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CEDAW Roundtable Discussion

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Remarks from Professor Rangita de Silva de Alwis – University of Pennsylvania Law School

Thank you Dean Lester and the leaders of the editors of the *Columbia Journal of Transnational Law* – the charge is yours. Our paper, Ambassador Verveer's and my paper, makes legal arguments for the US ratification of the CEDAW. But the most fundamental appeal that we can make is that the choice America makes today to join the CEDAW would be one of the most significant tributes that the American people can pay to women like my sister, Naheed Farid of Afghanistan. The U.S. ratification of the CEDAW at this historic moment, to borrow from Justice Jackson, would be one of the most significant tributes that power can pay to reason. The US is only one of a handful of countries that is yet to ratify the convention on the elimination of discrimination against women, rendering it a strange bed fellow with Sudan, Somalia, Iran, Tonga, and Palau. Twenty years ago, Dean Harold Koh made a canonical foreign policy argument for ratification. In our article, we develop three more reasons as to why now, due to the Biden Administration, the U.S. is at the historic moment to finally ratify the CEDAW.

First, we are at a new public reckoning which helps us to advance our domestic policy on gender, race, and intersectionality. For four decades, Congress failed to rally enough votes to ratify the CEDAW. But today, social justice movements are building new momentum like never before. At the time of the public reckoning spawned by the Black Lives Matter and the #MeToo movements, the Convention represents an important vehicle to address institutional and structural sexism through an intersectional lens. As Dean Koh argued in 2002, “a country's ratification of the CEDAW is one of the surest indicators of the strength of its commitment to internalize the universal norm of gender equality into [its] domestic laws.” The potential for the CEDAW to inspire necessary change in the U.S. directly relates to some of the United States' current policy objectives. First, the National Strategy for the COVID-19 Response and Pandemic Preparedness illustrates the Administration's commitment to place women and girls at the center of the global recovery. Second, the rescue plan recognizes that COVID-19 has exacerbated domestic violence and sexual assault, especially those at the intersection of minority status, thereby creating a “shadow pandemic.” As the Biden Administration looks towards the reauthorization of the Violence Against Women Act, the VAWA, it must look to the horizon—to the ratification of the CEDAW. Ratifying the Convention will give the Biden Administration significantly more legitimacy to its efforts to end violence against women and would demonstrate the solidarity needed to achieve this goal. As President Biden himself stated, the renewal of the VAWA “should not be a Democratic or a Republican issue—it's about standing up against the abuse of power and preventing violence.” Our data analysis in our research of the State Party Reports to the CEDAW Committee from 2016 to 2020 reveals a significant focus by the CEDAW committee on two issues that are central to the Biden Administration and to the United States' national security and foreign policy in general: First, violence against women; and

second, an intersectional focus on gender. In every Concluding Observation across all five years between 2016 and 2020 (107 countries reported to the CEDAW committee during that period) and in all of the 107 country reports' concluding observations, the CEDAW committee conveyed the importance of intersectionality and gender-based violence 100% of the time. So as we fight the forces of a pandemic, the global and domestic recovery will be measured by how it created greater gender and racial equity. The US ratification of CEDAW will be an important measure of the global recent.

My second pillar rests on the importance of the ratification of the CEDAW as part of the United States' transformative powers, and we see a shift from soft power to smart power to what we call transformative power. What we need now is that expansion: a smart power diplomacy to embrace transformative power. And transformative power is a response to global systemic inequality, a way to restructure power imbalances across race, class, and gender. In response to global challenges, CEDAW continues to be the standard-setting policy tool to advance gender and intersectional equality. And as we address this in our analysis of CEDAW's impact on drafting national constitutions, domestic legislation, judicial decision-making, and in changing the national conversation and public discourse in countries in the Arab region. As Ambassador Melanne Verwee, my co-author, testified before Congress in 2010, this is an imperfect project, as she said. It's true: many countries do not live up to that treaty, but we know how effectively that lever is for rights advocates to seize and to use effectively to bring about the kind of consistent application of the principles of the treaty to their own lives.

And finally, the Women, Peace, and Security agenda and its linkages to CEDAW needs to be mined. The WPS agenda is one gender issue that has bipartisan support, as demonstrated by over a decade of concerted legislative efforts by both Democrats and Republicans. In our paper we explore how the United States' strong bipartisan commitment to the WPS agenda, and how its global security goals can be advanced by ratifying the CEDAW. From the UK to Afghanistan, the CEDAW has paved a road in strengthening commitments to the WPS agenda. The US has emerged as a global leader in WPS both by spearheading UN Security Council Resolutions as well as condemning violence against women and girls in armed conflict. For example, the US Secretary of State Condoleezza Rice introduced Security Council Resolution 1820 in 2008, and in proposing this resolution Secretary Rice confirmed that sexual violence against women in conflict was an imperative which the UN security Council was charged to address. Exactly a year later, Security Council Resolution 1888 was introduced by Secretary of State Hillary Clinton, and she reaffirmed Secretary Rice's premise, and her promise, that the United States would acknowledge that violence against women is inextricably connected to women's security. The US needs to leverage the bipartisan support for the WPS agenda by piggybacking support for the Convention. In 2020, during the 75th annual sitting of the UN, the CEDAW concluding observations for Afghanistan had sections dedicated specifically to WPS. For instance, the CEDAW committee observed in detail that Afghan women are systematically excluded from formal peace negotiations such as the 2018 Kabul process and the negotiations that followed. Just last week, as the clock was ticking on the planned withdrawal of the troops, the CEDAW committee called upon the Taliban to respect the CEDAW and the recommendations that it made in its concluding observations on Afghanistan's report in March of 2020. And in view of the unfolding events in Afghanistan, the prophetic nature of those recommendations in 2020 now have moral urgency. I highlight just two: women's security and girls' education. Two intertwined concerns that unite both Republican and Democratic lawmakers. The Committee not

only underscored CEDAW's general recommendation Number 35 and Security Council Resolution 1325 on the primacy of women's participation in peace, but the CEDAW committee went further in invoking the importance of full inclusion in including women belonging to ethnic and religious minorities participating in the justice and reconciliation processes. But most importantly, the Committee expressed its concern that schoolgirls, and schools for girls, continue to be targeted in the course of armed conflict. And this is at its urgency. For as Malala, the most famous victim of the Taliban, once said incredulously: "Why are they bombing these schools? These schools are already closed." Citing what is called the "Safe Schools Declaration", an intergovernmental declaration signed by Afghanistan, CEDAW ensured that this issue to prevent attacks on the education of girls should be addressed as a tool of conflict. The answer as to why these schools are bombed when they are already closed might lie in a statement made by Irina Bokova; she has often said as Head of UNESCO that, "A girl with a book is a threat to a man with a gun." As the shadows of men with guns loom large over Afghanistan, and as Ambassador Verveer will tell you, the CEDAW can be a threat to the forces of extremism.

So today, as we bear witness to the fall of Afghanistan, history will judge us on how we protect the rights of women and girls in Afghanistan. Ultimately, the arc of American engagement, both in foreign and domestic policy, must bend towards ratifying the CEDAW. After decades of lawmakers failing to muster the political will for ratification, the demand for change has now reached a fever pitch both nationally and globally. The Biden Administration must rally bipartisan support to ratify the CEDAW as a tool to advancing the human rights of women around the world. In then-Senator Biden's words in 2002, "time is a Wasting" for the US ratification of the CEDAW. In fact, in Madeline Albright's words, "It is well past time for the ratification of the CEDAW."

I just wanted to leave the students with one word of advice, and this comes from your own, Columbia's own iconic international law scholar Louis Henkin, whom we refer to as the founding father of public international law. He has famously said, "in the cathedral of human rights, the United States is more like a flying buttress than a pillar. Choosing to turn outside the international structure, supporting the international human rights system, but without being willing to subject its own conduct to the scrutiny of that system." So, I think, if we were to summarize this conversation, it is that aspect of how can we as the United States be willing to subject our own conduct to the scrutiny of that system, and thereby be a pillar in the cathedral of human rights. And this is from your own Louis Henkin from Columbia Law School. So, it is up to Columbia Law School -- as your dean said, Columbia is a cathedral, to those jurists like Ruth Bader Ginsburg, and all of you who are following in the trail that she has blazed. So as all of our distinguished guests have said, the charge is now passed on to you. You're the ones who will lead to close the unfinished business of our generation. Thank you.