Universiteit Leiden

Do I have to?

On the Expression of Degrees of Obligation in the Official English Version and the Dutch Translation of CEDAW

Master Thesis

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Abstract

This thesis researches the nuances in the wording of the official English version and the Dutch translation of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). CEDAW imposes obligations on the States Parties, but it is unclear how these obligations are legally enforced. This thesis first investigates the enforcement mechanisms of CEDAW and secondly it analyzes the differences between how the English version and the Dutch translation express obligation, both lexically and grammatically. This research is based on the following thesis question: *How strong is the expression of degrees of obligation within CEDAW's official English version and its Dutch translation, and has this strength changed in the process of translation?* The findings led to a dichotomy between legislative obligations and the linguistic obligations, where the former is less strong than proposed and the latter is equal in both version.

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Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
ECOSOC	Economic and Social Council
GA	General Assembly
ICJ	International Court of Justice
SC	Security Council
VCLT	Vienna Convention on the Law of Treaties
UN	United Nations

Introduction

The need for a convention that would protect women all over the world became such a pressing matter in the 1960s that the United Nations (UN) responded by creating and bringing into force the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Among the variety of human rights treaties, CEDAW has taken up the important role of bringing the need for women under the attention of human rights. The treaty was adopted 35 years ago and is currently ratified by 173 Member States. It is said to be strong in its enforcement and is supposed to provide strong mechanisms to provide safety and security for all women. This thesis will try to determine the actual strength of the treaty, both in the way that it was drafted as well as in the linguistic elements that are used to enforce obligation on the States Parties. This brings us in unchartered territory as there has been little to none research on the different ways that obligation can be expressed in treaties and the degree that grammatical units express the obligation. Nor has there been research that has investigated the impact of the difference of expressed degrees of obligation between official languages of the UN and translations to unofficial languages.

Many researchers and academics have written about international law in general and the role of multilateral treaties, but so far there has been little research on the relation between the degrees of obligation in these treaties and its expression in language. Even less has been written on the relation between an official treaty and its unofficial translation and how this translation could influence the expression of obligation. This MA thesis is one of the first to explore this subject and it does so to add to the still developing academic area of legal translation. In order to do this, the thesis attempts to answer the following thesis question: *How strong is the expression of degrees of obligation within CEDAW's official English version and its Dutch translation, and has this strength changed in the process of translation?*

The methods that are used to research these degrees of obligation are: at first to analyze the position of the treaty within international law and more specifically in contract law. Then we analyze the linguistic aspects of the articles with a focus on nouns, verbs etc. that supposedly indicate obligation and in detail the modal verbs that are used in legal drafting to signify an obligation.

The overall structure of this MA thesis takes form in seven chapters, excluding this introductory chapter. Each of these chapters is structured like a funnel, working from a broad basis to a specific conclusion or summary. Chapter one introduces the main elements of

international legislation, such as the United Nations and Sovereign States. It provides an overview of the role of international law and the law of treaties. Chapter two analyzes the history and content of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Moreover, it examines the status of the official languages and the validity of translations. The third chapter goes more in-depth to describe the reservations that are entered on the treaty and the enforcement mechanisms that are at its disposal to sanction States Parties in case of violation. The fourth chapter explores the relation between CEDAW and a common contract, in order to see whether CEDAW has the same binding force as contracts. The linguistic analysis begins in chapter five with the establishment of the expressions of obligation in the English and Dutch language. Chapter six builds on this topic and provides an extensive analysis on the use of modality in both the original English version and the Dutch translation of CEDAW. Finally, the conclusion gives a brief summary and critique of the findings while identifying areas for future research.

The expected outcome of this research is that we will discover that the CEDAW does not carry a strong obligative message. In the analysis of the linguistic side of the treaty, the researcher expects to find that the language of CEDAW in de Dutch translation is equally obligative or slightly less obligative.

1. International Law

This chapter elaborates on several general concepts which are discussed mostly in the preamble of the CEDAW, such as the United Nations, specialized agencies, the concept of States Parties (SP), and the role of international law. A full understanding of these terms used in the convention enables us, later in this thesis, to develop a clear understanding of the content of CEDAW and eventually work towards an answer to the thesis question. This chapter also addresses the distinction between the use of the terms *convention* and *treaty*, and discusses the process of the creation of a treaty before it comes into force which gives us a comprehensive idea of what makes a treaty a treaty.

1.1 The United Nations

Established directly after the Second World War in 1945, the United Nations (UN) is the successor to the League of Nations. The main purpose of the UN is maintaining international peace and security, but the organization also strives for friendly relations between nations, to improve the lives of poor people and to play a key role in helping nations achieve their goals. The UN and its specialized agencies do humanitarian work as well, which contains but is not limited to, disaster relief, counter terrorism, gender equality, and international health (UN 1, 2014).

All rules and regulations of the UN are written up in the Charter of the United Nations which was signed by all Member States in 1945. The organization came into force after the Republic of China, France, Soviet Union, the United Kingdom and the United States ratified the charter. The charter is a constituent treaty and binds all Member States by its articles. As a foundational treaty, the Charter prevails over all other treaty obligations as is mentioned in in article 103. Currently, 193 states are a member of the UN, and with a total of 195 countries in the world this means that the UN is very well represented. The UN has its international headquarters in the city of New York and its European headquarters are based in Geneva, but all buildings and land are part of international territory. Since 1946 the UN has had its own emblem which is described as:

> a map of the world representing an azimuthal equidistant projection centered on the North Pole, inscribed in a wreath consisting of crossed conventionalized branches of the olive tree, in gold on a field of smoke-blue with all water areas in white. The

> projection of the map extends to 60 degrees south latitude, and includes five concentric circles (UN Dag Hammarskjöld Library, 1997-2012)

The UN has a complex organizational structure because it is not a homogenous organization. Neither is it an independent organization, because its actions need to be accepted and funded by the 193 Member States. This can cause matters of especially political nature to become a slow process, but also a balancing act between global importance and national sovereignty. In order to give all the Member States a voice and to be able to carry out all its tasks, the UN has six main bodies of which we will discuss the three most relevant to this thesis: The General Assembly, the Security Council, and the International Court of Justice.

The General Assembly (GA) is the only one of the six main bodies that has a full representation of all Member States. In the general meetings of the GA, which are held between September and December of every year, all Member States have the right to vote. In these meetings, the GA discusses all matters in the scope of the UN's activities. Its primary role is to make recommendations and deliberate on issues, but the body has no power to enforce its proposal onto the states. The only time the GA has this power is when its resolution addresses the internal organization. Some secondary tasks that the body has are: electing the members of several councils and the judges of the International Courts of Justice, supervising the activities of the UN and acting as a main contact point for the other bodies. Most of the work is done in six separate working groups such as 'Disarmament and International Security' and 'Economic and Financial'. For agreement on a decision the GA needs a majority of the votes, however, on more pressing matters such as the entry of a new state, a majority of two-thirds is necessary (Kooijmans, 2002: 189-190; "General Assembly", 2014).

The Security Council (SC) is one of the bodies that has the power to force states into action. Its primary responsibility is keeping the international peace and ensuring security. The body is only small: it has fifteen members of which five are permanent (United Kingdom, United States, Russia, China, and France). The size of the council enables them to react effectively to pressing issues. All UN Member States can bring a dispute in front of the SC and at first they will try to find a peaceful resolution, but if there is an imminent threat the SC can call upon the Member States to take action. All SC members have one vote, but the five permanent members have the right to veto. However, this has not been used in a long time, as

it has paralyzed the council on several occasions in the past (Kooijmans, 2002: 190-199; "Security Council", 2014; Garner, 2009: 1478).

Finally, the International Court of Justice (ICJ) is the most important juridical body of the UN. The autonomous body is seated in The Hague and has fifteen judges who are appointed by the GA and de SC. Each judge is a representative from a different state; no two are from the same state. The main function of the court is to pass judgment on disputes that were brought forward by the states. There are three ways in which these disputes can be solved: the first one is a settlement, the second a discontinuation or withdrawal from the court's proceedings by a state, and the third a conclusion by verdict of the court. The ICJ passes its verdicts in accordance with international law as laid down in treaties and other instruments. The court's verdicts are final and there is no appeal possible (Kooijmans, 2002: 137-138; "International Court of Justice", 2014; Garner, 2009: 891)). The following paragraph will further highlight the most important part of the UN: its Member States and their steps towards membership.

1.1.1 States

An important part of every treaty is the ratification made by the UN Member States, but these Member States are not only important for bringing a treaty into force, they are the ones who give the UN international jurisdiction. It is thus interesting to know what process any state, otherwise called nation or country, has to go through before they are a Member State of the UN.

All Member States are sovereign states that have applied for a membership of the UN. This membership is, according to the UN, 'open to all peace-loving States that accept the obligations contained in the United Nations Charter and, in the judgment of the Organization, are able to carry out these obligations' (UN 2, 2014). However, the only states that can become a member are sovereign states. These are states that possess independent existence and whose government is not subjected to a larger whole (Garner, 2009: 1523). Sovereign states are the only states that have an absolute and original international legal personality. There are three conditions that need to be met in order for a state to gain sovereignty; first the state needs to have a territory, secondly there has to be a population on this territory, and thirdly there needs to be a government who can effectively make decisions over the population of the territory (Kooijmans, 2002: 19-20).

Membership of the UN is granted by the GA who has received a recommendation of the SC. A sovereign state first has to apply to the Secretary-General in which it accepts all

obligations under the UN Charter. Then the SC will consider its membership, and if nine out of the fifteen members approve its membership and none of the permanent members vote against the application, the SC will recommend the state. This recommendation will be taken on in the GA and here a majority of two-thirds is necessary to admit the new state. If this is the case, the state will enter as a member as of the date that its resolution for admission is adopted. (UN 2, 2014) Even though the UN can allow a membership, the new state needs to be recognized as well. State recognition is an act that can be either withheld or granted by other states or governments. As the UN is neither a state nor a government, it is dependent on the opinion of its current Member States this matter. This recognition of the Member States is important because it allows a new state to join in the workings of international law, which in turn allows its national law system to acknowledge juridical acts of other states. State recognition is not a legal act, but a political one, as there are no specific rules to the recognition (Kooijmans, 2002: 27-29).

1.1.2 The UN System

The UN has a total of thirty organizations that contribute to the central effort of solving global problems that are a challenge to humanity. These organizations together form the UN System. Besides the main bodies, of which some were discussed above, the System consists of autonomous subsidiary organs such as funds, programs, research and training institutes. There are also fifteen specialized agencies which operate as legally independent international organizations of the UN. Some of these agencies already existed before the UN came into force, and were adopted in the process to accommodate the UN's emerging needs. These agencies work with each other and with the main bodies of the UN through the coordination of the Economic and Social Council (ECOSOC). The World Health Organization and the International Monetary Fund (IMF) are examples of these specialized agencies. They have international responsibilities that are related to a wide range of activities concerning economics, culture, education, and health. All the organizations that belong to the UN System have their own governing bodies, secretariats and funds. Even though all these organization have more autonomy than the main bodies, their work is still in coorperation with the Member States because they are also dependent on the funds from these Member States (UN 3, 2009; UN 4, 2009; UN 5, 2009).

1.2 International Law

Garner, in Black's Dictionary (2009), defines international law as 'the legal system governing the relationship between nations' (892). Jessup (1949) adds that 'international law […] must be defined as law applicable to states and their mutual relations and to individuals in relation with states' (Garner, 2009: 892). One of the UN's main goals is the development of international law, as is stated in the preamble of the Charter of the United Nations they strive: 'to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained' (UN Charter, 2014). The Charter also urges the UN to ensure continuous codification of international law.

In brief, the traditional view of international law is that it is an area of jurisprudence that deals with the conduct of states. Besides the conduct between the states, it also deals with the conduct between states and other international organizations such as the UN (United States Army, 1964: 1, 15). The rules and regulations are created by several sources which are available to international law. The traditional sources are stated in article 38 of the Statute of the ICJ, and divided in primary and secondary sources. The former are treaties, customary international law, and general principles of international law, while the latter are judicial decisions and renowned scholarly legal texts. There are however some additions to these more traditional sources and these are soft law, resolutions of international organizations, *jus cogens*, and unilateral acts (Fitzmaurice & Quast, 2007: 9; Kooijmans, 2002: 11-20) *Jus cogens*, or the peremptory norms, are norms that are accepted by the international society and which are non-derogable. This means that they contain rights that cannot be altered; these include for instance the restrictions on slavery which are included in major treaties (Perlin, 2011: 31). Out of all these sources that are available to create international legislation, this thesis focuses on treaties as the main source of international law.

A more modern take on international law does not view it as a collection of rules, but as a continuously developing network of assumptions, practices, principles and guidelines. Especially the laws governing human rights are not only legal, they are also influenced by ethical principles. If one States Party violates an article of a treaty, this could lead to a breach of other treaties by other States Parties, which could be negative for the international community. This is why international laws are not often enforced by military force, but are mostly adhered to by states through mutual understanding and self-interest. States Parties are also hesitant to violate rules because this could jeopardize the entire international system and therefore lose the sense of security and community ("International Law", 2014).

The relationship between states and individuals was omitted in the traditional view, but it is mentioned in Jessup's definition. European and international law have a principle of direct effect, both horizontal and vertical. This direct effect was first established by the judgment of the European Court in the case of Van Gend en Loos, but is also applicable to international law. The principle signifies that the obligations that are drawn up in treaties are not only for the Member States, but also for individuals. Individuals are thus able to resort to international legislation beside national legislation. When a court gives effect to an international obligation, this means that it assures that this obligation is enforced. When the court gives this effect in an indirect way, it assures that the international obligation is met through the application of national legislation that incorporates this obligation. When the court applies a direct effect, however, it does not enforce it through domesticated laws, but applies the obligation itself. This means that it does not need an intermediate legislative measure, which signifies that the obligation from a treaty is deemed as self-executing. In the end this means that the international obligation becomes usable for the individual. Nevertheless, direct effect does not mean that the international obligation is enforced entirely outside of domestic law, as it also does not mean that international legislation always takes precedence over national legislation (Nollkaemper, 2011: 117-120).

This direct effect is again divided into a vertical and horizontal aspect. The vertical aspect allows individuals to rely directly on obligations that result from treaty articles when they make a claim against their state in a national court. It governs the relation between individuals and the state. A horizontal direct effect is concerned with the relations between individuals; individuals can thus make use of treaties that include individual rights against other individuals in national court. International law is for the larger part limited to the vertical direct effect (Hillier, 1998: 57; Eurofound, 2011; Eurofound 1, 2011; Europa, 2010).

International law is mostly enforceable because it is incorporated into the national legislative systems. One main difference between international and international law is that:

> International law does not have a general, institutionalized legislative (law-making) system; it does not have an administrative and judicial enforcement system; and it does not have a sufficient degree of internal coherence and homogeneity because its subjects, the states in the first place, have diverse historical, cultural, and ideological backgrounds (Balekjan 2012: 357-8 qtd. in Alchini, 2012: 45).

The attitude of states towards international law within the scope of their own national laws is thus essential for the implementation of for instances treaties.

1.3 Law of Treaties

The aforementioned states can only function in international law with binding treaties, which brings us to the law of treaties. From the moment that there were entities that could engage in international relations, there have been treaties. However, it was not until 1969 with the drafting of the Vienna Convention on the Law of Treaties (VCLT) that treaties became governed instruments of international law. A large part of the rules in the VCLT, which came into force in 1980, has been adopted into international law. Some areas of international law are almost entirely regulated by treaties. It is important to know that the drafters of the convention incorporated barely any rules on the consequences for states when they are in breach of an obligation mentioned in an article of a treaty. Any sanctions that need to be enforced with a breach of obligation are left to the responsibility of states. The function of these sanctions is discussed in chapter three.

There are two key principles that form the basis of the law of treaties. The first one is that a treaty is formed on the free consent of states; the second principle however states that the freedom that is enjoyed by states is not boundless. Once states have given consent to be bound to the articles of the treaty, and the treaty has entered into force, the states are expected to keep the treaty under *pacta sunt servada* or good faith. It shows that the articles of the treaty must be performed by the states (Klabbers, 2013: 41-43). The Vienna Convention provides the following definition of a treaty:

> "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation; (VCLT, 1969: 5)

Treaties can be bilateral, multilateral, or even universal when almost all states have ratified them. A traités-contrat is a contractual treaty that is established on a multilateral or universal level, while a traits-lois is a lawmaking treaty that usually contains specific regulations between a small number of states (Kooijmans 2002; Fitzmaurice & Quast, 2007: 11-12). In the VCLT definition it is mentioned that a treaty can exist out of both one and multiple instruments, which can be compared with the way a contract is formed through offer and acceptance. Another important fact mentioned in the definition is that treaties should be

governed by international law, in any other circumstance they are not treaties. This condition sets treaties apart from other non-legally binding agreements.

A special kind of treaties is the series of human rights treaties, a series to which CEDAW belongs to. Human rights treaties have been developed ever since the Universal Declaration of Human Rights came into force in 1948. The international human right treaties together form a body of international human rights and obligate the States Parties to respect and fulfill human rights. Most States Parties have adopted articles from these human rights treaties in their national legislation in order to take positive action to provide basic human rights (OHCHR, 1996-2012). CEDAW is, besides a human rights treaty, a multilateral agreement between States Parties and is binding under international law. The UN, as an international organization, has supervised the creation of this treaty and is also counted as a party in the treaty. Now that we are aware of the law of treaties, the next step is to understand how a treaty is developed. The following paragraph will highlight the most important steps in the forming of a treaty.

1.3.1 Creating a treaty

The process behind making treaties is not standardized nor is it in the hands of a centralized international organization, but there are some universal phases that can be distinguished. This paragraph will only address the development of multilateral treaties, because this process can be applicable to how CEDAW was created. If an international organization such as the UN encounters an issue that requires international action, they will first adopt a declaration that addresses the issue and makes recommendations and perhaps even takes a first step towards formulating a treaty. The second step is to consider whether the proposed instrument will achieve its goals and whether the resources that are used to create it can be justified. The UN will need to regard several issues such as the need that the treaty is to meet, the existing legislation, a time schedule, and the expected costs. Experts, secretariats, and surveys will have to provide answers to these questions, but also anticipate issues that may occur in the process of creating a treaty. Once a decision is made to carry on the process, it has to be kept in mind that the outcome could change during the process of formulating and forming the treaty. Essentially, states are allowed to initiate the creation of a treaty (or any other instrument), but the GA has asked states to do this in moderation. The international legislative system is difficult to coordinate, as it is vastly decentralized, thus if all states wish to initiate a treaty it would become even more difficult to coordinate the processes. By requesting the state to leave the setting up of an instrument for the large part to an international organization, the

UN at least has some overview over the processes. Of course, all states are represented in the UN, so they can initiate any treaty making process through their representatives.

When the UN officially makes the decision to move forward towards making the treaty, the next crucial step is set in movement. The entire process of formulating the multilateral treaty incorporates more preliminary research which is followed by the creation of an initial draft. This first draft spells out most of the content that should end up in the articles of the treaty; the final clauses often do not appear in this stage, and can be created by either parties that did the initial research, by a working group, or by an organization that falls outside of the UN, such as an Non-Governmental Organization (NGO). When the first draft is presented, the long process of negotiation begins. States, governments and the UN will discuss all the terms and the set-up of the text in the treaty, which usually results in a political play. In this stage, the states that are not included in the negotiations are informed on the progress of legislative process and will have the opportunity to also communicate their reservations to the treaty. These reservations are 'unilateral acts by which individual states wish to modify or exclude part of a treaty' (Klabbers, 2013: 48). These reservations give states the opportunity to commit themselves to a treaty, but without having to make drastic national changes or to agree to obligations that they do not wish to agree to. Every negotiation has its own different rules on the acceptance of reservations. The topic of reservations is quite complex, because states can choose either to accept the reservations of other states, to stay silent, to object without consequences for the reserving state, or to make sure that the reserving state does not get what it wants. The process around the reservations concerning CEDAW is further discussed in chapter three. Let us assume that the reservations made by all states are accepted, which brings us to the next step in the process; the treaty reaches its final form and is adopted. This adopting process means that the states agree to the content and are ready to commit themselves to the articles. For the next step all states choose a representative to sign the treaty. This representative is needed because a state is an abstract concept that needs a natural person to perform its legal acts. These representatives, according to article 7 of the Vienna Convention, have the power to bind states to the treaty. Unfortunately, a signature is not enough to bring the treaty into force. States will also need to ratify the treaty, which is usually done by a national legislative procedure. In the Netherlands this in most cases means that the parliament has to give its official approval to the treaty and notify all other states of this approval. The states can also hold a national referendum to ask the citizens their opinion

on whether they should ratify a treaty. The treaty eventually is published in the *Tractatenblad,* which is an official bulletin that contains treaties and other international instruments.

Now that the treaty is in force, it is up to the States Parties to begin interpreting what the treaty actually means. This is usually done through debating, where we can distinguish three roughly outlined options. In first instance the interpretation can be about the objective meaning of the treaty, in the second instance the debate will be on what the drafters had in mind while writing the text, and in the third instance the debate will mainly center on how to reach the goals that the drafters have set. All states take their own approach in order to determine how they will apply the treaty in their national system (UN University, 2014; Klabbers, 2013: 41-66; Kooijmans, 2002: 90-102).

Now that we have a general view of the law of treaties and what processes multilateral treaties have to go through in order to get ratified, it is also important to address another issue. In this thesis, the term *treaty* is used to address both a convention and a treaty in international law. As CEDAW is official named a *convention* the next paragraph explores the terminology of international agreements as discussed in this thesis.

1.3.2 Terminology concerning international agreements

The Convention on the Elimination of All Forms of Discrimination against Women, as the name reveals, is a UN convention, but is usually referred to as a treaty and is also part of the UN treaty collection. The question that arises here is why the document has two different names, and consequently we wonder what the difference between these two denominations is. Unfortunately, the difference is not entirely clear, but it is possible to come to an approximate answer on what these terms mean and if they differ. In order to do this we will take a look at the definitions that are used by the UN, but also at definition from legal dictionaries. First of all, CEDAW is a formal international agreement between a myriad of countries. According to Svarlien (1955):

> […] international agreements are known by a variety of titles, such as treaties, conventions, pacts, acts, declarations, protocols, accords, arrangements, concordats, and modi vivendi, none of these terms has an absolutely fixed meanings. The more formal political agreements, however, are usually called treaties or conventions (qtd. in: Garner, 2009: 891)

According to the UN's handbook for definitions used in the Treaty Handbook, both terms can have 'a generic and specific meaning' (UN Treaty Collection, 2014). As a generic term a convention embodies all international agreements, but this is also true for a treaty, thus in this sense they are synonymous. However, to use treaty as a generic term for an agreement means that it has to be binding, it has to be concluded by states with treaty-making powers, and it has to be governed by international law. Convention, as a specific term, is used mostly for multilateral treaties that include a large number of parties. A treaty, when spoken of as a specific term, is most used when states employ solemn agreements for matters of gravity. However, there are no coherent rules as to how a state uses the term 'treaty' when discussing an international instrument (UN Treaty Collection, 2014).

At this point, the actual difference in terminology is still not very clear, so we have to look further than the UN's handbook. In Black's Law Dictionary, Garner (2009) specifies a convention as 'an agreement or compact, esp. one amongst nations; a multilateral treaty' (380). Again the word treaty is used to exemplify what a convention is, and again there is a mention of an agreement between multiple states. West's Encyclopedia of American Law characterizes a convention as an 'agreement or compact, particularly an international agreement.' According to this encyclopedia it bears resemblance with a treaty and regulates international affairs between states (Gale, 2008). Here as well there is a mention of similarity between both a convention and a treaty.

Garner (2009) uses two different definitions for a treaty: it is either defined as an 'agreement formally signed, ratified, of adhered to between two nations or sovereigns' or 'an international agreement between two or more states in written form and governed by international law' (1641). The second definition is more applicable to the multilateral CEDAW, and differs from the first definition in that it is 'governed by international law'. However, Garner also adds that a treaty can also go under, among others, the term *convention*. The Oxford English Dictionary (OED) defines a treaty as '[a] contract between two or more states, relating to peace, truce, alliance, commerce, or other international relation; also, the document embodying such contract, in modern usage formally signed by plenipotentiaries appointed by the government of each state' ("Treaty", 2014).

If we take a close look at these definitions there are details that are different between the two terms, but in general both seem to lend their name to an international instrument that is signed between two states and governed by international law. Thus, for this thesis we will take satisfaction in this general definition, because CEDAW fits this description quite well.

The terms treaty and convention are treated as synonyms and used interchangeably throughout this thesis.

2. Convention on the Elimination of All Forms of Discrimination against Women

As was mentioned before, CEDAW is a multilateral international treaty, but is also part of a series of human rights treaties. These human rights treaties protect the human rights of every individual in all circumstances. This means that humans, besides states, also play a part in international law. They also have rights and obligations on several areas that are governed by international law. International crimes or the states of refugees are examples of situation in which humans are subjected to international laws. These rights and obligations are mostly represented in the UN human rights treaties. There are ten different human rights treaties that tend to the individual, but this chapter focuses on the Convention on the Elimination of All Forms of Discrimination against Women. It examines the process of the creation of CEDAW, the articles of the treaty, and its official languages and translations.

2.2 CEDAW

This paragraph generally describes the process of the making of CEDAW. It discusses the role that CEDAW takes and the committee that is in charge of monitoring the implementation of the provisions. Lastly, it briefly outlines the position of CEDAW in the Netherlands.

2.2.1 Precursor to CEDAW

The UN Charter places emphasis on the UN's goal to achieve fundamental human rights and equal rights for women and men. This emphasis is strengthened by the Universal Declaration of Human Rights which took the step towards equality for all and freedom without distinction or, for example, gender. Between these two conventions it was believed that the rights of women still were not sufficiently protected, and so the Commission on the Status of Women (CSW) was created in 1946. At first, the CSW was a sub-commission to the Commission on Human Rights, but it quickly became a full commission. The CSW mostly made recommendations and wrote proposals for problems concerning the rights of women. However, from 1949 on they started to write several treaties relating to the situation of women, among which the Convention on the Nationality of Married Women and the Convention on the Political Rights of Women. Slowly but surely the CSW started to protect women with these treaties but were still only active on a fragmentary level. In 1965 they began the drafting of CEDAW on request of the GA. During the development of the treaty, which was done by a selected committee out of the CSW, the world created a new awareness of discrimination against women. As a result, the UN decided in 1974 that CEDAW would

become an internationally binding treaty to eliminate discrimination against women. Several working commissions worked on the final text of the treaty and in 1979 CEDAW was adopted by the GA. In 1980 the first 64 Member States signed the treaty and in 1981 CEDAW officially came into force. The treaty has seen the fastest ratification of all human rights treaties (UN Women, 2009).

2.2.2 Role of CEDAW

CEDAW is currently ratified by 187 states and is the legal framework for the rights of women. Otherwise named the Women's Convention or the Women's Bill of Rights, it is part of the vast network of human rights treaties created by the UN. Besides the fact that it is a bill for women's rights, it is also an agenda for States Parties to take action and to ensure equal rights. The treaty should be used as a tool to provide women with equal rights to men in the public and private sphere, in specifically among others with education, marriage, nationality, employment health care, and family planning. In general there are three principles of equality that can be distinguished from the treaty: the principle of non-discrimination, the principle of state obligation, and the principle of equality. All of these principles are discussed later on in this chapter. The treaty is continuously updated to make sure that new developments are incorporated. The committee that is part of CEDAW is responsible for these updates, but also for the monitoring of the States Parties to see whether they are enforcing the provision of the treaty. As CEDAW is legally binding the committee has some options to make sure the States Parties abide to the provisions. These enforcement tools are discussed in chapter three. The committee plays a large role in the implementation and the monitoring of CEDAW and the following paragraph highlights some of its most important tasks (Raday, 2009; OCHR 1, 2014; Kahn, 1999; Facio & Morgan, 2009)

2.2.3 The CEDAW Committee

All UN human rights treaties have a human rights treaty body that monitors the implementation of the articles. This committee consists of independent experts who are recognized in the field of human rights and are elected every four years by the Member States. The CEDAW committee has a total of 23 experts who oversee the implementation of women's rights (OHCHR 1, 2014). The committee was found to 'bridge the gap between ratification and implementation' (UNIFEM, 2004: 15). In order to do this the committee reviews the national reports that are submitted by the States Parties. States Parties are obliged under article 18 of the convention to produce these reports. They contain the 'legislative, judicial, administrative or other measures' (CEDAW, 1979) that are implemented by the

States Parties for the implementation of CEDAW's provisions. National reports are usually compiled by the government in collaboration with women's rights organizations. All States Parties are required to submit a report one year after the treaty went into force and one every four years or when it is demanded by the committee. The committee reviews all these reports during its annual sessions and discusses them with the representatives of the States Parties. During these sessions they can research further action that the state can undertake to facilitate CEDAW's provisions. In most cases, there are eight countries assigned per session. The committee also has the power to provide recommendations and suggestions to the GA. (OHCHR 1, 2014; (Kahn, 1999; UNIFEM, 2004:16-17).

2.2.4 CEDAW in the Netherlands

As was described in the previous chapter, after a treaty is ratified it is up to the states to interpret the meaning and apply the provisions to their own national legislative system. The Netherlands signed CEDAW at the World Conference on Women in Copenhagen 1980. In 1981 a bill with memorandum was presented to among other the Emancipation council (*D. Emancipatieraad*), and with their recommendation a new bill was introduced to the Council of States (*D. Raad van State*) in 1982. After this an impasse occurred as political parties and society were in discussion on the enforcement of an Act that would ensure equal treatment for people of all genders, marital states, and inclinations in society and public administration.

In 1985 the proposal to Kingdom Act (*D. Rijkswet*) was first presented to the Dutch House of Representatives (*D. Tweede Kamer*) for approval, and in 1984 the official introduction took place. In 1985 the treaty was officially ratified by the Netherlands in Nairobi. After six years of thorough discussion the Senate (*D. Eerste Kamer*) gave their consent. CEDAW had the longest period of deliberation in which the Dutch practice of law of the 2nd, 3rd, and 5th to 17th articles were heavily discussed. Some of the conclusions were that the legislator is in charge of the implementation of the provisions and that most provisions were already covered by the Dutch law. Only in some cases there was need for new legislative measures or adjustments to existing laws. An extra provision was added to the proposal to make sure that the Netherlands would keep to the obligation of reporting every four years to the UN. Several experts have expressed their opinion of the influence of CEDAW on the Dutch jurisdiction, and these opinions range from negative to very positive. The Dutch legislator however was very positive of the influence of the treaty in Dutch law (de Wildt, 1992: 262-265).

2.4 Essentials of CEDAW

CEDAW has a total of thirty articles which are divided up into six parts. These articles are preceded by the preamble to the treaty. A preamble is 'an introductory statement in a constitution, statute, or other document explaining the document's basis and objective […]' (Garner, 2009: 1294). This means that a preamble is the opening paragraphs of a treaty, which explain the purpose and underlying ideas. CEDAW's preamble mentions the equality of all human beings as was put forward in the UN Charter. However, the provisions of the Charter were not enough to ensure equal circumstances for women and that is why this treaty was called into force. The preamble further describes some of the goals that the UN has tried to reach with the treaty, such as the change in the traditional male and female roles and the social progress and development for women.

The first part of CEDAW contains six articles of which the first one is the definition of 'discrimination against women'. This is defined, for the purpose of this treaty, as:

> any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. (CEDAW, 1979: art. 1)

The second article notifies States Parties on their obligation to condemn discrimination against women and describes a series of legislative manners to do so. They for example state that States Parties should undertake to 'repeal all national penal provisions which constitute discrimination against women' (CEDAW, 1979: art. 2). Article 3 then follows to highlight that these obligations are necessary, but in addition States Parties should also take the appropriate measures in 'political, social, economic and cultural fields […]' (CEDAW, 1979: art. 3). Article 4 describes that any special measures taken to speed up the process of equality are not to be seen as discrimination, whereas article 5 again points out obligations to the States Parties. In article 6 the treaty obligates the States Parties to suppress all forms of prostitution and exploitation of women.

Part II of the treaty addresses the political rights of women on the basis of three articles. It gives them freedom in political and public spheres, as well as in international organizations. Part III is somewhat longer and contains a total of five articles which ensure equality on the social, cultural, and economical level. Article 10 addresses the equality of

women in education, and article 11 gives them equal rights to men in the working environment and in social security. In article 12 the rights to healthcare are described, with in detail the care during pregnancy and the post-natal period. Article 13 is directed more at women in economic situations, such as taking out loans or mortgages. This article also points out that women have '[t]he right to participate in recreational activities, sports and all aspects of cultural life' (CEDAW, 1979: art. 13). Article 14 concludes part III with the rights of rural women.

There are only two articles that make up part IV of the treaty and they are concerned with civil equality. Article 15 gives women a legal capacity and the opportunity to choose their own residence and domicile. Marriage and family relations are the main topic of article 16. Here women are given the right to enter into a marriage with a spouse that they have freely chosen and consented to. It however also focuses on equal rights in a married situation and prohibits the marriage between a child and an adult.

The entirety of part V (articles 17-20) is dedicated to the monitoring of the treaty. It describes the committee in charge of the implementation and supervision of the articles and regulates its election and tasks. Among these tasks, as previously mentioned, is the evaluation of national reports. Lastly, part VI contains seven articles among which five are final provisions. Article 23 states that this treaty does not interfere with national legislation or with other international treaties. Article 24 again addresses the obligation of the States Parties to enforce the articles of the treaty with 'all necessary measures' (CEDAW, 1979: art. 24). The final provisions (articles 25-30) deal with the administrative matters such as the signing of the treaty, the appointment of a depositary, and the date of enforcement. Article 30 is of special interest for the languages versions of this treaty. It states that the treaty has been drawn up in all six official UN languages, and that they are to be treated as equals. In the following table all articles are displayed and described:

Overview CEDAW	
Part I Article 1: Discrimination definition Article 2: Policies to be taken by States Article 3: Basic Human Rights guarantee Article 4: Temporary Special Measures Article 5: Gender roles and Family Education Article 6: Trafficking and Prostitution	**Part II** Article 7: Political and Public Life Article 8: Participation in Government and International Organizations Article 9: Nationality
Part III Article 10: Equality in Education Article 11: Equality in Employment Article 12: Health Care Article 13: Economic and Social Life Article 14: Rural Women	**Part IV** Article 15: Equality in Law Article 16: Marriage and Family Relations
Part V Article 17: CEDAW Committee Article 18: Reporting Duty Article 19: Procedure of Committee Article 20: Meetings of Committee Article 21: Reports of Committee Article 22: Role of Specialized Agents	**Part VI** Article 23: Effect on current treaties and legislation Article 24: State effort on national level Article 25-29: Administrative tasks Article 30: Principle of Equal Authenticity

Table 1: Overview CEDAW

2.5 Official Languages and Translations

Since the foundation of the UN the official languages were Chinese, English, French, Russian, and Spanish, as established in the UN Charter. Arabic was added as an official language in 1973. Most but not all UN documents are created in the official languages. The UN Secretariats have English and French as working languages (DGACM, 2011). CEDAW's Committee is the only treaty body that has the six official languages as working languages. All these languages are thus not translations of each other, but separate entities that are treated as equals. Article 30 of CEDAW confirms this by stating that: '[…] the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic'. Translators within the UN are employed with the United Nations Department for General Assembly and Conference Management (DGACM) which houses the six different translation services under the Meetings and Publishing Division. UN translators strive to make UN documents faithful to the original with respect for the previously established terminology. In most cases the mentioned 'original' will be in one of the two official working languages (DGACM, 2011). It

is however unclear if treaties are drawn up simultaneously in all six official languages, or if they are actually translated later on.

It is thus quite difficult to determine whether treaties are equally authentic, but they at least bear equal authority. This means that they bear the same meaning in each of the languages and that each of them represents in a faithful manner the intended meaning (ICRC, 1977). Unfortunately, the matter of equivalence between two of more languages is one of the trickiest fields of research in linguistics. This same problem also arises when states need to communicate a treaty to their citizens who do not speak any of the six official languages, which emanates the need for a translation of the treaty document.

There are no straightforward rules on how a treaty should be communicated by a member state to its citizens, which means that there are no official translations. A state can decide to let more than one national institution make the translation, which increases the chance of inconsistencies, but also uncertainty of the actual source of the translation. However, it must be noted that when a dispute results from a treaty, the official text will always prevail over the translation as to avoid confusion (Garre, 1999: 198-200).

The Dutch translation of international treaties would logically be in the hands of the *Directie Vertalingen* which is part of the Ministry of Foreign Affairs (*D. Ministerie van Buitenlandse Zaken*). This supportive secretariat provides translation out of foreign languages for the Ministry of Foreign Affairs, but also for the other ministries and the Royal Family (Rijksoverheid, 2014). However, after correspondence[1] with the *Directie Vertalingen* it was communicated that CEDAW was not translated by them or by any other party within the Department of Foreign Affairs. This unfortunately means that there is no opportunity to research the translation strategies of the translators or their intentions. Like Garre (1999) proposes in her study into Danish translations of human rights treaties, there have been cases of incongruities between the UN's official languages, but also between the official texts and their translations. In most cases translation of legal terminology has not been consistent, a result of among others the difference between the states' legal systems, and this inconsistency could lead to different interpretations (198-202). This uncertainty with regard to the quality of the translation is further addressed in chapter five, where the details of the Dutch translation of CEDAW are discussed in order to see whether any nuances could be retained or if they have been lost in translation.

[1] Correspondence via e-mail through contact form on the website of *Ministerie van Buitenlandse Zaken.* Contact was with the liaison officer for question regarding the *Directie Communicatie.*

2.5.1 Terminological inconsistencies

With the assumed equality and the standardization of the different version of the international treaties, the terminology of all these versions should also be standardized. This has proven to be a difficult task, because legal terminology is a product of a variety of institutions, legal systems, culture, and history. These different sources mean that there is an array of inconsistencies in legal terminology. As Šarčević (1997) points out, there are three important aspects to keep in mind when translating a multilateral instrument. First of all, the boundaries between legal concepts in languages are not consistent. For example, the Dutch concept of *beschikking* which corresponds to multiple English concepts such as rule, decision, and order. Secondly, the same terms in the same language can refer to different concepts due to the differences in the legal systems. This inconsistency for instance occurs in English terms that have different meanings in Australian, British, American, and Canadian. Thirdly, there are legal concepts or terms that simply do not have a comparable concept or term in another language. This usually happens when the concept or term is not present in the either of the systems, which means that a translator should try and find a functional translation. This also happens with vague concepts like *discrimination* or terms such as *all appropriate measures* that occur in CEDAW. These concepts and terms do not have the same connotation or denotation to everyone, which makes the translation process very challenging (Šarčević, 1997: 231-233). These inconsistencies in terminology also challenge the interpreters of the different Member States when they have to incorporate a multilateral treaty into their national legislative systems. A number of these linguistic problems are discussed in chapters five and six.

3. Reservations & Enforcement

International law differs from all other legal fields in that it does not have the same power to intervene in matters as for instance a national government could. The Security Council of the UN does have more power to intervene than the General Assembly, which can only advise on matters. The UN however, is always dependent on its Member States to intervene in a situation or when they create a treaty. As described in chapter 2, Member States are given the opportunity to lay down any reservation they have on the draft of a treaty. This chapter discusses these reservations more in depth and focuses on the reservations that were made by Member States concerning CEDAW. These reservations eventually have influence on the sanctions that can be used to reprimand States whenever they violate a provision of the treaty. This chapter elaborates on the importance and the consequences of these sanctions for the Member States. Knowledge of both the reservations and sanctions to CEDAW will bring us another step closer to answering the thesis question.

3.1 Reservations

In the process of creating a multilateral treaty, all Member States have the opportunity to hand in their reservations to the articles of the treaty. They do so because they believe that they cannot become a party if one or more articles are either excluded or modified. The UN's International Law Commission has defined a reservation as:

> […] a unilateral statement, however phrased or named, made by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty or by a State when making a notification of succession to a treaty, whereby the State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization (International Law Commission, 2012).

When parties enter a reservation they thus tell the other states that they do not want to be bound by certain elements of the treaty. A States Party indicates with its reservations that it aims to change the legal effect of the treaty's provisions.

It seems that the combination of human rights and reservations is a contradictory relationship, because essentially all human rights treaties are bound to the *jus cogens* principle. However, human rights treaties are in this case equal to all other multilateral treaties

and their reservations should also be considered as binding (Cook, 1990: 665-673). CEDAW is one of the most reserved treaties in the UN collection, and has made a special provision for the allowance of reservations. Article 28.2 regulates that 'a reservation incompatible with the object and the purpose of the present Convention shall not be permitted' (CEDAW, 1979). Nevertheless, the treaty does not provide a mechanism for the evaluation of the reservations and to determine whether they violate the terms of article 28.2. A procedure to limit reservations to the treaty is also not determined in CEDAW, which might explain the large amount of reserving states. It should, however, be noted that the reservations are meant as a temporary measure for states so that they overcome the obstacles for the implementation of the reserved provisions (IWRAW Asia Pacific, 2014). States Parties are induced to make reservations by several factors, and these do not include the lack of respect towards human rights. In most cases they enter reservations because of the clash between their national legislation and the provision of the treaty.

A number of key provisions of the treaty are addressed in the reservations. Article two of CEDAW, on the elimination of discrimination, is one of the most reserved articles. Other articles that are heavily reserved are the article five, concerning gender roles, and article sixteen on marriage and family relations. There are also states that have reserved to article twenty-nine, which sets out the dispute settlement before the ICJ. In most cases the articles are reserved on the basis of the States Parties' religion, as is the case with most Middle Eastern countries. These reservations will be discussed in the following paragraph (IWRAW Asia Pacific, 2014).

3.1.1 Middle Eastern Countries

Many of the reservations to the treaty are entered for fundamental provisions of the treaty. In particular article two on the process towards elimination of discrimination and article 16 on families are heavily reserved provisions. An area in the world where we would expect women rights to be underdeveloped is the Middle East, and that is why we are taking a look at some of these countries' reservations to CEDAW. There are two reasons given by most of the Middle Eastern countries for their reservation and those are the conflict either with domestic legislation or with Islamic sharia or with both. However, some of these Islamic countries have reserved to provisions without additional comments, while other have used this Islamic law as a justification of their reservations. This shows that there is no uniform approach or application of the sharia.

As an example we take Syrian Arab Republic, Saudi Arabia, Oman, and Iraq as countries that have all entered reservations on the basis of both justifications.

States Party	Reservation to Articles
Syrian Arab Republic	Articles 2, 9.2, 15.4,16.1 (c,d,f,g), 16.1, 29.1
Saudi Arabia	Articles 9.2 & 29.1
Oman	Articles 9.2 , 15.4 , 16 (a,c,f), 29.1
Iraq	Articles 2, 9.1, 9.2 (f,g), 16, 29.1

Table 2: Reservations by Middle Eastern countries

As we can see in the table above, Iraq and the Syrian Arab Republic have reserved to article 2, which is deeply concerning because this article is vital in the battle against discrimination of women. It is all of the States Parties that make reservations to articles 9.2 and 16 of the treaty. Both deal with the equality of women in family relations and in matters relating their children. The Syrian Arab Republic states that the reserved provisions are: '[…] incompatible with the provisions of the Islamic Shariah' (UN Women 1, 2009). Saudi Arabia takes this a step further with stating that: 'In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention' (UN Women 1). The same is true for Oman and Iraq, which as well state that any provisions contrary to the sharia are not considered to be binding to the States Parties. Oman's sultanate addresses the conflict with domestic legislation by stating that they are not bound by: 'All provisions of the Convention not in accordance with […] legislation in force in the Sultanate of Oman' (UN Women 1, 2009).

In addition, these Middle Eastern states have reserved against the settlement of disputes by the ICJ. All of them do not consider themselves bound by this procedure and thus will not participate in this international arbitrational process (IWRAW Asia Pacific, 2014). These reservations create a weak position of CEDAW in these states that are already known for their harsh attitude against women, so we can ask ourselves if CEDAW has any positive effect on the domestic legislation. However, there are also states that have not reserved to any of the provisions, such as the Netherlands.

3.1.2 The Netherlands

The Dutch government has not made any reservations to the treaty. However, they have made a declaration before ratification which states the following:

> During the preparatory stages of the present Convention and in the course of debates on it in the General Assembly the position of the Government of the Kingdom of

> the Netherlands was that it was not desirable to introduce political considerations such as those contained in paragraphs 10 and 11 of the preamble in a legal instrument of this nature. Moreover, the considerations are not directly related to the achievement of total equality between men and women. The Government of the Kingdom of the Netherlands considers that it must recall its objections to the said paragraphs in the preamble at this occasion.

This Dutch declaration indicates that the government did not agree with two paragraphs of CEDAW, which are both aimed at the eradication of among others discrimination and racism as well as strengthening of international peace and security. In retrospect they wish to withdraw the aforementioned objections and comply with these paragraphs of the preamble.

A declaration is a different form from a reservation in that it is an understanding of a matter or a provision which is included in the multilateral treaty. As opposed to a reservation, a declaration does not strive to exclude or modify the legal effect of a provision. Its aim is only to clarify the intent of one or more provision or the whole treaty (Treaty Section of the Office of Legal Affairs, 2012:16). Essentially, this means that the Netherlands have not made any reservations to the treaty and will be held to all its provisions.

3.2 Enforcement Mechanisms

CEDAW states that the States Parties should: ‘undertake to adopt all necessary measures at the national level aimed at the full realization of the rights recognized in the present Convention’ (CEDAW, 1979: art. 24). However, the previously mentioned reservations and the legal status of CEDAW have proven that the treaty is difficult to enforce and to establish sanctions upon states that do not adhere to the provisions. To address this problem, the GA adopted an optional protocol to the treaty in 1999. An optional protocol is a treaty in its own right and is open to signatures and ratification. These protocols can either address a nominal part of the human rights treaty it belongs to or provide for accompanying procedures. The latter is the case with the optional protocol to CEDAW. It contains the communication procedure, which means that individuals or organizations are allowed to put their complaints in writing to the committee of the treaty. This procedure is set out in article two of the protocol:

> […] a Communications Procedure which allows either individuals or groups of individuals to submit individual complaints to the Committee. Communications may also be submitted on behalf of individuals or groups of individuals, with their consent, unless it can be shown why that consent was not received (UN Women 2, 2009)

It includes the inquiry procedure as well; this enables the committee of the treaty to act upon serious and even systematic misconduct according to the provisions (UN Women 3, 2009). This is determined in article 8 of the protocol:

> […] an inquiry procedure that allows the Committee to initiate a confidential investigation by one or more of its members where it has received reliable information of grave or systematic violations by a States Party of rights established in the Convention. Where warranted and with the consent of the States Party, the Committee may visit the territory of the States Party. Any findings, comments or recommendations will be transmitted to the States Party concerned, to which it may respond within six months (UN Women 2, 2009).

As of 2013, the protocol has 104 parties and 80 signatories. Besides the two measures that are brought forward in the optional protocol, the States Parties are required, as mentioned before, to report every four years on the progress of the adopted measures. The following paragraphs will expand on the procedures of the optional protocol and one in CEDAW.

3.2.1 Communications Procedure

The communications procedure gives women or women's organizations the possibility to bring a claim to CEDAW against their state's government for a violation of one of the treaty's provisions. Women will need to bring this claim within the jurisdiction of the States Party. Articles two to seven in the protocol outline the procedure and the requirements for admissibility. The purpose of the communications procedure is to reinforce the implementation of the treaty. Part of the communications procedure is the review of complaints made by individuals or organizations for alleged violations. These complaints can only apply to the provisions, as stated in article four. Before these parties can lodge a complaint they have to have exhausted all the available national remedies.

A downside to this communication procedure could be that the parties who lodge a complaint must make themselves known to the States Parties, which could prohibit them to go forth with the complaint procedure. Another drawback is that article three states that:

> […] that a communication will only be considered by the Committee if it concerns a country that has become party to the protocol. In addition, a communication must be submitted in writing and may not be anonymous. (UN Women 2, 2009).

This means that a complaint can only be received and considered by the Committee if the concerned States Party has signed and ratified the optional protocol. As we have seen before, not all parties to the treaty have also ratified the treaty thus the complaint procedure is limited in it enforcement. Countries like Afghanistan, Iraq, and Algeria have not signed the optional protocol, thus complaints from women out of these regions are not allowed to enter the complaint procedure. These countries cannot be researched by the Committee even if they are known for their grave discrimination of women (Lawteacher, 2014: 3-4).

Once the Committee has reviewed the complaint(s), they can make a recommendation to the States Parties to improve the situation, but they do not have a provision for enforcement. The committee is allowed to investigate further if they deem it necessary. This is done under the inquiry procedure.

3.2.2 Inquiry Procedure

The inquiry procedure provides the Committee with the authority to investigate into situations in States Parties where there are serious breaches of the treaty's provision(s). This inquiry procedure is mostly used in cases of grave misconduct such as trafficking or genital mutilation. The protocol does not place any restrictions on the person who wants to make a claim of a violation, which is unique for a human rights treaty. As opposed to the communication process, the inquiry procedure can pick up on systematic violations. It also offers women in danger the possibility to circumvent the communications process, in case they are faced with even more direct danger when they want to report misconduct. A group of experts reviews the claim and determine the severity of the violation on the basis of the facts provided by the claimant.

Article 8 mentions that the Committee, or the experts, can visit the territory of the state when this is 'warranted and with consent of the State Party' (UN Women 2, 2009). Unfortunately, this means that the state in which the misconduct is taking place can choose to

deny cooperation, which slows down or even stops the inquiry. The optional protocol does not allow reservations, but it does offer an opt-out mechanism of which States Parties can make use upon signature or ratification:

> Each States Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 8 and 9 (UN Women 2, 2009)

This opt-out clause means that States Parties have the option to deny the authority of the Committee and prevent them from inquiring into systematic failure of the States Party to adhere to the provisions (Lawteacher, 2014: 4-5).

The inquiry procedure was created to provide the Committee with extra leverage on States Parties in cases of violation of CEDAW. It however seems that the Committee still does not have a proper enforcement mechanism to avoid these violations. Both provisions of the optional protocol fail to impose sanctions on the States Parties when they do not adhere to the treaty. Besides that, the States Parties have the opt-out clauses with which they can hedge all questioning of the Committee. There is another procedure that is laid down as the only enforcement mechanism in the treaty itself and that is the settlement of disputes. This procedure is not for individuals but for States Parties only.

3.2.3 Settlement of Disputes

The settlement of disputes is not addressed in the optional protocol, it is the only enforcement method mentioned in CEDAW. Article 29.1 sets out the following procedure:

> Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court (UN Women 2, 2009).

This interstate procedure addresses the dispute between States Parties over interpretation or application of CEDAW and outlines the proceedings that should resolve the dispute. If there is not resolution after six months, the ICJ takes over and pronounces judgment over the

dispute. This judgment is binding under international law, which means that whatever the final decision the States Parties must submit to it. The procedure seems a strong enforcement method for CEDAW and the Committee. Unfortunately, States Parties in most cases do not initiate the interstate procedure. States support the non-intervention principle when it comes to the domestic affairs of other states. Most states are not prepared to let other states comment on their internal matters and are concerned about the retribution of the other members to the treaty. These reasons vouch for the fact that the interstate method has never been used. Another drawback is that States Parties can reserve to this procedure in line with paragraph 2 of article 29. Thus, the States Parties are allowed to hedge themselves from the procedure, as was done by some Middle Eastern countries. When we look at all the enforcement methods that were added by the optional protocol or were originally stated in the treaty, we can deduct that CEDAW does not have a strong mechanism to sanction its States Parties. The following paragraph will review the challenges that CEDAW faces concerning its binding function.

3.3 Challenges the Treaty Faces

The procedures described in the optional protocol and in the treaty itself are there to make CEDAW more easily enforceable. However, these procedures such as the complaint procedure still do not address the sanctions that States Parties should receive when they breach. It only provides the UN with the necessary means to examine structural violence or wrongdoings against women to which they can make recommendations to end these practices.

As opposed to the European Convention on Human Rights (ECHR), CEDAW does not have the means to force penalties or sanctions on States Parties that do not fulfill their obligations. In addition, as aforementioned, CEDAW is also the most reserved, meaning that a large number of States Parties do not adhere to a number of articles. With the combination of reservations and the lack of means to sanctions States Parties, we can start to question the status of CEDAW as a ‘legally binding’ treaty. What does this term mean when there is no way to ensure that the provisions of the treaty are adhered to? The preamble of the treaty mentions that the States Parties are:

> Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations (CEDAW, 1979: preamble).

However, if the States Parties are determined to adopt the measures set forth by CEDAW, how is it they do not make sure that there is a mechanism that ensures mutual enforcement? It appears that the States Parties, with these reservations and weak enforcement mechanisms, lack a commitment to put in serious effort for women's rights. The challenges that were set in the preamble and in the negotiations appear too idealistic within the current framework. With the optional protocol, the States Parties have taken a step towards a more serious commitment, but it is still far from effective (LawTeacher, 2014: 7). These troubles, as we have seen in this chapter, make us question the fundamental binding forces and obligations of CEDAW. The following chapter will summarize all the above facts and analyze if CEDAW is a special case in the series of UN treaties and on what matters it deviates from standard international contracts.

4. Treaties as Contracts

In this chapter we explore the similarities and differences between an international treaty and a contract. First, the components of a contract are highlighted and secondly CEDAW's components are compared with these contract components. This way we try to discover whether CEDAW is equal to a contract. Two different arguments, those of comparative analysis and prototype theory, help us establish an answer.

4.1 Components of a Contract

A contract is, in common and civil law, a formal agreement between two or more parties. It is binding under law and thus legally enforceable. For all the parties involved, a contract creates rights but also obligations that can be invoked in court. Garner (2009) defines a contract as: '[a]n agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law' (365). There is a variety of different contracts, such as deeds or mortgages, but this chapter will only describe the general concept of a contract. It also does not take into account the specific difference between common and civil law contracts when it comes down to consideration, as this is not a crucial element in our discussion. We will, however, look at all the components of a general contract, or agreement, and look at the different interpretations that parties can give to a contract in case of a dispute.

All parties that wish to form contract come together first have to present their wishes and demands before they can start to negotiate about the content of the contract. Essentially, there has to be a mutual assent between the parties. To come to a contract the parties have to begin with an offer, which means that the offeror agrees to enter into a contract when the other parties agree to the offer. All the offerees can decide whether to accept the offer or make a counter-offer. The latter option resolves in negotiations between the parties. During these negotiations it is important that both parties give and take to end up with an acceptable deal for all involved. In the end, parties will accept all the terms of the final offer. It is important to determine the balance of power in the negotiations, but also when the contract is formed. There is an inequality of bargaining power when one or more of the parties have a better position during the negotiations. This implicates that these parties have more options or alternatives. In the case of negotiations of multilateral treaties, some States Parties have more political power than others which gives them more dominance over other parties. Parties who have this advantage can weigh in and get a better deal out of the contract than the less powerful parties (Gubby, 2013: 88-92).

When the contract is entered into force the parties need to adhere to its conditions and warranties. These are fundamental and lesser obligations that are stated in the contract. If they fail to do, so it could come to a dispute or even a lawsuit between the involved parties. In this case how the contract is interpreted is important, either with good faith and fair dealing or according to the parol evidence rule. The former is common in Dutch contract law and is a presumption that all parties to a contract deal with each other honestly and without trying to use deceitful means to breach the terms of a contract. When there is a dispute or lawsuit in case of a breach, the contract does not need to be followed to the letter. If a party fires an employee with a fixed contract without reason because the contract says they can do it 'at will', the judge will call on the implied reasoning behind the contract and not the explicit writing (Hill & Hill, 2005). The latter is more standard in Anglo-Saxon common law. This principle is defined by Garner (2009) as a rule where: 'a writing intended by the parties to be a final embodiment of their agreement cannot be modified by evidence of earlier or contemporaneous agreements that might add to, vary, or contradict the writing' (1227). It implies that the written words in a contract are to be followed and that they cannot be altered by extrinsic evidence that is provided by a party.

In case of a breach of contract by either of the parties, the contract includes sanctions that can be enforced on a party. These sanctions are vital elements that should form a barrier for parties to try and breach the contract. When a breach of contract occurs, there are various options for injured parties to penalize the breaching party. We will review the most common ones. The injured parties can defer from carrying out their obligations under the contract. The suspension of performance, or *exception non adimpleti contractus*, is common in Dutch, German, and French law. The parties can also decide to claim damages as a compensation of their loss. The financial compensation is in most cases determined by a judge. There is a variety of damages available to the injured parties, but it is not relevant to this discussion to describe each of them. *Quantum meruit* is another remedy for breach of contract. It occurs when not all tasks under the contract are performed and the claimant requests for 'as much as he deserves' for the part that was performed. An injured party can also file an injunction when they believe that the breaching party is for instance leaking confidential information. The injunction makes sure that the breaching party will be restrained from further action. The final option is the rescission of the contract, which means that the parties cancel the contract in its entirety (Barker, 2007: 164-170; Loonstra, 2012: 75-86; Hubby, 2013: 101-104). All components to a contract are stated in the following table:

Components of a Contract
Two or more parties
Offer and acceptance
Balance of power
Good faith and fair dealing or parol evidence
Sanctions

Table 3 Components of a Contract

4.2 Is CEDAW a Contract?

Now that we are aware of the basic components of a contract, we are going to take a look at two different theories to see to what extent CEDAW can be called a contract. The following paragraphs describe both theories and the degree to which CEDAW is analogous to a contract in these theories.

4.2.1 Classical Categorization

The theory of classical categorization was first established by Plato, but further developed by Aristotle in the text Categories from his Organon. In this theory, the idea is that a category (of animals for example) can be defined by a specific set of attributes. Each of these attributes individually is necessary for an item to belong to a category. Thus, if an item does not have one attribute out of four, it is not a member of this particular category. Only the set of attributes is necessary for an item to fall into a category, no other requirements are needed. This means that categories have members that all share the same attributes. According to the classical theory, all categories need to have a clear definition, be mutually exclusive and jointly exhaustive. In this way, all items on earth will belong to one exclusive category. As an example we can think of a penguin and a parrot, which are both birds. If the category *birds* however entails that the item should have a beak, feathers, the ability to fly, and an appetite for bird seed, this would mean that a penguin does not belong to the *birds* category. According to the classical categorization it fails to check the last two features of this category: it cannot fly and does not eat bird seed. The implication of this theory is thus that a membership to a category is all or nothing. It also means that all members of one category are on an equal level, so a parrot is just as much a bird as a sparrow or an eagle. No other characteristic belonging to these different birds is of importance (Smith, 1997).

When we take a look the previous paragraph we can see that a contract can also be divided up into components or — to fit the theory — attributes. These features would then be: two or more parties, offer and acceptance, balance of power, good faith and fair dealing or parol evidence, and sanctions. For CEDAW to be a contract under classical categorization it

should contain all these attributes. For this, we have to check all the boxes and see whether these also apply to CEDAW. To start off, CEDAW meets the requirement for two or more parties because it currently has 187 signed States Parties. There has also been a process of offer and acceptance, one that started with the UNs offer to improve the situation of women around the world. Negotiations took place and the States Parties could discuss their concerns and demands to eventually end up with an acceptable treaty. However, the matter of acceptance is not so clear-cut. Most parties have made reservations to the provisions of the treaty which means that acceptance does not entirely apply here. There was also no balance of power between the States Parties. Some parties will have had more power in the negotiations; although we cannot point a finger at specific states it is natural to assume that there was an imbalance of power. It is also interesting to see what states have not signed and ratified the treaty, because this can influence the effectiveness of the treaty. In this case the most important states that have not signed CEDAW are the United States, Sudan, South Sudan, Somalia, and Iran. The United States is the fourth largest country of the world and with that also a great political force. It effects CEDAW that this large state has not signed on to improve the rights of women, as it has a lot of influence in countries such as Afghanistan and could send a strong message to all other states that women's rights are important. The other states that have not signed are states in which the issue of women's rights is pressing and their absence to the treaty potentially weakens the status of women's rights. Nevertheless, CEDAW does meet the balance of power condition, because in no contract the parties are entirely equal. It is very difficult to confirm whether good faith and fair dealing or parol evidence is used by the parties and the ICJ. All parties have a certain freedom of interpretation and the ICJ can in certain cases decide the best option of interpretation. Unfortunately, this information on interpretation is unattainable so we assume that both parol evidence and good faith and fair dealing are so common that either of these methods will be used by all parties and the ICJ. Lastly, we come to the matter of sanctions. As described in chapter three, sanctions are a serious weakness in CEDAW. In fact, the treaty does not have sanctions to enforce on its States Parties, only some enforcement methods. All the aforementioned sanctions that belong to a contract do not apply to CEDAW. The treaty does not allow States Parties to claim damages from each other or individuals, not can they file and injunction or rescind the contract.

If we take the strict rules of the classical categorization theory, CEDAW is not a contract. It failed to tick the box for sanctions, which are important elements of a contract. We

can thus conclude that CEDAW is not part of the contract category. We can reason that CEDAW is not a regular treaty but a human rights treaty. Perhaps human rights treaties have a unique status which means that they cannot be categorized as a contract. To test this take a look at another human rights treaty that is signed by a large number of states: the European Convention on Human Rights (ECHR). Essentially, the treaty has the first four attributes, just like CEDAW. The difference however is found in the attribute *sanctions*, one that CEDAW does not have. The ECHR has provisions that include strong sanctions such as article 6 on the right to a fair trial. In the case of the ECHR states can be fined for breach of the treaty. Thus, individuals or states can claim damages and the court can hold that the claimant has right to these damages. This was for instance true for the cases Andersson v. Sweden, (no. 17202/04, 7; December 2010) or Robins v. the United Kingdom (no. 22410/93, 23 September 1997), where both the claimants were awarded financial compensations (Council of Europe, 2013: 56). The ECHR then has all the attributes that belong to a contract and will fall into the category unlike CEDAW. We can deduce from this that the special status of human rights treaties does not need to have any effect on their status as a contract.

4.2.2 Prototype theory

Rosch (1976) took a revolutionary departure from the classical view on categorization. She developed a new way of categorization in the field of cognitive science which is called the prototype theory. The theory deals with the way people categorize items on the basis of an ideal image or prototype of that category. This means that when people talk about birds they have certain attributes in mind that hold the same importance, for instance that birds have feathers, wings, a beak, etc. People will then probably imagine a sparrow or a robin, and although an emu also meets the criteria of the category, it is not viewed as a prototypical bird. So, people have a list of prototypes in mind when they think of a category and match these with common items that represent these attributes to create a prototype. The prototype theory thus, as opposed to classical categorization, creates a sliding scale of items in a category. The prototypes of the category, the sparrow and the robin, are the ideal items that match the attributes, while an emu or penguin is lower on the scale but still belong to the same category. While the classical view proposed that all members of a category are equal because they share the same attributes, the prototype theory does not consider all members equal. The prototype theory also includes all attributes possible for a category and does not have the same strict boundaries as the classical view (382-439).

We have already determined that in the classic theory of categorization, CEDAW is not a contract. Within the scope of the prototype theory we will come to a different conclusion. Here we will have to see to what degree the attributes are present and how important they are to the category. In order to make a sliding scale to show to which degree CEDAW is a contract we will also add the Dutch Constitution (*D. Grondwet*) to the categorization. This way, we can have four types of agreements that should fit into the category *contracts*. Considering that this thesis revolves around the notion of obligation, we take a special interest in the fifth attribute: sanctions. This is one of the most important elements to a contract and thus we will give this attribute the most weight. Naturally, a general contract contains all the attributes to become the prototype of this category: it takes the highest position on the sliding scale. Secondly, we take a look at the Dutch Constitution, which lays down the fundamental rules that govern the state. It contains the attributes of a contract, although less convincing than an actual contract. A constitution does not have two or more obvious parties, but even though it seems the only party is the government the citizens of the state are also part of the constitution. The constitution perhaps does not perfectly fit into the contract mold, but it has a myriad of provisions that include sanctions for the parties involved. The Dutch criminal code (*D Wetboek van Strafrecht*) contains all types of punishment and all regulations in case of breach of the constitution. It lists all types of appropriate principle punishments that can be given such as imprisonment (*D. gevangenisstraf*), detention (*D. hechtenis*), or additional punishments such as deprivation of certain rights (*D. ontzetting van bepaalde rechten*) or forfeiture (*D. verbeurdverklaring*) (Michiels & Sneijders, 2012: 3313; Foster, 2000: 82). Thus, with our focus on sanctions and obligations the Dutch constitution scores quite high and is placed after contracts on the sliding scale.

As we have discussed above, the ECHR is a human rights treaty that contain all attributes. Still, it is placed below the Dutch constitution on our scale because it has a possibility for states to reserve on its provisions. This creates a weakness in the way that states can be sanctioned, even though the treaty provides strong sanctions. It is again a small step further from the prototypical contract that we want. CEDAW then is placed on the other end of the scale because it lacks the attribute of sanctions. Nevertheless, it is a contract in the prototype theory, but not one that would appear first on the list when we talk about this category. Perhaps we can state that it has the same status as a penguin in the bird category, not

prototypical of the category but still a bird. From our analysis comes the following sliding scale:

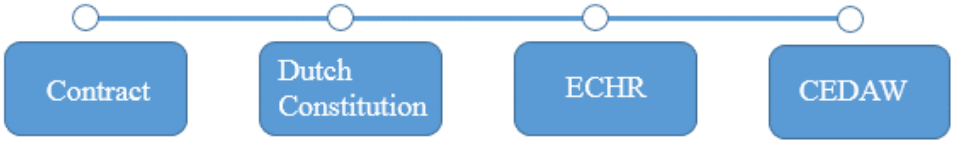

Figure 1: Sliding Scale

The contract in this case is the 'super contract', a prototype for the category. One step down the sliding scale we find the Dutch constitution which has a less prototypical form of a contract, followed by the ECHR. In last place, in the periphery, CEDAW is placed. From the prototype theory we can deduct that CEDAW is a contract, but definitely not representative for its category.

5. Obligation in Legal Language

This chapter deals with the linguistic aspects of legal language and specifically of expression of obligation. Bhatia et al. (2005) mention that 'rule of law' is difficult to follow when the law is 'only communicated via texts containing at least partially vague language' (14). In the following paragraphs this thesis attempts to provide for clear definitions of grammatical units in both everyday and legal English. This attempt strives to bring us closer to understanding the degree of obligation that is intended in CEDAW.

5.1 Obligation in Treaty

State obligation is one of the cornerstone principles of CEDAW. The States Parties to the treaty take on responsibilities towards women from which they — supposedly — cannot withdraw. The treaty deals with the obligation of the States Parties in articles 2, 3, 4, and gives these obligations context and substance in articles 5 to 16 (IWRAW 1, 2014). Still, we have already concluded that the States Parties are able to hedge themselves from provisions in the treaty, and that the status of CEDAW is not as strong as a contract. Now we are taking a step towards the linguistic aspects of the treaty's text to see whether it imposes the obligations that the UN proposes.

Garre (1999) mentions that international law, under which CEDAW falls, is a legal system by itself, though it is structured by pre-existing national legal systems from all over the world. Legislators have taken concepts, linguistics structures and terminology from the legal systems that they are familiar with and built a legal system that can be practiced in every country in the world. The legal language of international law is thus filled with different linguistic features that over time have created a complex structure that needs to be fully understood by a translator (127-128). We can thus presume that the interpretation of treaty texts can cause some problems. This is even truer for the translators who need to provide a translation that carries the same intention, and in the case of CEDAW, degree of obligation. First of all we need to establish the degree of obligation in the provisions of the official English version, and then we can move on to the Dutch translation to see if this degree has been maintained. We will do this by taking nouns, verbs, and clauses that express obligation and analyze both their everyday English and legal English meaning. This way, we can determine whether there has been a change in the meaning and what degree of obligation they carry. Next, we will do the same for the Dutch translation of these words and eventually we

will end up with a schematic overview of meanings and a comparison of degrees of obligation.

5.2 Words Expressing Obligation in CEDAW

CEDAW contains a number of words that express a degree of obligation. A selection of the words that expressed the highest degree of obligation is featured in table 4. This table also shows the Dutch translation of the official English.

CEDAW English text	CEDAW Dutch Translation
Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights, (Preamble)	Erop wijzend dat de Staten die partij zijn bij de Internationale Verdragen inzake de rechten van de mens verplicht zijn het gelijke recht van mannen en vrouwen op het genot van alle economische, sociale, culturele, burgerlijke en politieke rechten te verzekeren,
States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake (Article 2)	De Staten die partij zijn bij dit Verdrag, veroordelen discriminatie in alle vormen van vrouwen, komen overeen onverwijld met alle passende middelen een beleid te volgen, gericht op uitbanning van discriminatie van vrouwen, en verbinden zich tot dit doel
States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (Article 7)	De Staten die partij zijn bij dit Verdrag, nemen alle passende maatregelen om discriminatie van vrouwen in het politieke en openbare leven van het land uit te bannen, en verzekeren vrouwen in het bijzonder het recht om op gelijke voet met mannen:
States Parties shall grant women equal rights with men with respect to the nationality of their children. (Article 9.2)	De Staten die partij zijn bij dit Verdrag, verlenen vrouwen gelijke rechten als mannen wat de nationaliteit van hun kinderen betreft.
States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: (Article 10)	De Staten die partij zijn bij dit Verdrag, nemen alle passende maatregelen om discriminatie van vrouwen uit te bannen ten einde vrouwen rechten te verzekeren die gelijk zijn aan die van mannen op het gebied van onderwijs en vorming, en in het bijzonder, op basis van gelijkheid van mannen en vrouwen, het volgende te garanderen:

Table 4: Excerpts CEDAW

Both the English and the Dutch words express a degree of obligation in legal language, but it is interesting to determine if this is also the case when they are used in everyday English and to what extent they might have changed in meaning. This way we can determine whether legal drafters have changed the meaning of the word to accommodate their intention. With this comparison between meanings we can also determine whether the Dutch translation carries the same intention as the official English text. This comparative analysis between the two languages and their meanings is important because, as Šarčević (1997) argues, 'the translator's first consideration is no longer fidelity to the source text but rather fidelity to the uniform intent of the single instrument, i.e. what the legislator or negotiator intended to say' (112).

5.2.1 English Obligative Nouns & Verbs

From the official English version of CEDAW we have taken one noun, three regular verbs, and two modal verbs that express a degree of obligation. These are *obligation, undertake, ensure, grant, have to,* and *must.* In order to establish whether there is a discrepancy between the meanings of these words, we will take a look at their general, legal, and contractual meaning. In addition, an interpretation of the meaning in CEDAW is also given. The general meaning was taken from the *Oxford English Dictionary* (online) and the *Collins Dictionary* (online); the legal meaning is a combination of Garner's (2011; 2009) *Dictionary of Legal Usage* and *Black's Law Dictionary*; for the contractual meaning we are using Rossini's (1998) *English as a Legal Language*. The following table gives an overview of all the meanings of the English noun and the verbs.

	General	**Legal**	**Contract**	**Treaty**
Obligation	The action of constraining oneself by oath, promise, or contract to a particular course of action	A legal or moral duty to refrain from acting, a mutual legal relationship that imposes a liability to do something for a set of persons	An obligation that a party agrees to, similar to *duty,* expressed by *shall*	The States Parties have a duty to
To undertake	To commit oneself or take upon oneself	To bind oneself contractually; To take on an obligation or task	-	The States Parties take steps to / commit themselves

To ensure	To make certain or sure	To make more certain (used similarly as insure)	-	The States Parties provide certainty
To grant	Agree or consent to perform something; to bestow	Formal transfer, agreement that creates a right in favor of a person	To accede to something; to give accord	The States Parties give / provide

Table 5: Meanings of Obligative Words

For the noun *obligation* we can see that in both general and legal sense, it indicates an action in which one is bound by a contract or promise to fulfill an action. The following sentence is an example of the use of *obligation*:

(1) I have an obligation to take care of her (OED).

In this sentence, the subject has agreed to fulfill an action: to take care of the woman. The contractual meaning is almost similar. However, it also points out that the noun is expressed with the modal verb *shall* in contracts. For example:

(2) The parties shall maintain the common areas (Kimble, 1992: 64)

This sentence indicates that the subject of the sentence, the landlord, has an obligation or duty to maintain the common areas. In the interpretation of the use of the noun *obligation* in CEDAW, we can see that it also implies that the States Parties have ‘a duty’ to do something. In this sense, it seems that *obligation* keeps the same meaning throughout, only a bit more detailed in the contractual and treaty sense.

The verb *to undertake* in everyday English signifies that someone commits themselves to something. In legal English it proves to have a stronger meaning because someone binds themselves contractually to a task. Unfortunately, there is no contractual meaning, but we can imagine that this would be equal to the general legal meaning. At first glance, the treaty interpretation seems less strong, but it appears stronger when we include the context:

> States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, *undertake* (CEDAW, 1979: Article 2)

The language in this sentence is already quite powerful (condemn, pursue, eliminating) which influences the strength of *undertake*. The verb here carries the same strong obligation as in its legal meaning.

The verb *to ensure* means to make certain in everyday English, but is a little trickier in legal English. It means 'to make more certain', but the problem is that it is often replaced with either *insure* as in the following sentence:

(3) After a bill is enacted, its sponsors must insure that the law becomes permanent policy (Garner, 2011: 88)

Here, the drafter should have used *ensure*, because *insure* should be restricted to 'financial context involving indemnification' (Garner, 2011:88). It is thus to some extent an ambiguous verb in legal language. The correct use of the word is illustrated in the following sentence:

(4) The independent and adequate state ground doctrine ensures that the States' interest […] (Garner, 2011: 88)

Again, there is no contractual meaning from Rossini, but we assume that this corresponds with the general legal meaning. In the interpretation of the treaty we need to look to the context (see table 4) and from this we can deduct that it is similar to the general legal meaning of 'to make more certain'. The States Parties make even more certain to all women that they receive certain rights.

To grant, which in everyday English means that one consents to performing an action or to bestow something on someone, is more formal in legal English. It signifies a formal act or transfer in which one confers something to another party. The treaty interpretation leans more towards the everyday English meaning than the legal meaning. States Parties (see table 4) more or less agree to give or provide the women with certain rights.

5.2.2 English (Semi) Modals

The semi-modal *have to* and the modal *must* are not used in CEDAW, but they are modals that signal a strong expression of obligation and *must* is discussed in chapter six. They are therefore included in this analysis. For the analysis of these modals, we have included another dimension, namely the meaning that they have in English grammars. For this, we have

combined definitions from Quirk et al. (1985) *Comprehensive Grammar of English* and Swan's (1996) *Practical English Usage*. Table 6 illustrates all the different interpretations:

	General		Legal	
	Grammars	**Dictionary**	**Contract**	**Legal**
Have to (semi-modal)	Expresses obligation or logical necessity, mostly in AmE Obligation imposed from the outside	Be obliged or find it necessary to do the specified thing	-	-
Must (modal)	Used mostly to express the deduction or conclusion that something is certain. In indirect speech indicates necessity and obligation The obligation is a necessary condition	Be obliged to; should	To indicate necessity, irrespective of who is responsible	Is required to; denotes all required actions

Table 6: Meanings of Obligative Verbs

The table shows us that the semi-modal *have to* and the modal *must* both express necessity and obligation. However, there is a significant difference in how they impose obligation. The semi-modal *have to* expresses an impersonal obligation, which means that it is expressed by a speaker external to the sentence. The semi-modal is thus objective because it does not contain the personal opinion of the subject.

(5) Children have to go to school.
(6) In the Netherlands, you have to drive on the right side of the road.

On the other hand, *must* imposes an obligation as a necessary condition. In this case it means that condition A is necessary a necessary condition for B to happen. For example:

(7) The sun must dry the grass before we can mow it.

(8) John must obtain all his ECTS before he can graduate.

The dictionary meaning of both modals is virtually the same, but when we arrive at the legal definitions the table shows gaps. For *have to* there are no legal definitions in our sources, possibly because the semi-modal is in most cases one of the most used irregular verbs in the English language. It seems that this appears to be problematic to find specific legal meanings that we can find with *must.* The modal does not appear in Garner's (2011) *Dictionary of Legal Usage* under the section of authoritative words, nor is it mentioned by Rossini (1998). Perhaps we can conclude that *have to* does not carry the same strong expression in legal context as it does in everyday English.

The modal *must,* however, can be interpreted in contracts as an indication for a necessity. Its meaning is slightly more detailed in Garner's definition, but it also points either party on something that is necessary to be done, as illustrated by sentence 9:

(9) Notice must be set within 30 days

In general, either in contracts or in other legal documents, the verb *must* has a similar meaning. It points a party on a necessary action that they are required to fulfill. Even though the legal definitions do not explicitly mention the notion of obligation, they give a more detailed description of something that is compulsory for parties. We can thus conclude that the meaning of *must* in legal documents has not changed significantly from its everyday use.

Overall, the noun and the verbs that express a degree of obligation keep to their legal meaning. All try to bind the States Parties to a promise or force them to undertake action and we thus consider them to express a strong obligation on the States Parties. The following paragraph determines whether the Dutch translation follows the same pattern.

5.2.3 Dutch Translations for Obligative Nouns & Verbs

The translations of the discussed noun and verbs in the previous section are respectively *verplichten, verbinden, verzekeren, garanderen, verlenen,* and *moeten.* For the meaning of these Dutch translations we consulted the *Van Dale* dictionary, which can be considered a Dutch equivalent to the *Oxford English Dictionary.* Unfortunately, there were no sources to determine the contractual meaning of the verbs, and there was only one source available to

consult on the legal meaning: *Fockema Andrea's Juridisch Woordenboek* (2012). Again, the meaning of the verb in the treaty is the researcher's interpretation.

	Dictionary	**Legal**	**Treaty**
Verplichten	Als plicht opleggen; door dienst verbinden	-	Staten moeten
Verbinden	Door overeenkomst of voorschrift verplichten	-	Staten binden zich aan dit doel
Verzekeren	Zeker maken van, de vaste beschikking geven over	Verbinden tot een contract / afspraak	De Staten garanderen
Garanderen	Borg blijven, instaan (voor –)	Zekerheid geven, de verzekering geven	De Staten beloven / verzekeren
Verlenen	Als hogere aan een mindere schenken; (figuurlijk) verschaffen, geven	-	De Staten geven

Table 7: Meanings of Dutch Translation Obligative Words

The first thing that we notice from the table is that the noun *obligation* is translated with the verb *verplichten*. In everyday Dutch, the meaning of the verb is already equal to the English legal meaning 'have a duty to'. We can see this in the following sentence:

(10) Hij verplichtte mij hem behulpzaam te zijn (Van Dale)

(11) *He forced/compelled me to help him* (Van Dale)

As we can see, the verb *verplichten* already carries a strong obligation in its everyday form. Even though we do not have a Dutch legal meaning, we assume that this will have the same strong obligative connotation. We can back this up with the treaty meaning, which goes towards the verb *moeten* (*E. must*). Thus, the strength of the obligation is in this case maintained in the translation. The same is true for the verb *verbinden*, which has the same everyday meaning as the English source verb *to undertake.* Its everyday Dutch meaning again tends to the stronger legal meaning in English: 'to bind oneself, to take on an obligation'. Here we again assume that the Dutch legal meaning carries the same strength, which is supported with the interpretation of the treaty meaning.

The English verb *ensure* has been translated with two different Dutch verbs, namely *verzekeren* and *garanderen.* From the latter verb, the legal meaning is most similar to the English meanings, while from the former verb, the dictionary meaning is closed to the English

meanings. Even though these are two different verbs, their meanings are closely related and in both the context they have a similar connotation as *ensure*. However, *verzekeren* is more directed at the actual contractual binding and has thus a touch more obligative than *garanderen.* For example:

(12) Ik verzeker u dat het een succes wordt (Guarantee)

(13) De bank heeft een winst van 5% gegarandeerd (Promise)

Even though one translation has a stronger obligative connotation, in general the meaning and strength of *ensure* was properly conveyed in the Dutch translation.

Finally, *to grant* was translated with the Dutch verb *verlenen.* There is unfortunately again no legal meaning that we can use for our analysis. Though this does not have to be a problem, because the English treaty interpretation is similar to the everyday use and it seems that this is also the case with the Dutch verb. In both circumstances it comes down to the fact that the States Parties bestow or give women something. We can thus conclude that the meaning and obligative strength of the English verbs have not been lost in the Dutch translation. However, this analysis cannot entirely show the changes in meaning for the Dutch verbs because there is a lack of legal meanings. This makes the analysis of the translation less complete than the English analysis.

5.2.4 Dutch Translation of the (Semi) Modals

In Dutch, the modals *have to* and *must* are both translated with the intransitive verb *moeten*. This is why the table below only shows one verb instead of two which was the case with table on English obligative verbs. For the meanings of *moeten* under the section 'grammar', the *Elektronische Algemene Nederlandse Spraakkunst* (E-ANS, 2002) was used.

Verb	Grammar	Dictionary	Legal
Moeten	De spreker of schrijver [geeft] te kennen dat het in de zin uitgedrukte op grond van bepaalde beschikbare gegevens op een dwingende manier waarschijnlijk is	Verplicht, gehouden zijn tot iets	-

Table 8: Meaning Dutch Translation Obligative Verb

Unfortunately, the Dutch sources here are also limited to the everyday meaning of *moeten* and do not provide a legal meaning. The meaning taken from the grammar indicates that the speaker who uses *moeten* indicates that what he expresses is most probably obligatory or authoritatively. In the dictionary the meaning is a little more defined: someone is obligated to do something. For example:

(14) Ze moet haar handtekening zetten op het document

(15) She must sign the document

There is no legal meaning for *moeten*, probably because it is not used very often in legal documents as it is such a strong obligative expression (Deschamps, 2009: 354). However, we can, on the basis of the other meanings, determine that *moeten* carries the same obligative strength as *must.*

Overall, we can conclude that the degree of expressed obligation from the official English text is maintained in the Dutch translation. Unfortunately, the analysis was hindered by the lack of contractual and legal interpretations in English but mostly in Dutch. Therefore, the comparison between both languages is restricted. At the moment, there are no sufficient sources that have analyzed the differences between everyday and legal language. The same goes for the meaning of the noun, the verbs, and the modals in international treaties. To obviate these complications, the researcher has attempted to provide the reader with her own interpretation of these meanings in order to complete the analysis. Another important mode in which obligation is expressed is modality. In particular the modal verb *shall* plays a large role in legal drafting. The next chapter will give an in-depth analysis of the use of modality in treaties and the explicit and implicit meaning of *shall*.

6. Modality in CEDAW

Whereas the previous chapter was more focused on the nouns and verbs that express obligation, this chapter focuses entirely on the grammatical aspects of modality and a number of modals. It discusses the role of the obligative modals in legal usage and specifically in treaties such as CEDAW. Eventually, we will try to determine whether certain modals have the same obligative strength in CEDAW as they are expected to have.

6.1 Modality

Modality is a grammatical form that indicates a mood. It is a 'semantic category that modifies a sentence to express such things as possibility and probability, doubt and certainty, volition and prediction, obligation and permission' (Andersson, 2007:12). Modality is a broad concept that refers to the degree of commitment or obligation of the speaker to perform the proposed content. Palmer (2001) states that modality is 'concerned with the event or situation that is reported in the utterance' and with 'the status of the preposition that describes the event' (1). Another aspect of modality is the way it functions within a language. Bybee et al. (1995) mention that modality 'is expressed in a variety of ways: morphological, lexical, syntactical, or via intonation' (2). This last mode of expression, intonation, is part of the Speech Act Theory (SAT) which deals with the propositional, illocutionary, and perlocutionary meaning of an utterance. The first meaning is the literal meaning; the second is the social function of the utterance, and the third meaning deals with the effect of what is said. SAT thus attempts to gain insight into the use of language by speakers that try to accomplish someone to perform an action and with the hearer's interpretation of the speaker's intended meaning (Hoye, 1997). In this thesis we will not deal with the SAT but with modality as semantic domain, because we are dealing with written texts and not with the pronunciation of these texts.

Modality is not synonymous to mood, which is a grammatical category similar to tense and aspect, whereas modality is the overall category that refers to the semantics of modal concepts. Mood thus refers to the words that a speakers uses to indicate his or her intent (modality). In general, modality is concerned with the authority of the speaker. This can be stated quite literally as the power that a speaker can exercise over an individual or a group, which can be linked to an expression of obligation (Hoye, 1997: 63). In this chapter we examine the types of modality and the way that they express this obligation.

6.1.1 Types of Modality

Linguists have developed different kinds of classifications for modality. Eventually, they all stem from the same traditional division between epistemic modality and root modality. For the purpose of this thesis we will use F.R. Palmer's division of modality, because his deontic modality best fits the semantic and practical scope of this thesis. Palmer (2001) has created the dichotomy of propositional and event modality. The former includes epistemic and evidential modality, while the latter is comprised of deontic and dynamic modality. Propositional modality deals with 'the speaker's attitude to the truth-value or factual status of the proposition' (Palmer, 2001:24). This thesis only deals with event modality, which includes obligation, permission, ability, and willingness (Aarts, 2011: 275-313). These subjects are the theme of this thesis as we are faced with these expressions in CEDAW.

Event modality describes events that have not occurred, but can potentially happen. For dynamic modality 'the conditioning factors are external to the person indicated as the subject' (Palmer, 2001:70), while in deontic modality these factors are internal. In addition, deontic modality depends mostly on the authority of the speaker. Palmer describes the distinction as following: 'deontic modality relates to obligation or permission, emanating from an external source, whereas dynamic modality relates to the ability or willingness, which comes from the individual concerned' (2001:9-10). The scope of this chapter is limited to deontic modality for the reason that it is concerned mostly with imposing obligation. It influences actions, states, or events but deontic modals can also impose obligation on its speaker (Andersson, 2007: 16). More specifically, the chapter only focuses on the modals that indicate deontic modality, these modal verbs are essential to drafters to express degrees of obligation.

6.2 Modal Verbs

English modality is expressed with a range of modal verbs instead of verb endings. English has a set of modals that has been formally defined, including: *may, might, can, could, must, will, would, shall* and *should*. Besides these core modals there are also marginal modals which are *need, dare, ought to,* and *used to*. The coordinating term for modals is auxiliary verbs, a category that also includes the verbs *be, do*, and *have*. English modals cannot be conjugated or used as a main verb, because they do not have an intrinsic meaning themselves. In third person singular they do not have a -s form like regular verbs.

The category of deontic modals includes the modal verbs *shall, will, must*, and *may*. These modals, which express permission and obligation, can be divided into deontic necessity

or possibility. The most important category to this thesis is the deontic necessity which is concerned with commands and imposing obligations. The main modal verbs that belong to this category are *shall* and *must*, of which *shall* contain the strongest force. It is however, rarely used in everyday English, but is still very much present in legal language. (Palmer, 2001: 89, 100; Andersson, 2007: 18-19).

Two types of deontic modality are directives and commissives, of which directives are the most prevalent category. Searle (1983) defines them as the type with which 'we try to get other to do things' (qtd. in: Palmer, 2001: 70). The English directives are *may* and *must,* both indicating permission and obligation. Commissives are defined by Searle as 'where we commit ourselves to do things' (qtd. in: Palmer, 2001: 72), which in English is signaled by the use of *shall.* The use of both directives and comissives, in particular the use of *shall,* is discussed further on in this chapter within the scope of legal language. First we will take a look at the status of modal verbs in Dutch, in order to later on understand the similarities and differences of modality between the two languages.

6.2.1 Dutch Modals

Dutch modals (*D. modale hulpwerkwoorden*) have a feature in common with English modals, they both lack a *te* or *to* before the infinitive for which they are acting as an auxiliary. Dutch has four real modals: *mogen, kunnen, moeten, willen*, but verbs like *durven, hoeven,* and *zullen* also carries auxiliary characteristics (Donaldson, 2008:219). They are called semi-modals, but in this thesis *zullen* is treated as a modal verb. In Dutch, the modal *moeten* is the designated verb to express obligation.

(12) U *moet* dit lezen.
(13) You *must* read this.

While *zullen* is not clearly marked out as a modal verb, it can express a sense of obligation or prohibition in Dutch. However, if the verb *zullen* is used to express either of these moods, it will have to be in a more formal formulation with *shall* as translation. A more regular approach would be to translation *zullen* into *will*.

(14) Gij *zult* niet stelen. (Obligatory)
(15) Thou *shalt* not steal.
(16) *Zal* het morgen regenen? (Probability)

(17) *Will* it rain tomorrow?

Dutch modals deviate from English modals in that they have ability to be used independently in a sentence. Where in English a verb would follow, in Dutch it is only implied. This happens most in cases when *doen*, *gaan*, *komen*, *hebben* and *worden* are the implied verbs.

(18) Ik *kan* het niet (doen).
(19) I *cannot* do it.

Table 9 summarizes the Dutch modals, with their most common English translations, but also with their meanings (Donaldson, 2008: 220-225; Shetter & Ham, 2007:107-112).

Dutch	English	Meaning
Zullen	Shall / will	Obligation or probability
Zouden	Should/ would	Obligation or probability
Moeten	Must	Obligation or certainty
Mogen	May	Permission or possibility
Willen	Want to / shall	Desire
Willen	Would	Desire
Kunnen	Can	Possibility or ability
Konden	Could	Possibility or ability

Table 9: Modals and their Meaning

6.3 Uses of Shall

Shall has almost lost its usage in everyday English, but it still has its usage in legal language. Nonetheless, this status is not undisputed. The following paragraphs will discuss the uses of *shall* and its problems.

6.3.1 Grammar of Shall

The modal that has a different meaning in everyday English and legal English is *shall.* This modal auxiliary originates from Old English and Germanic and expresses obligation or compulsion. It started off as a finite verb but it developed over the years and became an auxiliary. In light of this evolution, *shall* can both express a modal meaning and a mark a future time. Quirk et al. (1985) mention that *shall* is used very rarely in everyday English and has currently only two uses: prediction and volition. With a first person subject, *shall* will have a predictive use. Quirk also mentions that shall acts as a substitute 'for the future use of *will* in formal style' (Quirk et al. 1985: 230).

(20) When *will/shall* we get the results of our exams?

Shall is furthermore used to indicate volition, which also happens in first person as subject. Here it is again a formal substitute for *will.* Quirk (1985) however notes that *shall* can also — very restrictively — be used to indicate volition in second and third person subjects. In this case the modal would express the volition of the speaker in for instances giving an order, which gives it a very 'archaic and authoritarian' tone (230).

(21) You shall listen to me!

According to Swan (1996) and Hoye (1997), *shall* is one of the modals that expresses a degree of complete certainty, either positive or negative. Hoye argues that it indicates the speaker's course of action when it is used deontically. The modal verb emphasizes the need of the speaker to commit to thus action, it thus creates an obligational meaning (Hoye, 1997: 121; Swan: 1996: 333-336). However, in everyday English the use of the modal *shall* has lost ground over the past years and is mostly replaced by more common modals such as *will* and *must*.

Nonetheless, *shall* is still used regularly in legal language, especially with the drafting of agreements. As Coates states, the use of *shall* is: 'virtually restricted to formal legal contexts' (qtd. in: Foley, 2002: 363). Here, it has quite an important role and is mostly used as a deontic commissive, indicating legal commitment or obligating someone to commit. Black's Law Dictionary describes *shall* as following:

> As used in statutes, contracts, or the like, this word is generally imperative or mandatory. In common or ordinary parlance, and its ordinary signification, the term "shall" is a *word of command*, and one which has always or which must be given a *compulsory meaning; as denoting obligation*.. . . But it may be construed as merely permissive or directory (as equivalent to "may"), to carry out the legislative intention and in cases where no right or benefit to anyone depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense (own emphasis, Black, 1979: 1223)

Adams (2007) also states that in the language of contracts, *shall* should continue to serve as 'the principal means of expressing obligations' (1).

However, the legal usage of *shall* has expanded from indicating obligation to expressing future time and even other uses that have nothing to do with either obligation or future time. According to Kimble (1992), *shall* is (in most cases) closely related to the meaning of *must* (64). Whereas *shall* is actually a stronger expression than *must*, because it not 'only lays down an obligation, however strong, but actually guarantees that the action will occur' (Palmer, 1990: 74). The status of the modal *shall* is thus uncertain in legal language, it is ambiguous in its meaning. This ambiguity is shown in table 10, where we can see the OED definition of *shall* and the differences between its meaning in contracts and legislation:

	General	**Contract**	**Legislation**
Shall	A command, promise, or determination	'Promises to'	'Has a duty to'

Table 10: Definitions of Shall

The discussion on its usage and the replacement with other modals such as *will* and *must* has been going on for some years now. Both camps make good arguments for either the deletion of *shall* and its restricted usage, or for the preservation of the modal. The following paragraph will concentrate on this general debate, specifically the one between Garner and Adams, to illustrate the status of *shall* in legal language.

6.3.2 Problems with Shall

The usage of *shall* has been deemed as excessive or misused in legal texts by several scholars and commentators (Kimble 1992; Adams, 2001, 2004; Foley, 2001). Therefore, there are a number of scholars and legal researchers that opt for the replacement of *shall* with *must* or *will*. This discussion is mainly based on the problems that the ambiguity of *shall* proposes in contracts. The following is a general overview of the most important opinions concerning the problems that stick to *shall*.

Garner (2009; 2011) and Asprey (2003) are prominent speakers for the elimination of the modal from contract drafting. Asprey argues that *must* can be fitted in for *shall* when an obligation is indicated. She believes that drafters and lawyers must consider the reader and thus write in present tense to avoid the use of *shall* (193). Garner, in 2012, argued that the overuse of *shall* is to be eliminated by replacing it with a 'clearer word more characteristic of American English: must, will, is, may or the phrase is entitled to' (Carton, 2012). He believes that the use of *shall* has several problems, such as the outdated status in everyday English, but mainly when the modal is used as a prohibition by drafters. This mistake, commonly made by drafters, causes *shall* to decrease the status of its meaning 'has a duty to' and creates

ambiguity. He opts for the replacement of *must* in contracts and in bilateral agreements for the modal *will* (Carton, 2012; Garner, 2012). Mostly because these words do not cause confusing situations because they are clear in meaning. Garner, the current editor of Black's Law Dictionary, also mentions the replacements and ambiguity of *shall* in the Dictionary's entry:

> 1. *Has a duty to; more broadly, is required to* "the requester shall send notice" "notice shall be sent". This is the mandatory sense that drafters typically intend and that courts typically uphold. 2. *Should* (as often interpreted by courts) "all claimants shall request mediation". 3. *May* "no person shall enter the building without first signing the roster". When a negative word such as not or no precedes shall (as in the example in angled bracket), the word shall often means may. What is being negated is permission, not a requirement. 4. *Will* (as a future tense verb) "the corporation shall then have a period of 30 days to object" […] (own emphasis: Garner, 2009: 1499)

Adams (2004) also argues that *shall* is overused in contracts, but that it is possible to maintain the modal verb. He pleads for a more disciplined use of *shall* to provide a useful distinction between an obligation imposed on the subject of the sentence and one on someone other than the subject of the sentence. By replacing *shall* by *must* we, according to Adams, do not have a quick fix for the overuse and ambiguity of *shall*, but we would lose this significant difference. Another problem with the use of *must* is that for most drafters it sounds 'unduly bossy' (37). The use of *must* in the entry for *must* in the fifth edition of Black's Law Dictionary shows that it is every bit as ambiguous as *shall*:

> This word, like the word shall, is primarily of mandatory effect and in that sense is used in antithesis to may. But this meaning of the word is not the only one, and it is often used in a merely directory sense, and consequently is a synonym for the word "may" not only in the permissive sense of that word but also in the mandatory sense which it sometimes has (Black, 1979: 919)

Adams therefore claims that simply replacing *shall* with *must* does not solve the problem of ambiguity. Garner however, also advocates the replacement of *shall* with *will* to express obligation within contracts. Adams finds it a more appropriate modal than *must*, but argues that it — in the end — is also very problematic. This is because *will*, in everyday English is

used to express future time and not obligation. Adams also points out that *will* imposes obligation on the subject of the sentence, but that it could also be used to impose it on someone other than the subject. *Will*, as a replacement of *shall*, would not solve the problem of ambiguity either (Adams, 2004: 33-37). In the end, Adams suggests that *shall* should stay in contracts to say 'has a duty to' and proposes that drafters are more disciplined in their choices of expressions. It may be that *shall*, over the years, has become ambiguous because it has changed from a grammatical category into a lexical category. Baker (1992) states that a grammatical category is a category that is relatively constant and rarely subject to change. A lexical category, however, can be introduced quite rapidly into a language (82-85). It appears that all these meanings given to *shall* might have changed the modal from the grammatical category of tense and aspect to a lexical item. This unfortunately does not solve the discussion between the two camps on the preservation of the modal *shall*, but it could shed some light on the overuse of *shall*.

6.4 Deontic Modality in CEDAW

As we have seen from the previous chapter, there is a difference between everyday and legal English, but there is also a difference between contract language and legislative language. In this case, we treat CEDAW as contract but it is of course also part of legislation, so there can be ambiguity in meanings of words. However, in modality both the modal verbs that are connected with legal language in general have the same meaning in contracts as in legislation: *shall* and *may.* We have extensively discussed the role of *shall* in legal English in the above paragraphs, but in this analysis we will also include *may.* The reason for this is that it is, after *shall*, the most common modal in CEDAW. This can be seen table 11:

Modal Verb	Frequency (out of 4.140)	Percentage (%)
Shall	83	2
May	11	0.26
Will	4	0.1
Should	1	0.02

Table 11: Frequency English Modals

The table shows that the modal verbs appearing in the English version of CEDAW are: *shall, may, will,* and *should.* As we can see, *shall* appears a total of 83 times as a modal verb in the official English version, while the *may* appears only 11 times out of 4.140 words. Both *will* and *should* only appear in the preamble and not in the actual provisions, we therefore leave them out of this analysis.

May is one of the substitutes for *shall* that Garner pleads for in his quest to eliminate the overuse of *shall.* However, in everyday English it is a modal that indicates either permission or possibility. Garner (2011) argues that *may* means 'has discretion to; is permitted to' (954). According to Palmer (2001) it has a deontic meaning that can, besides permission, also express obligation (71). Rossini (1998) however points out that in contract and in legislation the deontic modal *may* means 'is authorized to' (15). An overview the different interpretations:

	General	**Contract**	**Legislation**
May	Indicates permission or possibility	'Is authorized to'	'Is authorized to'

Table 12: Definitions of May

We now have both the knowledge of the legal uses of *shall* and *may* in order to start analyzing whether the Dutch translation of the modals in CEDAW also carry the same degree of expression of obligation as in the official English version.

English	**Dutch Translation**
States Parties shall take all appropriate measures	De Staten die partij zijn bij dit Verdrag, nemen alle passende maatregelen om
States Parties shall take into account	De Staten die partij zijn bij dit Verdrag, houden rekening met […]
the term "discrimination against women" shall mean any distinction, exclusion or restriction	wordt onder „discriminatie van vrouwen" verstaan elke vorm van onderscheid, uitsluiting of beperking
States Parties shall grant women equal rights with men to acquire	verlenen vrouwen gelijke rechten als mannen om een nationaliteit te verkrijgen
this equality shall be ensured in pre-school, general, technical, professional and higher technical education,	deze gelijkheid dient te worden verzekerd in de aan de school voorafgaande vorming, het algemeen vormend en het technisch onderwijs,
States Parties shall take into account the particular problems faced by rural women	De Staten die partij zijn bij dit Verdrag, houden rekening met de bijzondere problemen waarvoor vrouwen op het platteland

Table 13: Shall in CEDAW

As we can see, *shall* is in these exemplary sentences from CEDAW not translated with Dutch modal verbs. In fact, the Dutch translation only contains 26 instances of modal verbs, as we can see in table 14:

Modal Verb	Frequency (out of 4.970)	Percentage (%)
Kunnen	10	0.2
Kan	8	0.16
Zullen	3	0.06
Zal	2	0.04
Mag	2	0.04
Moet	1	0.02

Table 14: Dutch Modal Verbs in Translation CEDAW

There are just a few modals in the Dutch translation of CEDAW. The verb *kunnen*, and its conjugation *kan*, appear most of these modal verbs. In 18 cases it is a translation of the English modal *may*. The following table shows us that *may* is in almost all cases translated with a Dutch modal verb.

Modal Verb	Frequency	Translated with Present Tense	Translated with Modal
Shall	83	83	0
May	11	1	10

Table 15: Translation of Modals

What we can also deduct from this table is that *shall*, which has a more ambiguous meaning in English, is never translated with a modal verb. It is shown that it in all cases is translated with a Dutch present tense (*D. onvoltooid tegenwoordige tijd*). The 83 cases of *shall* are translated with 34 different present tenses.

This seems unusual because in Dutch modality can be expressed with either modal verbs or — in most instances — the grammatical tenses imperfectum (*E. simple past / D. onvoltooid verleden tijd*) and plusquamperfectum (*E. past perfect / D. voltooid verleden tijd*). Both these grammatical tenses express the potential occurrence of an event, just like English modal verbs do (E-ANS, 2002). An example:

(22) Ik belde haar op (Imperfectum)
(23) I called her
(24) Ik had gestudeerd voor het tentamen (Plusquamperfectum)
(25) I had studied for the exam

The *Nederlandse Taalunie* and the *Genootschap Onze Taal* both support this by stating that modality can be expressed with either modal auxiliary verbs, adjectives, or the past tense (Taalunieversum, 2014; Onze Taal, 2014). Bogaart (2013) argues that modality can be expressed clearly with past tense in most cases. According to him the speaker can present situations that are optional or improbable at the time of utterance (33).

Nonetheless, the evidence that we have gathered from the translation shows that this all is not true for the translation of modality in CEDAW. In our case modality is not expressed with past tense, but with the indicative praesens. This indicative is a coordinating term for all grammatical tenses, but in this case we focus on the perfectum or the present tense. Apparently, English modals are used by drafters when they want to express an obligation, but they are not preferred by Dutch drafters or translators of legal texts. Deschamps (2009), in her dissertation, discovered that Dutch legislative guidelines recommend the use of present tense to express obligations. The two verbs that seem to be most plausible to use for obligation would then be: *moeten* or *dienen.* This is not the case, because the guidelines and several scholars indicate that these verbs can be circumvented with the use of present tense. The Dutch *Aanwijzingen voor de regelgeving* even indicate that '[r]egulations should, unless this in inevitable, not be formulated with the help of the verbs *moeten* or *dienen*' (own translation: Borman, 1993: 83). In general, *dienen* has the same status as *shall* in English. Its use in everyday Dutch has been made redundant with the use of *moeten* and it has become an archaic verb (E-ANS, 2002). The guidelines provide no clear reason why either of these verbs should be avoided, but it is probable that people find them to sound 'bossy', as is the case for the use of *must* as argued by Garner (2004). Thus, in legislative texts, the guidelines and scholars seem to prefer the use of present tense to express modal obligation. According to Coremans and Van Damme (2001) the use of present tense simplifies the reading of the text. Other scholars argue that especially governmental bodies are best to use the present tense in their text, while others can suffice with a modal auxiliary. There is, however, discussion on whether the use of the present tense in legislative texts is too vague to indicate obligation. Some scholars argue that modals verbs (such as *moeten*) should be used to make the obligation clearer, because the present tense can also have multiple meanings (in: Deschamps, 2009: 354-356).

We can cautiously state that the present tense in legislative texts, in this treaty, functions as an imperative (*D. gebiedende wijs*). It is clear that the strong obligation of *shall* is in Dutch translated with a present tense though this is a common tense in the Dutch language without strong obligative meaning. The imperative however, does express orders that can have a strong obligative meaning (Onze Taal, 2014). For the imperative we can also argue that it sounds 'bossy' and that thus tense is therefore not applied in legislative texts. When we use an imperative for a clause in CEDAW we get the following sentences:

(26) Verbind u tot dit doel (!)

(27) Undertake this (!)

This would not be accepted by States Parties because it sounds too much like an order. The researcher thus proposes that in the translation of CEDAW, the present tense that replaces the modal *shall* is used in an imperative manner. The translators have thus chosen for a weaker expression of obligation with the present tense, but have kept the obligation equally strong with their intention to use the present tense ≈ imperative. The grammatical equivalence between the source language English and the target language Dutch here implies a relation between English modality and Dutch present tense. The relation between these languages could be forcing the translator to apply this modulation to maintain a certain level of equivalence (Baker, 1992).

Overall, we can argue that the strength of *shall* was maintained in the Dutch translation although in a seemingly weaker construction. This weaker construction however functions the same as the strong modal *shall* within the guidelines of Dutch legislative texts. In the Dutch translation the expression of degrees of obligation is equal to the English version, but written down more subtly.

7. Conclusion

This thesis has given an account of the role of CEDAW within international law and more specifically dealt with the legislative and linguistic expressions of degrees of obligation. The main goal of this thesis was to provide answers for the question proposed in the introduction: *How strong is the expression of degrees of obligation within CEDAW's official English version and its Dutch translation, and has this strength changed in the process of translation?*

One of the most interesting findings of this thesis is the dichotomy between the proposed legislative obligations and the linguistic obligations. While the former are seen as strong obligations by the UN and the States Parties, they appear to be weakened — not by its intention — but by the weak enforcement mechanisms. What was promised when the treaty came into force (substantial obligations towards the States Parties to improve the lives of women) is unfortunately currently out of reach. This is because of the multitude of reservations that States Parties were allowed to enter to the treaty. We have seen that especially the countries where the rights of women are still restricted have entered reservations on the most important provisions of CEDAW. Another problem is the status of CEDAW as a contract. Research has proven that the treaty is on the lowest rungs of the contract ladder and thus does not have a strong position regarding the obligations its can impose.

Linguistically, the obligations in the treaty seem to be stronger than they are legislatively. From our analysis we can conclude that the noun and the verbs that are used to express obligation are mostly translated with Dutch verbs with equal strength. The comparative analysis between English and Dutch was however not complete and interpretations of the researcher had to fill the gaps in the literature. Obligation in the treaty is also signaled with modality, in specific the modal *shall.* The study proves that this is a strong obligative modal in English which is not translated with a Dutch modal. However, we have proven that Dutch legislative texts use present tense, and not the expected past tense, to express the same obligation as *shall*. Finally, it was suggested that the Dutch present tense in legislative texts expresses the same obligative strength as the imperative.

When we look at the thesis question that was proposed in the introduction, we can thus answer that CEDAW is legislatively not very strong, but that the linguistic aspect does pose strong degrees of expression of obligation. The strength of these expressions has not changed, or changed only minimally, in the process of translation to Dutch. This answer corresponds to the outcomes that were expected in the introduction to this thesis.

A limitation to this study is the lack of available research on the status of international treaties as compared to contract. Another limitation is the gaps that arose in the analysis of Dutch verbs that express obligation, this caused for an analysis that lacked data. Future research should aim especially at the linguistic analysis of Dutch words that express degrees of obligation to create a complete overview. This overview can then be used for a large scale research on the expression of degrees of obligation which could give us more insight into its function in international treaties, but also in legislative documents in general. Another interesting angle for future research could be the grammatical equivalence between languages with obligative verbs such as *shall*, *must*, and *ought to*. Specifically, the changes that are applied that could transform these verbs from grammatical to lexical categories and the implications for translations of treaties.

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Appendix A: English Text 'Convention on the Elimination of All Forms of Discrimination against Women'

The States Parties to the present Convention,
Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,
Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,
Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights,
Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,
Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,
Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,
Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,
Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,
Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,
Emphasizing that the eradication of *apartheid*, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,
Affirming that the strengthening of international peace and security, relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for

national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including

legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care

facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropiate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in

order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through exployment or self-employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife; including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth States Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each States Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of

the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.
7. For the filling of casual vacancies, the States Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.
9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:
   (a) Within one year after the entry into force for the State concerned; and
   (b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States

Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a States Party; or

(b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any States Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth

instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each States Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any States Party which has made such a reservation.
3. Any States Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

Appendix B: Dutch Translation 'Verdrag inzake de uitbanning van alle vormen van discriminatie van vrouwen'

De Staten die partij zijn bij dit Verdrag,

Erop wijzend dat het Handvest van de Verenigde Naties opnieuw het vertrouwen in de fundamentele rechten van de mens, in de waardigheid en de waarde van de mens en in de gelijke rechten van mannen en vrouwen bevestigt,
Erop wijzend dat de Universele Verklaring van de rechten van de mens het beginsel van de ontoelaatbaarheid van discriminatie bevestigt en verkondigt dat alle mensen vrij en gelijk in waardigheid en in rechten zijn geboren en dat een ieder aanspraak heeft op alle daarin genoemde rechten en vrijheden, zonder enig onderscheid van welke aard ook, waaronder begrepen ieder onderscheid naar geslacht,
Erop wijzend dat de Staten die partij zijn bij de Internationale Verdragen inzake de rechten van de mens verplicht zijn het gelijke recht van mannen en vrouwen op het genot van alle economische, sociale, culturele, burgerlijke en politieke rechten te verzekeren,
In aanmerking nemend de internationale overeenkomsten gesloten onder auspiciën van de Verenigde Naties en de gespecialiseerde organisaties ter bevordering van de gelijkgerechtigdheid van mannen en vrouwen,
Tevens wijzend op de resoluties, verklaringen en aanbevelingen aangenomen door de Verenigde Naties en de gespecialiseerde organisaties ter bevordering van de gelijkgerechtigdheid van mannen en vrouwen,
Evenwel verontrust over het feit dat ondanks deze verschillende akten wijdverbreide discriminatie van vrouwen nog steeds bestaat,
Eraan herinnerend dat discriminatie van vrouwen schending van de beginselen van gelijkgerechtigdheid en eerbied voor de menselijke waardigheid is, de deelneming van vrouwen op gelijke voet met mannen aan het politieke, sociale, economische en culturele leven van hun land in de weg staat, de toename van de welvaart van de maatschappij en het gezin belemmert en de volledige ontplooiing van de mogelijkheden van vrouwen bij het dienen van hun land en van de mensheid ernstig bemoeilijkt,
Verontrust over het feit dat vrouwen in situaties van armoede worden achtergesteld bij de verkrijging van voedsel, gezondheidszorg, onderwijs, opleiding en werkgelegenheid, alsmede van andere mogelijkheden om in hun behoeften te voorzien,
Ervan overtuigd dat de invoering van de nieuwe internationale economische orde, gebaseerd op billijkheid en rechtvaardigheid, een aanzienlijke bijdrage zal leveren aan de bevordering van de gelijkheid van mannen en vrouwen,
Met nadruk erop wijzend dat de uitbanning van apartheid, van alle vormen van racisme, van

rassendiscriminatie, van kolonialisme, van neo-kolonialisme, van agressie, van buitenlandse bezetting en overheersing en van inmenging in de binnenlandse aangelegenheden van Staten, van essentieel belang is voor het volledige genot van rechten door mannen en vrouwen,
Bevestigend dat de versterking van de internationale vrede en veiligheid, de internationale ontspanning, de onderlinge samenwerking tussen alle Staten ongeacht hun sociaal en economisch stelsel, de algemene en volledige ontwapening, in het bijzonder nucleaire ontwapening onder streng en doeltreffend internationaal toezicht, de bevestiging van de beginselen van rechtvaardigheid, gelijkheid en wederzijds belang in de betrekkingen tussen de landen, en de verwezenlijking van het recht van volken, levend onder vreemde en koloniale overheersing en buitenlandse bezetting, op zelfbeschikking en onafhankelijkheid, alsmede de eerbiediging van de nationale soevereiniteit en de territoriale integriteit, de maatschappelijke vooruitgang en ontwikkeling zullen bevorderen en derhalve zullen bijdragen tot het bereiken van volledige gelijkheid van mannen en vrouwen,
Ervan overtuigd dat voor de volledige ontwikkeling van een land, het welzijn van de wereld en de zaak van de vrede is vereist dat zoveel mogelijk vrouwen, op gelijke voet met mannen, op alle gebieden deelnemen,
Indachtig de belangrijke, tot dusverre niet volledig erkende bijdrage van vrouwen aan het welzijn van het gezin en aan de ontwikkeling van de maatschappij, alsmede de maatschappelijke betekenis van het moederschap en de rol van beide ouders in het gezin en bij de opvoeding van kinderen, en beseffend dat de functie van vrouwen bij de voortplanting
geen basis voor discriminatie mag zijn, maar dat de verantwoordelijkheid voor de opvoeding van kinderen door mannen, vrouwen en samenleving als geheel gezamenlijk moet worden gedragen.
Zich ervan bewust dat een verandering in de traditionele rol zowel van mannen als van vrouwen in de maatschappij en in het gezin noodzakelijk is om tot volledige gelijkheid van mannen en vrouwen te komen.
Vastbesloten de beginselen, genoemd in de Verklaring inzake de uitbanning van discriminatie van vrouwen, te verwezenlijken en te dien einde de maatregelen die ten behoeve van de uitbanning van zodanige discriminatie in al haar vormen en uitingen zijn vereist, aan te nemen,
Zij overeengekomen als volgt:

DEEL I

Artikel 1

Voor de toepassing van dit Verdrag wordt onder „discriminatie van vrouwen" verstaan elke vorm van onderscheid, uitsluiting of beperking op grond van geslacht, die tot gevolg of tot doel heeft de erkenning, het genot of de uitoefening door vrouwen van de rechten van de mens en de fundamentele vrijheden op politiek, economisch, sociaal of cultureel gebied, op het terrein van de burgerrechten of welk ander gebied dan ook, ongeacht hun huwelijkse staat, op de grondslag van gelijkheid van mannen en vrouwen aan te tasten of teniet te doen.

Artikel 2

De Staten die partij zijn bij dit Verdrag, veroordelen discriminatie in alle vormen van vrouwen, komen overeen onverwijld met alle passende middelen een beleid te volgen, gericht op uitbanning van discriminatie van vrouwen, en verbinden zich tot dit doel:

(a) het beginsel van gelijkheid van mannen en vrouwen in hun nationale grondwet of in andere geëigende wetgeving op te nemen, indien dit nog niet is geschied, en de praktische verwezenlijking van dit beginsel door middel van wetgeving of met andere passende middelen te verzekeren;

(b) passende wettelijke en andere maatregelen te treffen, met inbegrip van - waar nodig - sancties, waarin alle discriminatie van vrouwen wordt verboden;

(c) wettelijke bescherming in te voeren van de rechten van vrouwen op gelijke voet met mannen en door middel van bevoegde nationale rechterlijke instanties en andere overheidsinstellingen de daadwerkelijke bescherming van vrouwen tegen elke vorm van discriminatie te verzekeren;

(d) zich te onthouden van ieder discriminerend handelen, eenmalig of voortdurend, jegens vrouwen en te verzekeren dat de overheidsorganen en -instellingen handelen overeenkomstig deze verplichting;

(e) alle passende maatregelen te nemen om discriminatie van vrouwen door personen, organisaties of ondernemingen uit te bannen;

(f) alle passende maatregelen, waaronder wetgevende, te nemen om bestaande wetten, voorschriften, gebruiken en praktijken, die discriminatie van vrouwen inhouden, te wijzigen of in te trekken, onderscheidenlijk af te schaffen;

(g) alle nationale strafbepalingen die discriminatie van vrouwen inhouden, in te trekken.

Artikel 3

De Staten die partij zijn bij dit Verdrag, nemen op alle gebieden, in het bijzonder op politiek, sociaal, economisch en cultureel gebied, alle passende maatregelen, waaronder wetgevende, om de volledige ontplooiing en ontwikkeling van vrouwen te verzekeren, ten einde haar de uitoefening en het genot van de rechten van de mens en de fundamentele vrijheden op gelijke voet met mannen te waarborgen.

Artikel 4

1. Wanneer de Staten die partij zijn bij dit Verdrag, tijdelijk bijzondere maatregelen treffen die zijn gericht op versnelling van feitelijke gelijkstelling van mannen en vrouwen wordt dit niet beschouwd als discriminatie, als omschreven in dit Verdrag, maar het mag geenszins leiden tot handhaving van ongelijke of afzonderlijke normen; deze maatregelen dienen buiten werking te worden gesteld zodra de doelstellingen ter zake van gelijke kansen en gelijke behandeling zijn verwezenlijkt.

2. Wanneer de Staten die partij zijn bij dit Verdrag, bijzondere maatregelen treffen, met inbegrip van

de in dit Verdrag vervatte maatregelen, die zijn gericht op bescherming van het moederschap wordt dit niet beschouwd als discriminerend.

Artikel 5

De Staten die partij zijn bij dit Verdrag, nemen alle passende maatregelen om:

(a) het sociale en culturele gedragspatroon van de man en de vrouw te veranderen ten einde te komen tot de uitbanning van vooroordelen, van gewoonten en van alle andere gebruiken, die zijn gebaseerd op de gedachte van de minderwaardigheid of meerderwaardigheid van één van beide geslachten of op de stereotiepe rollen van mannen en vrouwen;

(b) ervoor zorg te dragen dat onderwijs over het gezin een juist begrip van het moederschap als sociale functie, en de erkenning van de gezamenlijke verantwoordelijkheid van mannen en vrouwen bij het grootbrengen en de ontwikkeling van hun kinderen bevat, met dien verstande dat het belang van de kinderen in alle gevallen vooropstaat.

Artikel 6

De Staten die partij zijn bij dit Verdrag, nemen alle passende maatregelen, waaronder wetgevende, ter bestrijding van alle vormen van handel in vrouwen en van het exploiteren van prostitutie van vrouwen.

DEEL II

Artikel 7

De Staten die partij zijn bij dit Verdrag, nemen alle passende maatregelen om discriminatie van vrouwen in het politieke en openbare leven van het land uit te bannen, en verzekeren vrouwen in het bijzonder het recht om op gelijke voet met mannen:

(a) hun stem uit te brengen bij alle verkiezingen en volksstemmingen, en verkiesbaar te zijn in alle openbaar gekozen lichamen;

(b) deel te nemen aan de vaststelling van het overheidsbeleid en aan de uitvoering hiervan, alsook openbare ambten te bekleden en alle openbare functies op alle overheidsniveaus te vervullen;

(c) deel te nemen aan niet-overheidsorganisaties en verenigingen op het gebied van het openbare en politieke leven van het land.

Artikel 8

De Staten die partij zijn bij dit Verdrag, nemen alle passende maatregelen om te verzekeren dat vrouwen, op gelijke voet met mannen en zonder enig onderscheid, de mogelijkheid hebben hun regering op internationaal niveau te vertegenwoordigen en deel te nemen aan de werkzaamheden van internationale organisaties.

Artikel 9

1. De Staten die partij zijn bij dit Verdrag, verlenen vrouwen gelijke rechten als mannen om een nationaliteit te verkrijgen, van nationaliteit te veranderen of deze te behouden. Zij waarborgen in

het bijzonder dat noch een huwelijk met een buitenlander, noch een wijziging van nationaliteit van de echtgenoot staande huwelijk, automatisch de nationaliteit van de echtgenote verandert, haar staatloos maakt of haar dwingt de nationaliteit van haar echtgenoot aan te nemen.

2. De Staten die partij zijn bij dit Verdrag, verlenen vrouwen gelijke rechten als mannen wat de nationaliteit van hun kinderen betreft.

DEEL III

Artikel 10

De Staten die partij zijn bij dit Verdrag, nemen alle passende maatregelen om discriminatie van vrouwen uit te bannen ten einde vrouwen rechten te verzekeren die gelijk zijn aan die van mannen op het gebied van onderwijs en vorming, en in het bijzonder, op basis van gelijkheid van mannen en vrouwen, het volgende te garanderen:

(a) dezelfde mogelijkheden inzake loopbaan- en beroepskeuze en inzake toelating tot het onderwijs en inzake het verwerven van diploma's aan alle categorieën onderwijsinstellingen zowel op het platteland als in stedelijke gebieden; deze gelijkheid dient te worden verzekerd in de aan de school voorafgaande vorming, het algemeen vormend en het technisch onderwijs, het hoger beroepsonderwijs en het hoger technisch onderwijs, zowel als in alle andere soorten beroepsopleiding;

(b) toegang tot dezelfde onderwijsprogramma's, dezelfde examens, tot onderwijs door leerkrachten met dezelfde soort bevoegdheden, en tot schoolgebouwen en uitrusting van dezelfde kwaliteit;

(c) uitbanning van elke stereotiepe opvatting van de rol van mannen en vrouwen op alle niveaus en in alle vormen van onderwijs, door het aanmoedigen van gemengd onderwijs en andere soorten onderwijs die zullen bijdragen tot het bereiken van dit doel, en in het bijzonder door de herziening van leerboeken en onderwijsprogramma's en door de aanpassing van onderwijsmethodes;

(d) dezelfde mogelijkheden gebruik te maken van beurzen en andere studietoelagen;

(e) dezelfde mogelijkheden inzake toegang tot programma's voor wederkerend onderwijs met inbegrip van programma's voor volwassenen om te leren lezen en schrijven en om te leren lezen en schrijven toegespitst op de praktijk, in het bijzonder programma's die erop zijn gericht in een zo vroeg mogelijk stadium ieder verschil in genoten onderwijs dat mocht bestaan tussen mannen en vrouwen te verkleinen;

(f) vermindering van het aantal meisjes en vrouwen die hun studie opgeven en organisatie van programma's voor meisjes en vrouwen die voortijdig de school hebben verlaten;

(g) dezelfde mogelijkheden om actief deel te nemen aan sport en lichamelijke opvoeding;

(h) toegang tot bijzondere informatie van opvoedkundige aard, die kan bijdragen tot het waarborgen van de gezondheid en het welzijn van het gezin, met inbegrip van informatie en advies inzake geboortenregeling.

Artikel 11

1. De Staten die partij zijn bij dit Verdrag, nemen alle passende maatregelen om discriminatie van vrouwen in het arbeidsproces uit te bannen, ten einde vrouwen, op basis van gelijkheid van mannen en vrouwen, dezelfde rechten te verzekeren, in het bijzonder:

(a) het recht op arbeid, als onvervreemdbaar recht van alle mensen;

(b) het recht op dezelfde arbeidsmogelijkheden met inbegrip van toepassing van dezelfde selectiemaatstaven in het arbeidsproces;

(c) het recht op vrije keuze van beroep en werk, het recht op bevordering, behoud van de werkkring en alle aan de desbetreffende arbeid verbonden uitkeringen en voorwaarden, alsmede het recht om een beroepsopleiding te volgen en te worden herschoold; hieronder zijn begrepen leerlingstelsels, voortgezette beroepsopleidingen en wederkerend onderwijs;

(d) het recht op gelijke beloning, met inbegrip van uitkeringen, en op gelijke behandeling met betrekking tot arbeid van gelijke waarde, alsmede gelijke behandeling bij de beoordeling van de kwaliteit van het werk;

(e) het recht op sociale zekerheid, in het bijzonder in geval van pensionering, werkloosheid, ziekte, invaliditeit en ouderdom, en arbeidsongeschiktheid om andere redenen, alsmede het recht op betaald verlof;

(f) het recht op bescherming van de gezondheid en op veilige arbeidsomstandigheden, met inbegrip van de zorg voor het behoud van de voortplantingsfunctie.

2. Ten einde discriminatie van vrouwen op grond van huwelijk of moederschap te voorkomen en het daadwerkelijke recht van vrouwen op arbeid te verzekeren, nemen de Staten die partij zijn bij dit Verdrag passende maatregelen om:

(a) ontslag op grond van zwangerschap of verlof wegens bevalling, en discriminatie bij ontslag in verband met huwelijkse staat te verbieden en sancties op overtreding van deze maatregelen te stellen;

(b) verlof wegens bevalling in te voeren met behoud van loon of met vergelijkbare sociale voorzieningen, zonder dat dit leidt tot verlies van de vroegere werkkring, de behaalde anciënniteit of de hun toekomende sociale uitkeringen;

(c) de verlening aan te moedigen van de noodzakelijke ondersteunende diensten voor sociale zorg, om ouders in staat te stellen verplichtingen jegens het gezin te combineren met verantwoordelijkheden in het werk en deelneming aan het openbare leven, in het bijzonder door het opzetten en ontwikkelen van een netwerk van faciliteiten voor kinderopvang te bevorderen;

(d) bijzondere bescherming tijdens de zwangerschap te bieden aan vrouwen wier soort arbeid

schadelijk voor hen is gebleken.

3. De beschermende wetgeving met betrekking tot de in dit artikel bedoelde aangelegenheden wordt met geregelde tussenpozen opnieuw bezien in het licht van de wetenschappelijke en technologische kennis en wordt - indien nodig - gewijzigd, ingetrokken of uitgebreid.

Artikel 12

1. De Staten die partij zijn bij dit Verdrag, nemen alle passende maatregelen om discriminatie van vrouwen op het gebied van de gezondheidszorg uit te bannen, ten einde te verzekeren dat vrouwen, op basis van gelijkheid van mannen en vrouwen, gebruik kunnen maken van medische zorg, met inbegrip van die welke verband houden met geboortenregeling.

2. Niettegenstaande het bepaalde in het eerste lid van dit artikel waarborgen de Staten die partij zijn bij dit Verdrag aan vrouwen passende, zonodig kosteloze dienstverlening in verband met zwangerschap, bevalling en de hierop volgende periode, alsmede passende voeding gedurende de zwangerschap en de tijd waarin zij hun zuigelingen voeden.

Artikel 13

De Staten die partij zijn bij dit Verdrag, nemen alle passende maatregelen om discriminatie jegens de vrouw op andere gebieden van het economische en maatschappelijke leven uit te bannen, ten einde vrouwen, op basis van gelijkheid van mannen en vrouwen, dezelfde rechten te verzekeren, in het bijzonder:

(a) het recht op gezinsuitkeringen;

(b) het recht op bankleningen, hypotheken en andere vormen van financieel krediet;

(c) het recht deel te nemen aan activiteiten op het gebied van vrijetijdsbesteding, aan sport en aan alle aspecten van het culturele leven.

Artikel 14

1. De Staten die partij zijn bij dit Verdrag, houden rekening met de bijzondere problemen waarvoor vrouwen op het platteland worden gesteld en met de belangrijke rol die zij spelen bij het economisch voortbestaan van hun gezin, met inbegrip van hun werk in de niet door geld beheerste sectoren van de economie, en nemen alle passende maatregelen om de toepassing te verzekeren van het bepaalde in dit Verdrag ten aanzien van vrouwen in plattelandsgebieden.

2. De Staten die partij zijn bij dit Verdrag, nemen alle passende maatregelen om discriminatie jegens de vrouw in plattelandsgebieden uit te bannen, ten einde te verzekeren dat vrouwen op basis van gelijkheid van mannen en vrouwen, deel nemen aan en voordeel genieten van de ontwikkeling van het platteland, en in het bijzonder garanderen zij zodanige vrouwen het recht:

(a) deel te nemen aan de uitwerking en uitvoering van ontwikkelingsplanning op alle niveaus;

(b) te kunnen beschikken over toereikende faciliteiten op het gebied van de gezondheidszorg, met

inbegrip van informatie, advies en dienstverlening op het gebied van geboortenregeling;

(c) rechtstreeks voordeel te genieten van programma's voor sociale zekerheid;

(d) alle soorten zowel officiële, als onofficiële opleiding en vorming te ontvangen, met inbegrip van die welke verband houden met het kunnen lezen en schrijven toegespitst op de praktijk zowel als gebruik te kunnen maken van alle gemeenschapsdiensten en diensten op voorlichtingsgebied, onder andere ten einde hun technische vaardigheden te vergroten;

(e) zelfhulpgroepen en samenwerkingsverbanden te stichten, ten einde te bereiken dat zij gebruik kunnen maken van gelijke mogelijkheden op economisch gebied door middel van arbeid in dienstverband of arbeid voor eigen rekening;

(f) deel te nemen aan alle gemeenschapsactiviteiten;

(g) te kunnen beschikken over landbouwkrediet en landbouwleningen, faciliteiten voor de afzet van hun produkten, de nodige technologie en gelijke behandeling bij land- en landbouwhervormingen alsook bij programma's voor herindeling van landbouwgrond;

(h) onder behoorlijke omstandigheden te leven, in het bijzonder wat huisvesting, sanitaire voorzieningen, elektriciteits- en watervoorziening, vervoer en verbindingen betreft.

DEEL IV

Artikel 15

1. De Staten die partij zijn bij dit Verdrag, verlenen de vrouw gelijkheid aan de man voor de wet.

2. De Staten die partij zijn bij dit Verdrag, verlenen aan vrouwen in burgerlijke aangelegenheden rechtsbevoegdheid die gelijk is aan die van mannen, en dezelfde mogelijkheden om die bevoegdheid uit te oefenen. In het bijzonder verlenen zij vrouwen gelijke rechten om overeenkomsten te sluiten en bezittingen te beheren, en behandelen hen in alle stadia van gerechtelijke procedures op dezelfde wijze.

3. De Staten die partij zijn bij dit Verdrag komen overeen dat iedere overeenkomst en ieder ander particulier document van welke aard ook, waaraan een rechtsgevolg is verbonden, gericht op beperking van de rechtsbevoegdheid van vrouwen, als nietig dient te worden beschouwd.

4. De Staten die partij zijn bij dit Verdrag, verlenen mannen en vrouwen dezelfde rechten met betrekking tot de wetgeving inzake de bewegingsvrijheid van personen en de vrijheid hun woon- en verblijfplaats te kiezen.

Artikel 16

1. De Staten die partij zijn bij dit Verdrag, nemen alle passende maatregelen om discriminatie jegens de vrouw in alle aangelegenheden betreffende huwelijk en familiebetrekkingen uit te bannen, en verzekeren in het bijzonder, op basis van gelijkheid van de man en de vrouw:

(a) hetzelfde recht om een huwelijk aan te gaan;

(b) hetzelfde recht om in vrijheid een echtgenoot te kiezen en alleen met vrije en volledige

toestemming een huwelijk aan te gaan;

(c) dezelfde rechten en verantwoordelijkheden tijdens het huwelijk en bij de ontbinding ervan;

(d) dezelfde rechten en verantwoordelijkheden als ouder, ongeacht de huwelijkse staat, in aangelegenheden met betrekking tot hun kinderen; in alle gevallen staat het belang van de kinderen voorop;

(e) dezelfde rechten om in vrijheid en bewust een beslissing te nemen over het aantal van hun kinderen en het tijdsverloop tussen de geboorten daarvan en te kunnen beschikken over de informatie, vorming en middelen om hen in staat te stellen deze rechten uit te oefenen;

(f) dezelfde rechten en verantwoordelijkheden met betrekking tot gezag over en de adoptie van kinderen, of soortgelijke instellingen waar deze begrippen in de nationale wet bestaan; in alle gevallen staat het belang van de kinderen voorop;

(g) dezelfde persoonlijke rechten als echtgenoot en echtgenote, met inbegrip van het recht een geslachtsnaam, een beroep en een werkkring te kiezen;

(h) dezelfde rechten voor beide echtgenoten met betrekking tot eigendom, verwerving, beheer, bestuur en genot van en beschikking over bezittingen, hetzij om niet hetzij onder bezwarende titel.

2. Verlovingen en huwelijken van kinderen dienen geen rechtsgevolg te hebben en alle noodzakelijke maatregelen, met inbegrip van wetgevende, dienen te worden genomen om een minimumleeftijd voor het aangaan van een huwelijk vast te stellen en de registratie van huwelijken in een officieel register verplicht te stellen.

DEEL V

Artikel 17

1. Ten behoeve van de beoordeling van de voortgang die wordt gemaakt bij de uitvoering van dit Verdrag wordt een Commissie voor de uitbanning van discriminatie van vrouwen (hierna te noemen de Commissie) ingesteld, die op het tijdstip van inwerkingtreding van dit Verdrag zal bestaan uit 18, en na de bekrachtiging hiervan of de toetreding hiertoe door de vijfendertigste Staat die partij is bij dit Verdrag, uit 23 deskundigen van hoog zedelijk aanzien en uitzonderlijke bekwaamheid op het terrein dat door dit Verdrag wordt bestreken. De deskundigen worden door de Staten die partij zijn bij dit Verdrag, gekozen uit hun onderdanen en hebben zitting in hun persoonlijke hoedanigheid, waarbij rekening wordt gehouden met een billijke geografische verdeling en met de vertegenwoordiging van de verschillende beschavingsvormen en de belangrijkste rechtstelsels.

2. De leden van de Commissie worden bij geheime stemming gekozen uit een lijst van door de Staten die partij zijn bij dit Verdrag, voorgedragen personen. Iedere Staat die partij is bij dit Verdrag, kan uit zijn eigen onderdanen één persoon voordragen.

3. De eerste verkiezing wordt gehouden zes maanden na de datum van inwerkingtreding van dit Verdrag. De Secretaris-Generaal van de Verenigde Naties zendt ten minste drie maanden voor de datum van iedere verkiezing de Staten die partij zijn bij dit Verdrag een brief waarin hun wordt verzocht binnen twee maanden een voordracht te doen. De Secretaris-Generaal stelt een alfabetische lijst op van alle aldus voorgedragen personen, onder vermelding van de Staten die hen hebben voorgedragen, en legt deze voor aan de Staten die partij zijn bij dit Verdrag.
4. Verkiezing van de leden van de Commissie heeft plaats op een door de Secretaris-Generaal op de zetel van de Verenigde Staten te beleggen vergadering van de Staten die partij zijn bij dit Verdrag. Op die vergadering, waarvoor twee derde van het aantal Staten die partij zijn bij dit Verdrag een quorum vormen, zijn die voorgedragen personen in de Commissie gekozen, die het grootste aantal stemmen op zich verenigen en die een volstrekte meerderheid verkrijgen van de stemmen van de aanwezige, hun stem uitbrengende vertegenwoordigers van de Staten die partij zijn bij dit Verdrag.
5. De leden van de Commissie worden gekozen voor een tijdvak van vier jaar. De ambtstermijn van negen van de bij de eerste verkiezing gekozen leden loopt evenwel na twee jaar af; onmiddellijk na de eerste verkiezing worden deze negen leden bij loting aangewezen door de voorzitter van de Commissie.
6. Verkiezing van de vijf extra leden van de Commissie heeft plaats overeenkomstig het bepaalde in het tweede, derde en vierde lid van dit artikel na de vijfendertigste bekrachtiging of toetreding. De ambstermijn van twee van de bij die gelegenheid gekozen extra leden loopt na twee jaar af; deze beide leden worden bij loting aangewezen door de voorzitter van de Commissie.
7. Om te voorzien in tussentijds ontstane vacatures benoemt de Staat die Partij is bij dit Verdrag en wiens deskundige niet langer optreedt als lid van de Commissie uit zijn onderdanen een andere deskundige, onder voorbehoud van de goedkeuring van de Commissie.
8. De leden van de Commissie ontvangen, met goedkeuring van de Algemene Vergadering, uit de middelen van de Verenigde Naties emolumenten op door de Algemene Vergadering vast te stellen voorwaarden waarbij rekening wordt gehouden met de belangrijkheid van de taken van de Commissie.
9. De Secretaris-Generaal van de Verenigde Naties zorgt voor het personeel en de andere voorzieningen, benodigd voor een doelmatige uitoefening van de taken van de Commissie krachtens dit Verdrag.

Artikel 18

1. De Staten die partij zijn bij dit Verdrag, nemen de verplichting op zich aan de Secretaris-Generaal van de Verenigde Naties ter bestudering door de Commissie, een verslag over te leggen betreffende de wetgevende, rechterlijke, bestuurlijke of andere maatregelen die zij hebben genomen ter uitvoering van de bepalingen van dit Verdrag en met betrekking tot de in dit opzicht geboekte vooruitgang:

(a) binnen een jaar na de inwerkingtreding voor de desbetreffende Staat;
(b) vervolgens ten minste eenmaal in de vier jaar en voorts telkens wanneer de Commissie dit verzoekt.

2. In de verslagen kunnen de factoren en moeilijkheden worden vermeld, die van invloed zijn op de mate waarin aan de in dit Verdrag vervatte verplichtingen wordt voldaan.

Artikel 19

1. De Commissie stelt haar eigen huishoudelijk reglement vast.

2. De Commissie kiest haar functionarissen voor een tijdvak van twee jaar.

Artikel 20

1. De Commissie komt in de regel bijeen gedurende een periode van ten hoogste twee weken per jaar ten einde de overeenkomstig artikel 18 van dit Verdrag overgelegde verslagen te bestuderen.

2. De vergaderingen van de Commissie worden in de regel gehouden op de zetel van de Verenigde Naties of op een andere passende, door de Commissie te bepalen plaats.

Artikel 21

1. De Commissie brengt door tussenkomst van de Economische en Sociale Raad jaarlijks aan de Algemene Vergadering van de Verenigde Naties verslag uit omtrent haar werkzaamheden en kan voorstellen en algemene aanbevelingen doen, gebaseerd op de bestudering van de verslagen en de inlichtingen die zij heeft ontvangen van de Staten die partij zijn bij dit Verdrag. Zodanige voorstellen en algemene aanbevelingen worden opgenomen in het verslag van de Commissie, te zamen met de eventuele commentaren van de Staten die partij zijn bij dit Verdrag.

2. De Secretaris-Generaal zendt de verslagen van de Commissie ter informatie door aan de Commissie inzake de rechtspositie van de vrouw.

Artikel 22

De gespecialiseerde organisaties hebben het recht vertegenwoordigd te zijn tijdens de bestudering van de uitvoering van die bepalingen van dit Verdrag die binnen het kader van hun werkzaamheden liggen. De Commissie kan de gespecialiseerde organisaties uitnodigen verslagen over te leggen omtrent de uitvoering van het Verdrag op de gebieden die binnen het kader van hun werkzaamheden liggen.

DEEL VI

Artikel 23

Geen enkele bepaling van dit Verdrag maakt inbreuk op bepalingen die in sterkere mate bijdragen tot de verwezenlijking van gelijkheid van mannen en vrouwen, en die kunnen zijn vervat:

(a) in de wetgeving van een Staat die partij is bij dit Verdrag; of
(b) in enig ander internationaal verdrag, dat of in enige andere internationale overeenkomst die voor die Staat van kracht is.

Artikel 24

De Staten die partij zijn bij dit Verdrag, nemen de verplichting op zich, op nationaal niveau alle noodzakelijke maatregelen te nemen om te komen tot volledige verwezenlijking van de in dit Verdrag erkende rechten.

Artikel 25

1. Dit Verdrag staat open voor ondertekening door alle Staten.
2. De Secretaris-Generaal van de Verenigde Naties is aangewezen als depositaris van dit Verdrag.
3. Dit Verdrag dient te worden bekrachtigd. De akten van bekrachtiging dienen te worden nedergelegd bij de Secretaris-Generaal van de Verenigde Naties.
4. Dit Verdrag staat open voor toetreding door alle Staten. Toetreding vindt plaats door nederlegging van een akte van toetreding bij de Secretaris-Generaal van de Verenigde Naties.

Artikel 26

1. Iedere Staat kan te allen tijde een verzoek tot herziening van dit Verdrag indienen door middel van een schriftelijke kennisgeving gericht aan de Secretaris-Generaal van de Verenigde Naties.
2. De Algemene Vergadering van de Verenigde Naties beslist welke stappen eventueel dienen te worden genomen naar aanleiding van een zodanig verzoek.

Artikel 27

1. Dit Verdrag treedt in werking op de dertigste dag na de datum van nederlegging van de twintigste akte van bekrachtiging of toetreding bij de Secretaris-Generaal van de Verenigde Naties.
2. Voor iedere Staat die dit Verdrag bekrachtigt of hiertoe toetreedt na de nederlegging van de twintigste akte van bekrachtiging of toetreding, treedt het Verdrag in werking op de dertigste dag na de datum van nederlegging van de akte van bekrachtiging of toetreding door die Staat.

Artikel 28

1. De Secretaris-Generaal van de Verenigde Naties neemt de tekst van op het tijdstip van de bekrachtiging of toetreding door de Staten gemaakte voorbehouden in ontvangst en zendt deze rond aan alle Staten.
2. Een voorbehoud dat onverenigbaar is met het doel en de strekking van dit Verdrag wordt niet toegestaan.
3. Voorbehouden kunnen te allen tijde worden ingetrokken door een hiertoe strekkende kennisgeving, gericht aan de Secretaris-Generaal van de Verenigde Naties, die vervolgens alle Staten hiervan in kennis stelt. Een zodanige kennisgeving wordt van kracht op de datum van ontvangst.

Artikel 29

1. Ieder geschil tussen twee of meer Staten die partij zijn bij dit Verdrag betreffende de uitleg of toepassing van dit Verdrag, en dat niet wordt beslecht door onderhandelingen, wordt op verzoek van één van hen onderworpen aan arbitrage. Indien de partijen er binnen zes maanden na de datum van het verzoek tot arbitrage niet in zijn geslaagd overeenstemming te bereiken over de vorm van

arbitrage, kan een van die partijen het geschil voorleggen aan het Internationale Gerechtshof door middel van een verzoek overeenkomstig het Statuut van het Hof.

2. Iedere Staat die partij is van dit Verdrag, kan op het tijdstip van ondertekening of bekrachtiging van dit Verdrag of van toetreding daartoe verklaren zich niet gebonden te achten door het eerste lid van dit artikel. De andere Staten die partij zijn bij dit Verdrag, zijn niet gebonden door het eerste lid van dit artikel tegenover een Staat die partij is bij dit Verdrag en die een zodanig voorbehoud heeft gemaakt.

3. Iedere Staat die partij is bij dit Verdrag, en die een voorbehoud heeft gemaakt overeenkomstig het bepaalde in het tweede lid van dit artikel kan dit voorbehoud te allen tijde intrekken door middel van een kennisgeving aan de Secretaris-Generaal van de Verenigde Naties.

Artikel 30

Dit Verdrag, waarvan de Arabische, de Chinese, de Engelse, de Franse, de Russische en de Spaanse tekst gelijkelijk authentiek zijn, wordt nedergelegd bij de Secretaris-Generaal van de Verenigde Naties.

TEN BLIJKE WAARVAN de ondergetekenden, hiertoe behoorlijk gemachtigd, dit Verdrag hebben ondertekend.