

GERMANY

Germany

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Introduction

The following description and analysis of the impact of *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) on the two Germanies is by no means complete. Due to time constraints, it was not possible to do a thorough research. Methodologically, both the description and analysis are based on personal knowledge (on account of my former position in government, on my research and my publications since the 1970s on women's issues) and on personal oral interviews with the former actors in government and the current representatives of a number of German national women's organisations.

Some Factors Affecting the Analysis

Looking at Germany from today's point of view and on the question of the impact of CEDAW several complications arise that made it difficult to come to a thorough and unequivocal assessment.

First, there is the fact to be considered, that when CEDAW was adopted by the General Assembly in December 1979, Germany was divided into two states based on very different ideologies and with opposing political economic and social systems, interpretation of human rights, different "civil societies," world political alliances, etc. The German Democratic Republic (GDR) had emerged from the Russian occupied zone of the former German Reich and was a totalitarian state with a "people's democracy" and a socialist economy. There were no free elections, free expression was limited, and free movement outside the state into states other than socialist governed ones was not possible. In fact,

the GDR had closed off its territory to the West with a wall and a border strip planted with mines and guarded by soldiers who had the order to shoot anybody wanting to leave the country. In the framework of the division of Europe due to the Cold War, the GDR was aligned with the Soviet Union. Among the various countries belonging to the so-called Soviet bloc, the GDR's economy, on the surface, was the best and the standard of living was fairly high compared to that in the other countries. However, in contrast to the political developments in some of those countries, following the Helsinki agreements and the adoption of "basket 3," in the GDR any attempt at opposition or the development of an understanding of civil and political rights was stifled and suppressed.

From the very beginning of the German Democratic Republic women had been granted full political, economic, social and cultural rights within the framework of the socialist model of emancipation, which saw women's suppression as a subcontradiction of the major contradiction between work and capital. Once this contradiction was solved through socialism, women's emancipa-

Contents

Introduction

Some Factors Affecting the Analysis

Answers to the Questionnaire

NGO Involvement

The Ratification Process

- German Democratic Republic
- Federal Republic of Germany

Reporting to the United Nations

Use of CEDAW

Germany

tion would automatically follow. This model allowed for women's equality in the productive sphere (labor market) while the reproductive sphere (family) remained their sole responsibility. Thus, patriarchal role models in the family were never questioned. Provisions for childcare, however, were made, both to allow women to be active in the labor market and to indoctrinate children into the socialist ideology from an early age on.¹

In contrast, the Federal Republic of Germany had emerged from the occupation zones of the Western Allies and, in the late 1940s, had adopted a democratic political system. It had introduced and developed the model of a "social market economy" which combines capitalism with welfare provisions. The country was oriented toward the West and had become a partner in a number of Western alliances. It had become the richest country in Europe. While women had fought and won in 1947 to have an equal rights clause and an antidiscrimination clause included in the *Basic Law* (constitution), the dominant sex role ideology remained patriarchal until the late 1960s. It took until the mid 1970s for equality

in marriage legislation to be achieved. Employment outside the home was discouraged for middle class married women with children, and generous tax subsidies favored families where the wife did not earn a salary. Childcare was frowned upon and most often denounced because it existed in the GDR. It was the new women's movement of the late 1960s and the 1970s that began to change the dominant ideology of sex-role segregation. Its demands began to filter into the political parties' platforms in the 1970s. Both Germanies, however, were members of the United Nations

Second, there is the fact to be considered that when CEDAW was adopted, the European Community (EC) (now European Union), to which the Fed-

eral Republic of Germany (FRG) belonged as a member, had started in 1976 to issue a number of "Directives" regarding non-discriminatory labor and social legislation for women, which the FRG—as a member of the EC—was obliged to transmit into national legislation. These provisions are more or less similar to some *Conventions of the International Labor* organisation and, since these were incorporated into CEDAW, to articles of this convention.

Third, there is the fact to be considered that in today's unified Germany women's organisations play different roles and are comprised of members with different personal and political biographies. Women's organisations on the territory of the former Federal Republic of Germany mostly stem from the postwar period. This means that they have a long institutional memory. They may have been active as lobby groups vis à vis the government for a long time. Women's organisations on the territory of the former GDR are young in age, they mostly originate from oppositional women's groups among women in the GDR in the short span between November 1989 and October 1990 and their institutional memory is young. Others were created as new chapters by existing women's organizations in the FRG during and after unification. These new chapters may not partake of the institutional memory of the overall organisation. The dominant party-aligned women's organisation of the GDR, the German Democratic Women's Union, does, of course, have a good and long institutional memory since at least some of the former leadership is still there. During unification it underwent a process of democratisation, and today, it is alive and active with many chapters² in the new states.

In conclusion, a study tracing the impact of CEDAW must differentiate between the impact in the GDR and in the FRG, taking into account the different political, economic and social systems, the differing interpretations of human rights, and the different role women's organizations played vis a vis the state and the government. It must also take into account the fact that the (one) leading women's organization of the GDR, which had been active in the consciousness raising about CEDAW in

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the GDR, today is somewhat discredited because of its affiliation with the socialist regime. It must also take into account that the legislation and jurisprudence on women's issues of the European Union both in the 1980s and in the 1990s has been more important for national legislation on women in the old and new FRG than CEDAW.

Answers to the Questionnaire

NGO involvement

The FRG has a host of national women's organizations with chapters organized at state (16) and local levels, some dating back to the 19th century, others having been formed in the last decade. Many of them, plus other NGOs with a large female membership (Federation of Trade Unions, Federation of Sports Associations), are united in the umbrella organization of the German Women's Council, comprising thus an (indirect) membership of approximately 13 million women. The German Women's Council is recognized as the official lobby organization vis-à-vis the federal government and is called upon to comment on draft legislation concerning women.

Also, there is a host of regional and local women's organizations or women's groups connected to the new women's movement of the late 1960s. Often these groups work project-oriented (bookshops, shelters for battered women, health clinics, rape crises centers, support to asylum seekers/refugees, etc.).

Since the United Nations World Conference in Copenhagen in 1980, the FRG has built women's machinery on the federal, the state and the community level, and has provided financially for their capacity to network. Though the women working in these entities are civil or public servants, they also belong to and often explicitly also serve and financially support women's organizations.

In addition, due to the UN world conferences in the last decade, a host of other NGOs united in so-called "fora" lobbying the federal government before and after UN World conferences (ecology, human rights, social and economic human rights) regarding the text of the respective final documents as well as their

implementation in the German context.

The current awareness of these NGOs with regard to CEDAW can be described as follows:

The German Women's Council's General Secretary, her staff as well as its Board Member for international relations are well aware of CEDAW, they follow the reports, publish articles written by the German CEDAW member or by its international human rights correspondent in the Council's magazine, thus reaching out to approximately 13 million women. However, these articles do not appear on a regular basis. Since these publications do not establish a reference to the daily concerns of women, most women will read and forget about CEDAW.³ They are not aware of the General Recommendations though, since these have not been translated into German.

In 1992, the National Women's Council organized a seminar on the United Nations and its work for women including CEDAW for appr. 30 women; I lectured on CEDAW at that time. In 1998/99 the Federal government funded one staff position at the Council whose task it was to develop a series of national conferences which will be attended by members of national women's organisations as a follow up to the Beijing Platform for Action. Due to her activities these conferences will include references to CEDAW.

The National Women's Council has been well aware of the international efforts regarding the Optional Protocol to CEDAW as well as of the amendment to CEDAW's article 20, and has been constantly lobbying the federal government on these issues. Within the human rights forum, an umbrella organisation of approximately 30 organisations, including the Council and Terre des Femmes, knowledge about CEDAW also exists and lobbying efforts as regards the above mentioned issues have taken place.

The current national leadership of the Female Lawyer's

The FRG has a host of national women's organizations with chapters organized on state and local levels, some dating back to the 19th century. Many are united in the umbrella organization of the German Women's Council, comprising thus a membership of approximately 13 million women.

Association, the Female Journalist's Association is also aware of CEDAW, but does nothing to educate its members about it.⁴ It is more occupied with the European Convention on Human Rights and an Optional Protocol to that Convention. The current national leadership of the Female Physician's Association was not aware of it.⁵

The national leadership of the German Democratic Women's Union is well aware of it, but does not educate its members about it any more.

There is little or no knowledge among all these women's organisations about the relationship between the Beijing Platform for Action (BPFA) and CEDAW, i.e. in the sense, that CEDAW is the legal basis of the BPFA and that all the programs and provisions of the BPFA can be related to the various articles of the convention.

Except for the very small and active women's human rights organisation Terre de Femmes, who currently lobbies the federal government that gender-related human rights violations of women should be acknowledged as a condition for granting asylum to women, there is no active lobbying or advocating being done with reference to CEDAW.

The one reservation to CEDAW by the FRG, which allows for German women not being drafted into the German army (which is based on the German constitution, and on the experiences and memories of two world wars) is accepted by most German women as a respected part of a pacifistic attitude ("Never again war, and never again Auschwitz") and is not seen as a possible instrument of discrimination. Thus, no lobbying efforts will emerge on this issue at this point.⁶

There seems to be a growing awareness of CEDAW, though, among young women researchers at some of the German universities earning their doctorates in political science or law. While there do not seem to be too many women in Germany studying international law and human rights, I have, nevertheless over the years, been able to identify about four to six of them who now hold professorships or assistantships. The existence of several human rights centers at various universities and the creation of several

new ones in the last decade, as well as the existence of a number of human rights professorships or chairs at German universities, who are held by men who are or were members in the various human rights treaty bodies over the years plus a sudden rise in human rights publications lead me to believe that awareness of CEDAW is rising among younger women in the academic community.

The reason for this lack of knowledge and this lack of educational or other efforts is due to a number of factors, which will become clear from the answers to the remaining questions.

The Ratification Process

a) German Democratic Republic

The GDR had a seat on the Commission on the Status of Women in the late 1970s when CEDAW was being formulated and adopted. The GDR representative, a female professor of philosophy of the Humboldt University in what was then East Berlin was active in that Commission for 15 years. The GDR was the second government that became State party to the *Convention*. Ratification took place on July 9, 1980. As I was told by this professor, this was partly due to her efforts vis a vis the GDR government. As the GDR fulfilled all the de jure requirements as outlined in the Convention, and since there was little awareness of the need to change sex-role stereotypes in the family, the government did not see any obstacles that should impede ratification. In addition, the moral responsibility was felt and expressed to get as many ratifications as quickly as possible in order to have the *Convention* come into force as soon as possible. According to this professor, this moral responsibility was seen as particular duty of a socialist state where (according to official belief)⁷ women's equality had been achieved. According to her it was strongly felt as an impetus in the GDR discussion and in the process of ratification.⁸ No specific ratification law was needed. The GDR, according to this source, did voice reservations, because some legislation of the GDR went further than the convention⁹ and because of its nationality legislation.¹⁰ After ratification, the conven-

tion was discussed in a number of the GDR women's magazines. Both this professor, who ultimately chaired the Commission on the Status of Women in 1989 and 1990 before unification of the two German states took place, and the first CEDAW expert of the GDR, and a professor of international law at the Humboldt University, claim that they contributed to some level of awareness of GDR women¹¹ about CEDAW by writing and lecturing on it.¹²

b) Federal Republic of Germany

The FRG signed CEDAW at the Copenhagen Conference on July 17, 1980. In contrast to the GDR, however, it took the FRG much longer to ratify it. This was, at least partly, due to a change in the federal government in 1982, when the center-left coalition was replaced by a center-right one.¹³ Thus, it was not before April 25, 1985, that CEDAW was ratified by the FRG. The female bureaucrat heading the Special Unit on Women's Affairs in the Federal Ministry of Family and Youth told me, that she had taken it up immediately and had pushed for ratification.¹⁴ Ratification was done in the form of a specific law consisting of one Article, which contains the ratification announcement and one reservation as regards Art. 7 of CEDAW, i.e. women being drafted into the national army.¹⁵ Since, as I mentioned before, there is more or less general consensus on this issue in Germany, which is also embedded in Art. 12 a, para 4, sentence 2 of the Basic Law (Constitution) of the FRG, there has never been an attempt by women's organizations to get this reservation removed. The legislative text was accompanied by a rather lengthy argument, mentioning the number and names of the states which had ratified the convention or acceded to it.¹⁶

The text makes it clear that the *Convention* outlines the rights and obligations of the state party; no direct or immediate rights and obligations of individuals can be derived from the convention, but only from the domestic implementation of it. The general line of argument of the accompanying text is that most obligations of the *Convention* are already a reality in the FRG and where they are not, it can be said that it is the outspoken political

will of the government and all political parties present in the federal parliament to make them a reality. Special measures are mentioned to overcome existing deficits in the equality of women, and in particular with the goal to reach a higher percentage of women on all levels and areas where they are still a minority, without, however, legislating this.¹⁷ The text then goes on to paraphrase the articles of the *Convention* and stating the legal situation of German women in their context as well as the intended efforts by the FRG government for further implementation accompany the law. Since, however, the legal situation in the FRG did comply with almost all of the legal requirements of the *Convention* at the time of ratification, almost no such new legislation was deemed necessary.

The law was published in the respective Federal Legal Gazette. A press release was probably formulated at the time.¹⁸

I personally learned about CEDAW in general while attending the Copenhagen Conference as a member of an NGO without any concrete knowledge or steps following from this. When I was asked to join the Administration of the newly created Federal Ministry for Family, Women's Affairs, and Youth in 1987 as its first Director General, I fully learned about its text and its reporting obligations. In my position, I was responsible for implementing these obligations and set my international unit to the task. In 1989 the Ministry published a brochure on CEDAW including its full text to celebrate its 10th anniversary, which was distributed widely among women's organizations and the general public. The government also nominated me as an expert for CEDAW, and I have been serving on the Committee since 1989. The GDR's expert served from the beginning until 1992.)

(Description of the intended efforts of the FRG government as stated in the text accompanying the law of ratification and their implementation will follow. Description of the legislative efforts of various state governments regarding non-discrimination and affirmative action legislation for the civil service and public service employment sector within the framework of CEDAW and of the EC legislation will also follow. However, it will be very dif-

difficult to relate these efforts directly to CEDAW)

Reporting to the United Nations

The FRG's first report was due in 1986. In fact, it was ready only in 1988 and was presented to the Committee in 1989, i.e. at the time, when the second report was almost due. The extensive oral update given at the time and the events of unification led to a delay in writing the second and subsequent reports. Currently, the FRG has submitted the second, third, and fourth report and is awaiting their presentation which was scheduled for the 21st session. However, the federal government asked to be excused for the 21st session, since from January to June 1999, it also carries the presidency of the European.

The first report was published by the Federal Women's Ministry and disseminated. Press releases were released for the publication and at the time of the presentation of the first report to the Committee in New York. There was some coverage in the print and television news. No shadow report was written at the time. However, at this point, the National Women's Council as well as other women's organizations are planning to write shadow reports within the next few months.

Use of CEDAW

At the time of the FRG's first report the Committee did not formulate concluding comments. I left my position as Director General in early 1992, therefore, I cannot tell whether the criticism and recommendations were taken into account in the ensuing new legislations and policies.

In general, however, it can be said, that because of the principle of non-discrimination, being already embodied in the Basic Law of the FRG (1948) and having been translated into existing legislation by 1957 and 1976 respectively, the FRG did comply with CEDAW on a legal basis at the time of ratification in 1985. When new and additional or corrective legislation was passed in the late 1980's or early 1990's (non-discrimination labor legislation in the private and public sector, Equal

Opportunities Legislation, recognition of child rearing and taking care of older/disabled persons in the social security system, legal claim for a place at a childcare center, abortion legislation, additional clause in the constitution on the responsibility of the state to promote equal opportunities for women), the push for such legislation did not come from CEDAW, but from the EC Directives, from antidiscrimination legislation in the U.K. or in the Scandinavian countries, and from the unification process in which women lobbied for the transmission of some of the GDR legislation favorable to women into the legislation of the united FRG.

It is only in connection with the debate and legislative efforts regarding "positive discrimination" or "affirmative action" in the public employment sector at the federal and state levels in the late 1980's and early 1990's and the ensuing court cases at the European Court that references to CEDAW were made. This, however, was a debate among specialists (women bureaucrats, legal advisors, lawyers) and was co-determined by the fact that the 1976 Directive of the EC also contains a clause to that effect. Political considerations at the federal level obstructed any strong legal commitment to this issue, however, while at the states level governed by social-democratic governments certain specific quota regulations were incorporated. However, they were challenged in court cases initiated by men and forbidden by verdicts of the European Court.

The Beijing Platform for Action certainly raised awareness among women's NGOs since the federal government convened a conference on this theme leaving most of its implementation to the NGOs. However, I was not invited. Also, the relationship between CEDAW and the Platform for Action was insufficiently made clear from what I heard about this conference.

Endnotes

¹In further studying the impact of CEDAW, I plan to interview women who were active in the GDR government at the time, the former GDR CEDAW member, if possible, and others. I also plan to send out the questionnaire to the

women's NGOs and to the human rights centers at the universities. In particular, I plan to interview some leading journalists and some leading jurists and lawyers, including the president of the Federal Constitutional Court (a woman and a feminist). However, I do not foresee, that much new knowledge as regards the impact of CEDAW in the FRG will come forth. I envision, however, that a specific network may emerge in order to raise human rights awareness among German women.

²It would have been interesting to investigate its current membership in particular regarding the ideological perspectives of today's members. It may very well be that these members align themselves closely with the political party of the PDS (Party of Democratic Socialism), i.e. the former Socialist Party of the GDR. Unfortunately, there was no time to do that.

³The most recent article mentioning CEDAW and the Optional Protocol gives a wrong picture about the latter as if German women would now have a means to go to court on the grounds of CEDAW. Lipinksky, A./Schaffer, S., *Wieviele Jahre brauchen gleichen Chancen und Rechte? 50 Jahre Art. 3 abs.2 GG und 20 Jahre CEDAW*, in: *Informationen für die Frau*, Folge 4, April 1999, pp. 19-20.

⁴They did invite me once to speak about CEDAW, but I could not follow up on this invitation.

⁵I did not find time to check with the National Association of Rural Women or the National Organisation of Housewives, nor the National Organisation of University Women or the National Organisation Alliance of Women. However, I am sure, that the results would not be different. Apart from some individuals who may have been introduced to CEDAW via a national or international publication or conference, there is no general knowledge about it.

⁶This may change when the draft army will be changed into a professional army which is an issue currently under some discussion, though a very serious one. In any case, the German constitution would have to be changed if such a demand would find a majority.

⁷My commentary.

⁸This may have been the impetus of other

socialist states, too. It needs to be investigated whether the majority of the early ratifications are mostly by socialist regimes. If that is so, the reason for this, apart from the claimed for moral responsibility, may also lie in the fact, that CEDAW contains many economic, social and cultural rights. According to the socialist interpretation of human rights, it were especially the so-called collective rights, i.e. the economic, social and cultural rights, that accorded with the concept of the role of a socialist state as a collective fulfilling, distributing and allotting rights and their material contents to its population. Individual rights according to this concept should be granted but not guaranteed. International human rights were interpreted as rights for and in the state, not as rights from and vis a vis the state. (Riedel, E., *Universeller Menschenrechtsschutz—Vom Anspruch zur Durchsetzung*, in: Baum, G. Riedel, E./Schaefer, M., *Menschenrechtsschutz in der Praxis der Vereinten Nationen*, Baden Baden 1999, p.27)

⁹I did not have time to check the GDR reports on the reservations. However, according to article 23 of the convention, such reservations would not have been necessary.

¹⁰Again, I did not have time to go into this. Nationality issues, were, of course, a very sensitive issue because of the existence of two German states, but this will have to be checked in detail.

¹¹How far this awareness spread is difficult to say. A prominent member of the new women's groups emerging in the last days of the GDR, who herself held a professorship at the Humboldt University, told me that there was little knowledge about CEDAW in these circles and that CEDAW did not play a role in the demands for women's rights that were voiced by these groups. The female philosophy professor told me that the first and last Minister (without portefeuille) on women's issues of the GDR, Tatjana Böhm, who was a young woman, did not know of the Convention.

¹²It is not clear to me, whether they focussed on the human rights aspect of the convention or merely talked about women's rights.

¹³Pending legislation will have to be reintroduced when a new legislative period begins.

Germany

¹⁴The text of the argumentation accompanying the legal text was obviously drafted in April 1983, since this date is given in the description of the then existing number of states having ratified the convention or acceded to it as 48.

¹⁵Gesetz zu dem Übereinkommen vom 18. Dezember 1979 zur Beseitigung jeder Form von Diskriminierung der Frau, 25. April 1985.

¹⁶Interestingly, the GDR mentioned before all the other states who are lined up in alphabetical order.

¹⁷Thus, it was made clear, that the center-right government did not intend to legislate any affirmative action plans for women in employment or decision-making bodies. This resolution was not carried through, though, in the period of 16 years of governing. In fact, it did legislate some weak form of affirmative action for both areas, i.e. employment in the federal sector and decision-making or advisory bodies instituted by the federal government.

¹⁸Again, I did not have time to check on this and the Federal Ministry could not provide it.