reflected both substantive concerns about human rights being within a nation’s domestic jurisdiction and institutional concerns regarding the distribution of power

¹⁰² Bradley, “The United States and Human Rights Treaties: Race Relations, the Cold War, and Constitutionalism,” 327–28.

¹⁰³ Bradley, 328.

¹⁰⁴ Bradley, 324–25.

between the U.S. federal government and those of the states, as the governance of human rights is reserved to the states through the tenth amendment to the Constitution.¹⁰⁵

In general, the overarching opposition to international treaties was derived from a concern that the federal government's treaty-making power would encroach upon states' rights, and this is most clearly demonstrated in Section 2 of the Bricker Amendment, which proposed that "No treaty shall authorize or permit any foreign power or any international organization to supervise, control, or adjudicate rights of citizens of the United States within the United States enumerated in this constitution or any other matter essentially within the domestic jurisdiction of the United States."¹⁰⁶ One of the major concerns of Senator Bricker and his supporters was also the increased use of executive agreements for international agreements, and Section 4 of the Bricker Amendment articulated a fear for the abrogation of rights by this international agreement process which often bypassed Congress, proposing that limitations be imposed on these treaties.¹⁰⁷

While none of the Bricker Amendment proposals were officially adopted, one did end up within one vote of the two-thirds support requirement to pass in the Senate.¹⁰⁸ Furthermore, the legacy of this opposition to the government's ability to sign on to international treaties seems to persist, as the Senate defers exclusively to the Article II senatorial supermajority requirement for the ratification of international human rights treaties. Modern human rights treaties also challenge the U.S. constitutional system in substance, as some human rights treaties are sometimes in conflict with constitutionally guaranteed rights, and in scope, given the human

¹⁰⁵ Kaufman and Whiteman, "Opposition to Human Rights Treaties in the United States Senate," 313.

¹⁰⁶ Kaufman and Whiteman, 315.

¹⁰⁷ Natalie Hevener Kaufman and David Whiteman, "Opposition to Human Rights Treaties in the United States Senate: The Legacy of the Bricker Amendment," *Human Rights Quarterly* 10, no. 3 (1988): 317.

¹⁰⁸ Bradley, 325.

rights treaties are often open-ended in interpretation and if they are self-executing federal law “they would generate significant litigation and uncertainty regarding the application and validity of numerous domestic laws.”¹⁰⁹ Since human rights treaties touch so many aspects of domestic civil, political, and cultural life, these treaties carry a high political salience that makes the Senate more likely to mobilize to protect institutional prerogatives, such as delegation of matters to the state governments.¹¹⁰ This seems to be one of the main reasons that the United States has deferred to the Senate supermajority rule in cases of ratifying international human rights treaties, as it is not politically feasible to shift to congressional-executive or the executive agreement process for concluding their treaties and doing so would raise constitutional issues.¹¹¹

Due to the concerns of international treaties superseding the Constitution’s authority, the Supreme Court has ruled that the senatorial supermajority consent process for ratifying international treaties is an appropriate process for concluding matters beyond the Constitution’s authority, but not those that conflict with it. The Supreme Court case *Missouri v. Holland* held that treaties concluded through the Article II process of supermajority Senate consent “may regulate domestic matters that are otherwise beyond the scope of Congress’s authority.”¹¹² The strongest argument for this holding was that the Article II supermajority senatorial consent process provides enough protection for federalism; this argument does not apply to congressional-executive agreements, as human rights treaties most likely have provisions that exceed the broad domestic authority of Congress, “such as provisions relating to local aspects of

¹⁰⁹ Bradley and Goldsmith, “Treaties, Human Rights, and Conditional Consent,” 400.

¹¹⁰ Bradley, “The United States and Human Rights Treaties: Race Relations, the Cold War, and Constitutionalism,” 328.

¹¹¹ Bradley, 328–29.

¹¹² Bradley, 328–29.

criminal law and procedure.”¹¹³ Additionally, there are constitutional limitations on the United States’ ratification of international human rights treaties, such that “none of the three branches—the Executive, the Congress, or the courts—can give effect to a treaty provision that is inconsistent with the Constitution.”¹¹⁴

In the case of CEDAW, the main concern with ratification seems to be governmental interference in private conduct. As will also be discussed in the following section, the U.S. government’s response to Jessica Lenahan’s petition to the IACHR mentions this concern. In this response, the United States notes that it has not ratified CEDAW due to it “contain[ing] provisions which do impose obligations upon State Parties, in the specific context of preventing discrimination, to prevent discrimination by any person, organization, or group/enterprise” which “could require the United States to prohibit purely private conduct.”¹¹⁵ This is likely also the case for the Belém do Pará Convention. Recall that Article 2 of the Belém do Pará Convention defines violence against women as physical, sexual, or psychological violence that occurs within interpersonal relationships, “in the community and is perpetrated by any person”, and “that is perpetrated or condoned by the state or its agents regardless of where it occurs.”¹¹⁶ As the Belém do Pará Convention, similar to CEDAW, could require the United States to prohibit private conduct, this conflict with the U.S. Constitution is one probable cause for the U.S. avoiding its ratification.

¹¹³ Bradley, 328–29.

¹¹⁴ Louis Henkin, “U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker,” *The American Journal of International Law* 89, no. 2 (1995): 342, <https://doi.org/10.2307/2204206>.

¹¹⁵ OAS, IACHR, *Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding Jessica Gonzales Petition # P-1490-05*, September 25, 2006, 27, <https://www.aclu.org/cases/jessica-gonzales-v-usa?document=jessica-gonzales-v-usa-government-response>.

¹¹⁶ “Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (‘Convention of Belem Do Para’),” 1535.

Since the Belém do Pará Convention has not even passed the initial concurrent resolution introducing it to the Senate for consideration, in the next section I examine the argument of U.S. exceptionalism as the most likely rationale for why the United States has yet to ratify this convention. Given that the U.S. Constitution and federalism impose barriers on the ratification of international human rights treaties which interfere with constitutional rights and the jurisdiction of states, both of which apply due to the provisions of the Belém do Pará Convention, the United States seems to be restricted from easily ratifying this treaty. On the other hand, as I explored in the first section, it is unable to ratify this convention with significant RUDs as it usually does because it would cast the United States as rejecting higher international standards. I posit that due to the limitations of the U.S. constitutional system and federalism and because of the restriction on reservations given the importance of this treaty, the United States takes on an attitude of exceptionalism to justify that it is still upholding the provisions of the Belém do Pará Convention without having ratified it.

iii. U.S. Exceptionalism & Domestic Laws

An extension of the substantive argument in opposition to the U.S. ratifying international treaties is the argument of U.S. exceptionalism, that U.S. domestic law adequately meets the standards of the international treaty already. What is interesting to consider is that the United States has not even ratified international treaties for women's rights with extensive RUDs, as it has in other instances it has ratified human rights treaties. As mentioned, human rights treaties with extensive RUDs act only as a charade—with extensive RUDs, human rights treaties so not change U.S. conduct, and ratification becomes “a mere charade for external consumption, with

no impact on these or any other human rights problems in the United States.¹¹⁷ Since the United States has not ratified the Belém do Pará Convention even with extensive RUDs, it seems the United States is committed to a different charade in which U.S. domestic law and practice is used as an excuse for why even a symbolic ratification is not necessary. I argue that, instead of ratifying the Belém do Pará Convention with extensive RUDs, the United States avoids the controversy of signing on with RUDs and it being a “charade” by instead asserting that existing domestic law, such as the Violence Against Women Act, is already consistent with the provisions of international human rights treaties to prove their compliance without ratification, a version of the U.S. exceptionalism argument.

Though the implications of *Jessica Lenahan v. United States* on domestic violence in the United States have been previously analyzed, the U.S. government’s response to this IACHR case has not been discussed in relation to the U.S. reluctance to ratify the Belém do Pará Convention. It has been argued that because of the few occasions when the U.S. government has ratified a human rights treaty with RUDs, and since this method of ratification is designed to preclude any domestic effect that the international treaty may have by its self-executing nature, that the United States government is afraid that international standards might constrain it. However, since it is difficult to prove fear in this case, a more plausible argument is that the United States does not meaningfully ratify international human rights treaties because of U.S. government takes on an arrogant exceptionalism, convinced that its domestic rights protections demonstrate that it does not need monitoring or imposed laws from the international community.

¹¹⁷ Kenneth Roth, “The Charade of US Ratification of International Human Rights Treaties Symposium: AEI Conference Trends in Global Governance: Do They Threaten American Sovereignty,” *Chicago Journal of International Law* 1, no. 2 (2000): 352.

Article 13 of the Belém do Pará Convention states that “No part of this Convention shall be understood to restrict or limit the domestic law of any State Party that affords equal or greater protection and guarantees of the rights of women and appropriate safeguards to prevent and eradicate violence against women.”¹¹⁸ In its rejection of IACHR judgment in the petition against it by Jessica Lenahan, the United States takes up this argument that it affords equal or greater protection and guarantees the prevention and eradication of violence against women. In response to Jessica Lenahan’s petition to the IACHR, which in part claimed that the United States does not adequately protect individuals from domestic violence, the United States government replied that “The comprehensive programs at the federal, state and local levels, and the billions of dollars devoted to implement these programs, demonstrate that Petitioner’s allegations that the United States fails to prioritize crimes of domestic violence, that U.S. law enforcement agencies lack the tools to effectively address and prosecute these crimes, and that victims of domestic violence lack legal avenues to ensure protection of their rights are unfounded.”¹¹⁹ From this statement, it is evident that the United States takes on an exceptionalist attitude when it comes to women’s rights and protection from violence, suggesting that a reason for it not having ratified the Belém do Pará Convention is because the U.S. government believes it does not need to improve its conduct and already has adequate legislation.

In particular, the U.S. government cites the Violence Against Women Act of 1994 (VAWA) and its successors, the Violence Against Women Act of 2000 and the Violence Against Women and Department of Justice Reauthorization Act of 2005, as evidence that the United

¹¹⁸ “Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (‘Convention of Belem Do Para’),” 1537.

¹¹⁹ OAS, IACHR, *Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding Jessica Gonzales Petition # P-1490-05*, September 25, 2006, 13-14, <https://www.aclu.org/cases/jessica-gonzales-v-usa?document=jessica-gonzales-v-usa-government-response>.

States recognizes “the seriousness of domestic violence and the importance of a nationwide response.”¹²⁰ The response refers to the VAWA as a “comprehensive legislative package, which addressed numerous facets of the problem of violence against women.”¹²¹ Note the language “comprehensive” and “addressed”, which implies that the U.S. government considers the problem of violence against women already adequately dealt with. The U.S. government also goes on to victim-blame Jessica Lenahan, saying that “Ms. Gonzales’ failure to pursue alternative remedies does not mean that such remedies do not exist for individuals in the United States who have legitimate claims.”¹²²

The United States, in its response, stated that it “believed the facts alleged by Ms. Gonzales in her petition are not supported by the evidence of the information available to the Castle Rock Police Department at the time the events arose, and that the petition itself is inadmissible for failure to state a breach of duty by the United States under the American Declaration of the Rights and Duties of Man (“American Declaration”).”¹²³ Furthermore, the response claims that “No provision of the American Declaration imposes a duty on the United States to have successfully prevented the murders of the Gonzales daughters.”¹²⁴ Here, it is evident that because the United States has not ratified the ACHR or the Belém do Pará Convention it is not able to be formally judged by the IACHR under international law.

The U.S. government goes on in its response to claim that “It is indisputable that domestic violence is a significant problem in the United States, as it is elsewhere in the world. However,

¹²⁰ Ibid, 15.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid, 3.

¹²⁴ Ibid, 25.

the available data does not support Petitioner's allegations that the United States consistently and systemically treats crimes of domestic violence as less serious crimes than other crimes."¹²⁵ The U.S. government goes on to cite numerous statistics of how the rate of family violence fell between 1993 and 2002 and how many defendants were served prison sentences, asserting that this "demonstrates that the United States, at the federal, state and local levels, is establishing as high priorities the investigation and prosecution of these crimes and that severe penalties are imposed as a result of such efforts."¹²⁶ The United States does acknowledge in this statement that domestic violence is a significant problem within its borders, and the U.S. government lists its reduction of family violence statistics and prosecution of crimes as evidence that it treats the issue seriously. While this may be the case, the U.S. government uses these statistics as a shield against its failure in Jessica Lenahan's case, refusing to acknowledge that there are instances when the United States does not adequately protect women. Instead of being apologetic and promising to better itself, the United States outright denies Jessica Lenahan's petition in defense of its reputation.

Additionally, in its response to the IACHR petition made by Jessica Lenahan, the U.S. government responded that in direct response to the murder of Ms. Lenahan's daughters, "Congress added a new statutory purpose area to the STOP program in VAWA 2005" that would allow states "to use STOP funds to place special victim assistants, known as 'Jessica Gonzales Victim Assistants', in local law enforcement agencies to serve as liaisons between victims of domestic violence and the agencies, in order to improve the enforcement of protection orders."¹²⁷ Though the United States government argues that there was an adequate response to Jessica

¹²⁵ Ibid, 12.

¹²⁶ Ibid, 12.

¹²⁷ Ibid, 17.

Lenahan's case, they contradict this statement by asserting that they implemented more law enforcement provisions in her honor without admitting that the police response was inadequate. In its response, the United States also reaffirms that cases of domestic violence are not to be considered a federal responsibility and "most laws that protect persons in the United States from domestic violence and provide civil remedies against perpetrators and other responsible parties are state and local laws and ordinances."¹²⁸

Furthermore, the United States reiterates that it has not ratified and thus has not assumed the legal obligations of the Belém do Pará Convention, acknowledging that within the hemisphere some states have ratified this convention and in doing so "have chosen to assume an obligation to apply the due diligence standard in their efforts to prevent, punish, and eradicate violence against women."¹²⁹ At the same time the United States also claims that it has, compared to other governments in the hemisphere and abroad, exceeded this due diligence standard:

"Standing on their own, U.S. legislation and the considerable resources devoted to investigating and prosecuting acts of domestic violence, including through the training of police officers on enforcement of protection orders demonstrate the unequivocal commitment of the United States in this area. However, when compared with efforts in this area by governments worldwide, or even in the hemisphere, there can be no question that the United States has not only satisfied, but exceeded even the broadest interpretations of the standard of 'due diligence.'"¹³⁰

Not only does the U.S. government maintain that it is not legally obligated to apply due diligence in cases of violence against women, it also claims to exceed the interpretations of due diligence globally and regionally. This demonstrates the United States's false exceptionalism in protecting violence against women. Without codifying international law for due diligence as well as

¹²⁸ Ibid, 20.

¹²⁹ Ibid, 34-35.

¹³⁰ Ibid, 39.

actively rejecting due diligence or responsibility in its response to Jessica Lenahan's IACHR petition, the United States still arrogantly claims that it practices due diligence better than any other government.

iv. Conclusion

The United States is one of the only countries in the OAS to not have ratified the Belém do Pará Convention, the first legally binding convention for the prevention of violence against women. Despite its widespread ratification and the United States ostensibly being committed to promoting human rights, the United States fails to participate in the Inter-American human rights system more generally. Even though the United States demonstrates a pattern of reluctance to ratify regional human rights treaties, it is unusual that consideration for the ratification of the Belém do Pará Convention never proceeded past the initial concurrent resolution submission.

I argue that while U.S. unilateralism in international institutions and the federalist system of the United States account for some of the opposition to the ratification of international human rights conventions in general, it is the United States's exceptionalist attitude which ultimately permeates its posture towards the issue of violence against women and international law for its prevention. While the United States restricts its ratification of human rights treaties which supersede its domestic law, it has a history of ratifying international treaties with RUDs to circumvent this concern. However, with regards to human rights treaties for women's rights, such as CEDAW, the United States has forgone utilizing RUDs and has dismissed pursuing

ratification of the treaty at all. I posit that, in the case of the Belém do Pará Convention, the United States does not want to be perceived by the international community as ratifying the treaty without taking on its obligations, which is why it has not pursued its ratification even with reservations attached.

The senatorial supermajority consent process of ratifying international treaties also imposes a barrier to U.S. ratification. However, because there is no documentation to suggest that the United States has even considered ratifying the Belém do Pará Convention, I explain its behavior by illuminating the attitude of U.S. exceptionalism that surrounds the issue of violence against women. In analyzing the U.S. government's response to Jessica Lenahan's petition to the IACHR, it is evident that the United States perceives its domestic law for preventing violence against women as being superior to that of other nations. This, I conclude, is ultimately what has caused the U.S. failure to ratify the Belém do Pará Convention.

What remains to be discussed is how the United States might react if the subject of ratifying the Belém do Pará Convention is again breached. Perhaps the most striking take-away from its failure to ratify this convention is how the United States upholds an attitude of exceptionalism for the prevention of violence against women domestically, refusing to have its performance critiqued by the international community. Should this attitude persist and should the United States continue to have impunity in the Inter-American human rights system, there are bound to be dire consequences for the U.S. women who are unable to seek justice for the violence committed against them.

Bibliography

- Andrew Moravcsik. "The Paradox of U.S. Human Rights Policy." In *American Exceptionalism and Human Rights*, edited by Michael Ignatieff, 134–80. Princeton University Press, 2009. <https://doi.org/10.2307/j.ctt7skx6>.
- "Approved Program Budget 2022 - OAS." Accessed March 10, 2023. https://www.oas.org/budget/approved_2022.html.
- Bradley, Curtis A. "The United States and Human Rights Treaties: Race Relations, the Cold War, and Constitutionalism." *Chinese Journal of International Law* 9, no. 2 (2010): 321–44.
- Bradley, Curtis A., and Jack L. Goldsmith. "Treaties, Human Rights, and Conditional Consent." *University of Pennsylvania Law Review* 149, no. 2 (2001 2000): 399–468.
- Condé, Victor H., and Charles F. Gelsinger. "Chapter 7: Organization of American States: The U.S. & the Inter-American Human Rights System." In *Human Rights and the United States*, Vol. Third edition. Human Rights and the United States. Armonk, NY: Grey House Publishing, 2017. <https://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=1687726&site=bsi-live&scope=site>.
- Council on Foreign Relations. "*Backgrounder: The Organization of American States.*" Accessed February 10, 2023. <https://www.cfr.org/backgrounder/organization-american-states>.

Dauer, Sheila. "Human Rights Responses to Violence against Women." In *International Human Rights of Women*, edited by Niamh Reilly, 1–17. International Human Rights. Singapore: Springer, 2019. https://doi.org/10.1007/978-981-10-4550-9_16-1.

ECLAC. "ECLAC: At Least 4,473 Women Were Victims of Femicide in Latin America and the Caribbean in 2021." Press release. November 24, 2022.

<https://www.cepal.org/en/pressreleases/eclac-least-4473-women-were-victims-femicide-latin-america-and-caribbean-2021#:~:text=About%20ECLAC-,ECLAC%3A%20At%20Least%204%2C473%20Women%20Were%20Victims%20of%20Femicide%20in,and%20the%20Caribbean%20in%202021>.

Hathaway, Oona A. "Why Do Countries Commit to Human Rights Treaties?" *Journal of Conflict Resolution* 51, no. 4 (August 1, 2007): 588–621.

<https://doi.org/10.1177/0022002707303046>.

Hemenway, David, Tokomo Shinoda-Tagawa, and Matthew Miller. "Firearm availability and female homicide victimization rates among 25 populous high-income countries." *Journal of the American Medical Women's Association* 57, no. 2 (2002).

Henkin, Louis. "U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker." *The American Journal of International Law* 89, no. 2 (1995): 341–50.

<https://doi.org/10.2307/2204206>.

Inter-American Commission on Human and Inter-American Court of Human Right, eds. "Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women 'Convention of Belem Do Para.'" In *Inter-American Yearbook on*

Human Rights / Anuario Interamericano de Derechos Humanos, Volume 12 A (1996),
194–215. Brill | Nijhoff, 1998. https://doi.org/10.1163/9789004470767_009.

“Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (‘Convention of Belem Do Para’).” *International Legal Materials* 33, no. 6 (1994): 1534–39.

Jonsdottir, Vera. “Is the US Still Too Patriarchal to Talk About Women? The Silent Epidemic of Femicide in America.” *Chicago Policy Review*, July 7, 2022.
<https://chicagopolicyreview.org/2022/07/07/is-the-us-still-too-patriarchal-to-talk-about-women-the-silent-epidemic-of-femicide-in-america/>.

Kaufman, Natalie Hevener, and David Whiteman. “Opposition to Human Rights Treaties in the United States Senate: The Legacy of the Bricker Amendment.” *Human Rights Quarterly* 10, no. 3 (1988): 309–38.

Koh, Harold Hongju. “Why America Should Ratify the Women’s Rights Treaty (CEDAW) International Crimes against Women.” *Case Western Reserve Journal of International Law* 34, no. 3 (2002): 263–76.

Leemis, Ruth W., Norah Friar, Srijana Khatiwada, May S. Chen, Marcie-jo Kresnow, Sharon G. Smith, Sharon Caslin, and Kathleen C. Basile. “The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Intimate Partner Violence.” (2022).

McQuigg, Ronagh JA. “Domestic violence and the Inter-American Commission on Human Rights: Jessica Lenahan (Gonzales) v United States.” *Human Rights Law Review* 12, no. 1 (2012): 122-134.

Meyer, Mary K. "Negotiating International Norms: The Inter-American Commission of Women and the Convention on Violence Against Women." *Aggressive Behavior* 24, no. 2 (1998): 135–46. [https://doi.org/10.1002/\(SICI\)1098-2337\(1998\)24:2<135::AID-AB4>3.0.CO;2-L](https://doi.org/10.1002/(SICI)1098-2337(1998)24:2<135::AID-AB4>3.0.CO;2-L).

Neumayer, Eric. "Qualified ratification: Explaining reservations to international human rights treaties." *The Journal of Legal Studies* 36, no. 2 (2007): 397-429.

"OAS : CIM : Brief History." Accessed March 29, 2023. <https://oea.org/en/cim/history.asp>.

OAS, IACHR. *Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding Jessica Gonzales Petition # P-1490-05*. September 25, 2006. <https://www.aclu.org/cases/jessica-gonzales-v-usa?document=jessica-gonzales-v-usa-government-response>.

"OAS :: Member States." Accessed March 30, 2023. https://www.oas.org/en/member_states/default.asp.

"OAS :: SLA :: Department of International Law (DIL) :: Inter-American ..." Accessed March 30, 2023. https://www.oas.org/en/sla/dil/inter_american_treaties_a-41_charter_oas.asp.

O'Connell, Ciara. "Women's Rights and the Inter-American System." In *International Human Rights of Women*, edited by Niamh Reilly, 1–16. International Human Rights. Singapore: Springer, 2018. https://doi.org/10.1007/978-981-10-4550-9_10-1.

Roth, Kenneth. "The Charade of US Ratification of International Human Rights Treaties Symposium: AEI Conference Trends in Global Governance: Do They Threaten American Sovereignty." *Chicago Journal of International Law* 1, no. 2 (2000): 347–54.

United Nations. "OHCHR | Committee on the Elimination of Discrimination against Women."

OHCHR. 2022. <https://www.ohchr.org/en/treaty-bodies/cedaw>.

UN OHCHR (n.d.-b) Violence against women. United Nations Office of the High Commissioner for Human Rights. <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/VAW.aspx>

U.S. Congress. Senate. Committee on Foreign Relations. *Convention on the Elimination of All Forms of Discrimination Against Women*. 107th Cong., 2d sess., 2002. S. Exec. Rep. 107-9. https://www.foreign.senate.gov/imo/media/doc/executive_report_107-09.pdf.

U.S. Congress. Senate. House - International Relations. *H. Con. Res. 182 - Expressing the sense of the Congress regarding the need for the President to seek the Senate's advice and consent for ratification of the 1994 Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women*. 104th Cong., 2d sess., 1996, H. Con. Res. 182. <https://www.congress.gov/bill/104th-congress/house-concurrent-resolution/182/text>.

Violence Policy Center. *When Men Murder Women: An Analysis of 2018 Homicide Data*. September 2020. <https://vpc.org/studies/wmmw2020.pdf>.