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The Legal Status of the Prohibition on Gender-Based Violence against Women: On the Interplay of Treaties, Custom and Soft Law

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Abstract

This article considers the legal status of the prohibition on gender-based violence against women. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not contain a prohibition on violence against women as such. However, the CEDAW Committee found in its General Recommendation 19 that the definition of discrimination against women in Article 1 CEDAW includes gender-based violence against women. As general recommendations are not binding, it is often suggested that, aside from the regional treaties on the issue, the prohibition exists only under soft law. By contrast, this article argues that the prohibition exists also under hard law. Whether the definition of discrimination against women in Article 1 CEDAW includes gender-based violence against women is a question of treaty interpretation.

The article contends that, in line with Article 31(3)(b) of the Vienna Convention on the Law of Treaties, the subsequent practice of States Parties in the application of CEDAW has established their agreement that discrimination against women in Article 1 includes gender-based violence against women. It argues further that General Recommendation 19 served as the catalyst for this subsequent State practice. The article also explores the relationship between treaties and customary international law and contends that CEDAW has generated rules of customary international law, namely that gender-based violence against women is prohibited and that there is an obligation on States to exercise due diligence to eliminate it. The large number of States Parties to CEDAW has not proved an obstacle to the generation of these customary rules.

Keywords: violence against women; gender-based violence; CEDAW; treaties; customary international law; soft law; general comments; general recommendations

1. Introduction

The legal status of the prohibition on gender-based violence against women under international law is contested. The principal treaty on women's rights, the Convention

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on the Elimination of All Forms of Discrimination against Women (CEDAW),¹ does not contain a provision on violence against women as such. In 1992, the body mandated to monitor implementation of the Convention, the CEDAW Committee, adopted a general recommendation on the subject, which provides that the definition of discrimination against women in Article 1 CEDAW ‘includes gender-based violence’ against women.² However, general recommendations and general comments of United Nations (UN) human rights treaty bodies are not binding.

Accordingly, some influential actors have taken the view that, aside from the regional treaties which address the issue, the prohibition is set out only in soft law. For example, the then Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo, has highlighted ‘that a normative gap exists at the international level’.³ However, others, such as Manjoo’s successor, Dubravka Šimonović, have contended that States have accepted the CEDAW Committee’s general recommendations on the subject.⁴

There are also mixed views on whether there are any rules of customary international law on the issue. The CEDAW Committee has taken the view that there is a customary prohibition on gender-based violence against women,⁵ and Special Rapporteur Yakin Ertürk has indicated that there is a customary obligation for States to act with due diligence in preventing and responding to violence against women.⁶ By contrast, Special Rapporteur Manjoo has contended that ‘none of the soft law developments on violence against women has moved into the realm of customary international law as yet’⁷ and, writing in a personal capacity, has described the CEDAW Committee’s conclusion as ‘questionable’.⁸ Actors on both sides of the debate have tended to set out their claims by assertion,⁹ or by reference to judgments of courts and tribunals and expert bodies,¹⁰ rather than through traditional approaches to the identification of customary international law.¹¹

This article explores the legal status of the prohibition of gender-based violence against women under international law.¹² It commences in [Section 2](#) with a consideration of

¹ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

² CEDAW Committee, ‘General Recommendation No 19’ (1992) UN Doc A/47/38, para 6.

³ UN Human Rights Council, ‘Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo’ (28 May 2014) UN Doc A/HRC/26/38, para 68 (Manjoo Report). See, more recently, R Manjoo and C Beninger, ‘Closing the Protection Gap through a Legally Binding CEDAW Optional Protocol on Violence against Women and Girls’ (2024) 13 IHRLR 313, 317.

⁴ UN Human Rights Council, ‘Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences on the Adequacy of the International Legal Framework on Violence against Women, Dubravka Šimonović’ (19 July 2017) UN Doc A/72/134, para 87 (Šimonović Report).

⁵ CEDAW Committee, ‘General Recommendation No 35’ (26 July 2017) UN Doc CEDAW/C/GC/35, para 2. See also Šimonović Report (n 4), para 79.

⁶ UN Human Rights Council, ‘Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Yakin Ertürk’ (20 January 2006) UN Doc E/CN.4/2006/61, para 29 (Ertürk Report).

⁷ Manjoo Report (n 3) 68. See also JA Tchoukou, ‘The Silences of International Human Rights Law: The Need for a UN Treaty on Violence against Women’ (2023) 23 HRLR 1, 11; Manjoo and Beninger (n 3) 331.

⁸ Manjoo and Beninger (n 3) 331.

⁹ General Recommendation 35 (n 5) does reference some State practice and *opinio juris*.

¹⁰ See Ertürk Report (n 6) paras 19–29.

¹¹ Custom by assertion is not unusual. For a critical discussion, see S Talmon, ‘Determining Customary International Law: The ICJ’s Methodology between Induction, Deduction and Assertion’ (2015) 26 EJIL 417.

¹² Given that rape has been recognised as torture and torture is prohibited under customary international law, at least one aspect of violence against women is accepted as being prohibited under customary

whether, as per the CEDAW Committee's General Recommendation 19, the definition of discrimination against women in Article 1 CEDAW includes gender-based violence against women. The issue is important as, if gender-based violence against women falls within the definition of discrimination against women in Article 1 CEDAW, the obligations for States Parties in respect of tackling discrimination against women will apply also to tackling gender-based violence against women. This, in turn, would mean that States Parties are under an obligation, *inter alia*, to: adopt legislation, including where appropriate sanctions, prohibiting gender-based violence against women; to refrain from engaging in gender-based violence against women; and '[t]o take all appropriate measures to eliminate' gender-based violence against women 'by any person, organization or enterprise'.¹³

Whether gender-based violence against women does fall within the definition of discrimination against women in Article 1 CEDAW is ultimately a question of treaty interpretation. Focusing on Article 31(3)(b) of the Vienna Convention on the Law of Treaties (VCLT), [Section 2](#) considers whether the subsequent practice of States Parties to CEDAW in the application of CEDAW establishes the agreement of the parties that the definition of discrimination against women in Article 1 CEDAW includes gender-based violence against women. It finds that the subsequent practice of States Parties does establish such an agreement, which has two consequences. First, gender-based violence against women is prohibited as a matter of treaty law and not just soft law. Second, there is a conventional obligation on the part of States Parties to act with due diligence to eliminate gender-based violence against women.¹⁴

Building on that finding, in [Section 3](#) the article considers whether certain provisions of CEDAW, as interpreted by the CEDAW Committee and States Parties to CEDAW, have generated rules of customary international law. This, too, is important, not least for the States which are not parties to CEDAW, but also owing to the different ways in which custom and treaties are received in domestic legal systems and in light of the binding nature of customary international law on international legal persons in addition to States. Specifically, [Section 3](#) analyses the relationship between treaties and customary international law and argues that the conventional prohibition on gender-based violence against women and the conventional obligation of States to act with due diligence to eliminate gender-based violence against women, identified in [Section 2](#), have generated rules of customary international law. The large number of States Parties to CEDAW has not proved an obstacle to the generation of these customary rules.

2. Gender-based violence against women within the CEDAW framework

2.1. General recommendations of the CEDAW Committee

2.1.1. Violence against women in general recommendations

CEDAW does not contain a provision on violence against women as such.¹⁵ During the drafting of CEDAW, Belgium proposed the inclusion of an article on 'attacks on the

international law. However, as only one aspect, the customary status of the prohibition against rape does not resolve the broader question.

¹³ CEDAW (n 1) art 2(b), (d), (e).

¹⁴ *ibid* art 2(e).

¹⁵ Art 6 provides that: 'States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.'

physical integrity of women'.¹⁶ However, the proposal was not adopted. Accordingly, in 1989, the CEDAW Committee adopted General Recommendation 12, in which the Committee recommended that States Parties include information in their periodic reports to the Committee on measures they have taken to protect women from violence.

A few years later, in 1992, the CEDAW Committee adopted General Recommendation 19. In that Recommendation, the CEDAW Committee stated, *inter alia*, that the definition of discrimination against women in Article 1 CEDAW 'includes gender-based violence' and that '[g]ender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence'.¹⁷ Gender-based violence was thus read into the CEDAW. General Recommendation 19 continued:

Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.¹⁸

The rights and freedoms in question were said to include the right to life, the right not to be subject to torture and the right to just and favourable conditions of work.¹⁹ General Recommendation 19 also provided that '[t]he full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women' and that 'under article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise'.²⁰

In 2017, the CEDAW Committee adopted General Recommendation 35, which updated General Recommendation 19.²¹

2.1.2. *The legal status of general recommendations*

Like general comments of other treaty bodies, general recommendations of the CEDAW Committee are not binding. Nonetheless, other international law bodies give their interpretations 'great weight',²² although their reception in domestic law varies considerably.²³ Owing to their non-binding nature, some have suggested that, as a matter of treaty law, CEDAW does not include 'binding provisions' on gender-based violence against women.²⁴ Rather, in their view, the prohibition has only been set out in

¹⁶ UN Secretary-General, 'Draft Convention on the Elimination of Discrimination against Women, Working Paper, Addendum' (25 August 1976) UN Doc E/CN.6/591/Add.1, 4; UN Secretary-General, 'Draft Convention on the Elimination of Discrimination against Women, Working Paper, Corrigendum' (14 September 1976) UN Doc E/CN.6/591/Add.1/Corr.1, 2.

¹⁷ General Recommendation 19 (n 2) para 6.

¹⁸ *ibid* para 7.

¹⁹ *ibid*.

²⁰ *ibid* paras 4, 9, respectively.

²¹ General Recommendation 35 (n 5).

²² *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)* (Judgment) [2010] ICJ Rep 639, 663–64, para 66. This is the case even if they are ultimately disagreed with. See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v United Arab Emirates)* (Preliminary Objections) [2021] ICJ Rep 71, 104, para 101.

²³ See generally M Kanetake, 'UN Human Rights Treaty Monitoring Bodies before Domestic Courts' (2018) 67 ICLQ 201.

²⁴ e.g. RJA McQuigg, 'Is It Time for a UN Treaty on Violence against Women?' (2018) 22 IJHR 305, 309.

soft law pronouncements.²⁵ For example, Special Rapporteur Manjoo has argued that '[t]here are many "soft law" documents that address the issue, including ... general comments and recommendations of treaty bodies', but '[a]lthough soft laws may be influential in developing norms, their non-binding nature effectively means that States cannot be held responsible for violations'.²⁶

2.2. *Subsequent practice establishing agreement regarding the interpretation of CEDAW*

This section interrogates the contention that CEDAW does not include binding provisions on gender-based violence against women. It assesses whether, through the subsequent practice of States Parties to CEDAW, the definition of discrimination against women in Article 1 CEDAW includes gender-based violence against women.

Article 31 VCLT sets out the 'general rule of interpretation'. Although the VCLT entered into force after CEDAW had been adopted, that general rule of interpretation is widely accepted as reflecting customary international law²⁷ and applicable to treaties adopted prior to the entry into force of the VCLT. Article 31 provides that:

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. ...
3. There shall be taken into account, together with the context:
 - a. ...
 - b. any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.

The UN Human Rights Committee (HRC) had suggested, in a draft general comment, that *its* 'general body of jurisprudence' constitutes subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation for the purposes of Article 31(3)(b) VCLT or, in the alternative, that 'the acquiescence of States parties in those determinations constitutes such practice'.²⁸ The International Law Association Committee on International Human Rights Law and Practice (ILA Committee) had also considered it 'arguable' that the pronouncements of treaty bodies could satisfy Article 31(3)(b). It contended that:

[t]he reference in article 31 to subsequent practice – as with so many other provisions in the VCLT – is written as if no monitoring body had been established by a treaty, as if no third-party interests existed, and as if it were only for other States to monitor each other's compliance and to react to non-compliance. Human rights treaties are different in some important respects from the presumed ideal type of a multilateral treaty which underpins the formulation of the individual provisions of the VCLT.²⁹

And the HRC used the ILA Committee's reasoning to support the position in its draft.³⁰

²⁵ e.g. *ibid*; Tchoukou (n 7) 13–14.

²⁶ Manjoo Report (n 3) para 68.

²⁷ See, e.g. *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (Judgment) [1994] ICJ Rep 6, 21, para 41.

²⁸ HRC, 'Draft General Comment No 33 (Second Revised Version of 18 August 2008)' (25 August 2008) UN Doc CCPR/C/GC/33/CRP.3, para 18.

²⁹ ILA Committee on International Human Rights Law and Practice, 'Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies' (Berlin Conference, 2004) para 22.

³⁰ Draft General Comment No 33 (n 28) n 9.

However, the first approach of the HRC, namely that the jurisprudence of treaty bodies themselves satisfies Article 31(3)(b), has gained little traction. Indeed, a number of States explicitly rejected the approach. The United States (US) considered the argument ‘extraordinary’,³¹ the United Kingdom (UK) stated that it ‘rejects the assertion’³² and Australia and New Zealand indicated that that position did ‘not accurately reflect the position under international law’.³³ Belgium and Poland also disagreed with the HRC’s explanation.³⁴ Following these States’ comments, the HRC removed the statement from the final version of its general comment.³⁵

A few years later, the International Law Commission (ILC) Special Rapporteur on Subsequent Agreements and Subsequent Practice would explain:

A pronouncement of an expert body under a human rights treaty cannot, as such, constitute subsequent practice under article 31, paragraph 3 (b), since that provision requires that a subsequent practice in the application of the treaty establishes the agreement of the parties.³⁶

And the ILC Drafting Committee considered this proposition ‘self-evident’.³⁷ A number of States also expressed their agreement with this conclusion.³⁸

Although general comments and general recommendations of UN human rights treaty bodies do not *themselves* constitute ‘subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation’, they

³¹ ‘Comments of the United States of America on the Human Rights Committee’s “Draft General Comment 33: The Obligations of States Parties under the Optional Protocol to the International Covenant Civil and Political Rights”’ (17 October 2008).

³² ‘Comments of the Government of the United Kingdom of Great Britain and Northern Ireland on “Draft General Comment 33: The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights”’.

³³ ‘Human Rights Committee’s Draft General Comment 33 concerning the Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, Response of the Government of New Zealand to request OHCHR/GVA0812 of 12 September 2008’, para 18; ‘View of the Australian Government on Draft General Comment 33: “The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights”’, para 12.

³⁴ ‘Projet d’observation générale sur les obligations des Etats parties en vertu du Protocole facultatif se rapportant au Pacte international relatif aux droits civils et politiques, Commentaires du Royaume de Belgique’ (23 octobre 2008); ‘Poland’s Commentary to the Draft General Comment No. 33 of the Human Rights Committee’ (although Poland refers to art 31(3)(a) VCLT).

³⁵ See HRC, ‘General Comment No 33’ (25 June 2009) UN Doc CCPR/C/GC/33.

³⁶ ILC, ‘Fourth Report on Subsequent Agreements and Subsequent Practice in relation to the Interpretation of Treaties, by Mr Georg Nolte, Special Rapporteur’ (7 March 2016) UN Doc A/CN.4/694 (Nolte Fourth Report) para 42.

³⁷ ILC, ‘Summary Record of the 3313th Meeting’ (10 June 2016) UN Doc A/CN.4/313 (Report of the Drafting Committee) para 7.

³⁸ ILC, ‘Subsequent Agreements and Subsequent Practice in relation to the Interpretation of Treaties: Comments and Observations received from Governments’ (21 February 2018) UN Doc A/CN.4/712, 34 (US); UNGA Sixth Committee, ‘Summary Record of the 20th Meeting’ (24 October 2016) UN Doc A/C.6/71/SR.20, para 53 (Finland, on behalf of the Nordic countries); ‘Summary Record of the 21st Meeting’ (25 October 2016) UN Doc A/C.6/71/SR.21, para 77 (Austria); ‘Summary Record of the 22nd Meeting’ (26 October 2016) UN Doc A/C.6/71/SR.22, para 41 (Singapore), para 64 (Japan).

can catalyse such subsequent practice. Pronouncements of a human rights treaty body might well ‘give rise to’³⁹ ‘subsequent practice by the parties which establish their agreement regarding the interpretation of the treaty’ under Article 31(3)(b) VCLT. That position is accepted by many States,⁴⁰ the ILC⁴¹ and academics.⁴²

This section considers whether the CEDAW Committee’s General Recommendation 19 (together with General Recommendations 12 and 35) acted as a catalyst for State practice on the interpretation of Article 1 CEDAW. It also considers whether this subsequent practice of States Parties to CEDAW has established their agreement regarding the interpretation of CEDAW, namely that the definition of discrimination against women in Article 1 CEDAW includes gender-based violence against women.

2.2.1. *The importance of subsequent practice*

As the ILC has indicated, ‘[t]he interpretation of a treaty consists of a single combined operation, which places appropriate emphasis on the various means of interpretation indicated, respectively, in articles 31 and 32’.⁴³ This means that, at times, subsequent practice of States Parties in the application of the treaty might be of particular importance.⁴⁴ Indeed, the International Court of Justice (ICJ), in the *Kasikili/Sedudu* case, described the importance of subsequent practice as ‘obvious’, explaining that ‘it constitutes objective evidence of the understanding of the parties as to the meaning of the treaty’.⁴⁵ For this reason, courts and tribunals have had regard to it frequently in interpreting a treaty.⁴⁶

Despite the importance of subsequent practice for the interpretation of a treaty, the ILC has suggested that there are some hurdles with respect to treaties, such as CEDAW, which have an expert treaty body attached to them. In the view of the ILC, the sheer number of parties to treaties which have an expert body means that establishing that all parties have accepted a particular pronouncement of a treaty body as expressing a particular interpretation of a treaty ‘is not easily achieved in practice’.⁴⁷

³⁹ ILC, ‘Conclusions on Subsequent Agreements and Subsequent Practice’ (2018) UN Doc A/73/10 (ILC Conclusions) conclusion 13(3).

⁴⁰ Government Comments (n 38) 32 (Czech Republic), 34 (Sweden, on behalf of the Nordic countries), 34 (US). See also Summary Record of the 20th Meeting (n 38) para 53 (Finland, on behalf of the Nordic countries); Summary Record of the 22nd Meeting (n 38) para 27 (Mexico), para 41 (Singapore), para 64 (Japan).

⁴¹ ILC Conclusions (n 39) commentary to conclusion 13, para 11; Report of the Drafting Committee (n 37) para 7. See also Nolte Fourth Report (n 36) para 43.

⁴² e.g. G Ulfstein, ‘Individual Complaints’ in H Keller and G Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (CUP 2012) 73, 96–97; A Byrnes, ‘Whose Law Is It? Some Reflections on the Contributions of Non-State Actors to the Development and Implementation of International Human Rights Law’ (2016) 59 *Japanese YIL* 14; Kanetake (n 23) 218.

⁴³ ILC Conclusions (n 39) conclusion 2, para 5.

⁴⁴ G Nolte, ‘Treaties and Their Practice – Symptoms of their Rise or Decline’ (2018) 392 *RdC* 219, 337.

⁴⁵ *Kasikili/Sedudu Island (Botswana/Namibia)* (Judgment) [1999] ICJ Rep 1045, 1077, para 49, quoting UNYBILC, vol II (1996) UN Doc A/CN.4/SER.A/1996/Add.1, 221, para 14.

⁴⁶ See, e.g. *ibid* (with citations to its jurisprudence).

⁴⁷ ILC Conclusions (n 39) commentary to conclusion 13, para 12. A similar point has been made in respect of multilateral treaties more generally. See SD Murphy, ‘The Relevance of Subsequent Agreement and Subsequent Practice for the Interpretation of Treaties’ in G Nolte (ed), *Treaties and Subsequent Practice* (OUP 2013) 82, 93.

Whilst not easily achieved, the mandate of a UN human rights treaty body lends itself to serving as a catalyst for generating subsequent practice of States Parties to the treaty. Human rights treaty bodies have a mandate, *inter alia*, to issue general comments/recommendations; receive State Party reports and issue concluding observations on them; receive individual and inter-State communications and issue Views on them; and conduct inquiries.⁴⁸ Once a treaty body adopts an interpretation of a treaty provision in its general comment/recommendation, it will tend to use that same interpretation in its interactions with individual States, for example, in its list of issues prior to reporting, concluding observations on State Party reports and Views. Indeed, the CEDAW Committee's guidance note on the preparation of State Party reports indicates that States Parties should report on gender-based violence against women.⁴⁹ States Parties, in turn, tend to engage with that interpretation in their reports to the treaty body and in arguments in the context of individual communications. Accordingly, the documents produced by States Parties in their interactions with the treaty body provide a useful source of information on their positions.

2.2.2. *The elements of Article 31(3)(b) VCLT*

As set out in Section 2.2, Article 31(3)(b) VCLT refers to 'any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation'. Accordingly, for gender-based violence against women to form part of the definition of discrimination against women in Article 1 CEDAW, four elements must be met.⁵⁰ First, there must be 'practice'. Second, that practice must be 'subsequent' practice. Third, that subsequent practice must be 'in the application of' CEDAW. And fourth, it must 'establish the agreement of the parties' regarding the interpretation of the CEDAW.

2.2.2.1. *'Practice'*. The first element is that there must be practice. Practice includes 'any "conduct" in the application of a treaty'.⁵¹ It can take a variety of forms and will vary depending on the treaty.⁵² It may include acts, omissions and silence.⁵³ In the present context, particular emphasis will be placed on States Parties' reports to the CEDAW Committee and the underlying domestic practice to which the reports refer as well as arguments of States Parties as part of the CEDAW communications procedure. These reports and arguments are official communications under CEDAW and its Optional Protocol and are also of direct relevance to States Parties' understandings of

⁴⁸ See generally R Higgins et al, *Oppenheim's International Law: United Nations* (OUP 2017) 837–66. Not all treaty bodies have all these functions. Some treaties also require States Parties to opt in.

⁴⁹ CEDAW Committee, 'Guidance Note for States Parties for the Preparation of Reports under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women in the Context of the Sustainable Development Goals' (27 September 2022) UN Doc CEDAW/C/74/3/Rev.1, paras 25–27.

⁵⁰ Different authors identify different elements. cf R Gardiner, *Treaty Interpretation* (2 edn, OUP, 2015) 254, with I Buga, *Modification of Treaties by Subsequent Practice* (OUP 2018) 23, with L Crema, 'Subsequent Agreements and Subsequent Practice within and outside the Vienna Convention' in Nolte (n 47) 13, 17.

⁵¹ See, e.g. ILC Conclusions (n 39) commentary to conclusion 6(2), para 22.

⁵² Gardiner, (n 50) 254; Buga, (n 50) 24–7.

⁵³ ILC Conclusions (n 39) commentary to conclusion 4(2), para 17; U Linderfalk, *On the Interpretation of Treaties* (Springer 2007) 166.

their obligations.⁵⁴ In addition, relevant practice includes resolutions of the UN General Assembly, the Commission on Human Rights and the Human Rights Council.

As will be seen in Section 2.2.3, much of the practice in question tends not to be found in a joint document of all the States Parties to CEDAW, or in an exchange of documents between the parties. Rather, they are found in parallel exchanges of documents between individual States Parties and the CEDAW Committee. As the ILC Special Rapporteur concluded, a ‘merely parallel conduct may suffice’, although ‘[i]t is a separate question whether parallel activity of such a kind actually articulates a sufficient common understanding (agreement) regarding the interpretation of a treaty in a particular case’.⁵⁵

In the *Bay of Bengal Maritime Boundary Arbitration*, the arbitral tribunal indicated that an exchange of letters between government officials of Bangladesh and India was not ‘sufficiently authoritative to constitute ... a subsequent agreement between the Parties’. However, that was due to the ‘low-level’ and brevity of the ‘exchange of correspondence between civil servants’⁵⁶ and not because it took the form of parallel documents. In the present context, the documents are official documents of the State Party concerned, issued to the body authorised to receive them and submitted pursuant to the party’s treaty obligations.

Given that much of the practice in question cannot be found in a joint document of all the States Parties, one question that arises relates to the required frequency of practice and, in particular, whether one-off practices by States are sufficient. There is some support for the position that what is necessary for demonstrating agreement is a “‘concordant, common and consistent” sequence of acts or pronouncements’.⁵⁷ However, as the overarching question for the purposes of Article 31(3)(b) is whether the practice ‘establishes the agreement of the parties regarding its interpretation’, the better view is that frequency of practice goes to evidence of agreement rather than constituting a requirement for proving agreement.⁵⁸ Indeed, the practice of all the parties is not needed, only the agreement of all of them. The greater the frequency of practice, the easier it will be to demonstrate agreement on the part of the parties. But a one-time practice will suffice providing it establishes the agreement of the parties.⁵⁹ In any event, in the present context, there is a regularity of practice.

⁵⁴ See, in the context of the International Covenant on Economic Social and Cultural Rights, R Yotova and BM Knoppers, ‘The Right to Benefit from Science and Its Implications for Genomic Data Sharing’ (2020) 31 EJIL 665, 678.

⁵⁵ ILC, ‘Second Report on Subsequent Agreements and Subsequent Practice in relation to the Interpretation of Treaties, by Georg Nolte, Special Rapporteur’ (26 March 2014) UN Doc A/CN.4/671 (Nolte Second Report) para 43.

⁵⁶ *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh v India)* PCA Case No 2010-16, Award (7 July 2014) para 165.

⁵⁷ Appellate Body Report, *Japan—Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 4 October 1996, 12–13. See also Panel Report, *Chile—Price Band System and Safeguard Measures relating to Certain Agricultural Products*, WT/DS207/R, adopted 3 May 2002, paras 7.78–7.79; I Sinclair, *The Vienna Convention on the Law of Treaties* (Manchester University Press 1984) 137; O Dörr and K Schmalenbach, *Vienna Convention on the Law of Treaties: A Commentary* (Springer 2018) commentary on art 31, para 80.

⁵⁸ Gardiner (n 50) 256; Nolte Second Report (n 55) para 48; Buga (n 50) 71–72.

⁵⁹ ILC Conclusions (n 39) commentary to conclusion 9(2), para 11. See also Linderfalk (n 53) 166.

2.2.2.2. *'Subsequent' practice.* The second element is that the practice must be 'subsequent' practice, i.e. practice subsequent to the 'conclusion' of the treaty.⁶⁰ Although questions have arisen regarding the exact point after which the practice is to have taken place, for example, whether it is after the adoption of the treaty and its opening for signature or after the entry into force of the treaty,⁶¹ that is not relevant for present purposes. All the practice discussed has taken place after the entry into force of CEDAW.

2.2.2.3. *Subsequent practice 'in the application of the treaty'.* The third element is that the subsequent practice must be in the application of the treaty. As Dörr and Schmalenbach have explained, the parties must 'act the way they do for the purpose of fulfilling their treaty obligations, i.e. their subsequent conduct must be motivated by treaty obligations'.⁶² For its part, the ILC has given an indication of the sorts of practices which might be relevant:

This includes not only official acts at the international or at the internal level that serve to apply the treaty, including to respect or to ensure the fulfilment of treaty obligations, but also, inter alia, official statements regarding its interpretation, such as statements at a diplomatic conference, statements in the course of a legal dispute, or judgments of domestic courts; official communications to which the treaty gives rise; or the enactment of domestic legislation or the conclusion of international agreements for the purpose of implementing a treaty even before any specific act of application takes place at the internal or at the international level.⁶³

As indicated in Section 2.2.2.1, much of the practice in question consists of reports by States Parties pursuant to their obligations under the treaty to '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'.⁶⁴ These are submitted to the treaty body mandated to monitor implementation of the treaty. Other practice consists of States Parties' responses to individuals bringing communications against them pursuant to the Optional Protocol to the treaty, alleging violation of the treaty.⁶⁵ All such practice constitutes subsequent practice in the application of CEDAW.

Given that States Parties report on a variety of provisions of CEDAW and not just its Article 1, one question that arises is whether subsequent practice in the application of other provisions of CEDAW can be taken into account. In the *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization* Advisory Opinion, the ICJ answered the question in the affirmative.

⁶⁰ UNYBILC (n 45) 221; ILC, 'First Report on Subsequent Agreements and Subsequent Practice in relation to the Interpretation of Treaties, by Mr Georg Nolte, Special Rapporteur' (19 March 2013) UN Doc A/CN.4/660, para 116 (Nolte First Report).

⁶¹ See, e.g. Gardiner (n 50) 261–62.

⁶² Dörr and Schmalenbach (n 57) para 81.

⁶³ ILC Conclusions (n 39) commentary to conclusion 4(2), para 18.

⁶⁴ CEDAW (n 1) art 18(1).

⁶⁵ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted 6 October 1999, entered into force 22 December 2000) 2131 UNTS 83, art 1.

When seeking to interpret Article 28(a) of the Convention establishing the Inter-Governmental Maritime Consultative Organization, it considered the practice of the parties in the application of other provisions of the Convention.⁶⁶ Thus, regard may be had here to practice in the application of other provisions of CEDAW.⁶⁷

As will be seen, some of the subsequent State practice is not directly on the definition of discrimination against women in Article 1 CEDAW. It also concerns the impact of gender-based violence against women on particular rights and the measures that the State Party has taken to address gender-based violence against women in the context of those rights. As the CEDAW Committee explained, '[g]ender-based violence, which impairs or nullifies the enjoyment by women of human rights ... is discrimination within the meaning of article 1 of the Convention'.⁶⁸ And the rights in question include, for example, the right to just and favourable conditions of work.⁶⁹ Thus, if a State Party reports on measures it has taken to eliminate gender-based violence in the context of the CEDAW provision on the elimination of discrimination against women in the field of employment, for example, on sexual harassment, the State is accepting that gender-based violence against women is discrimination against women within the meaning of Article 1 CEDAW. Indeed, CEDAW is the Convention on the Elimination of *All Forms of Discrimination* against Women. If gender-based violence did not fall within the meaning of discrimination, it would not be within the scope of the Convention. Thus, when States Parties report to the CEDAW Committee on matters of gender-based violence against women, they are implicitly accepting that it constitutes discrimination against women.

2.2.2.4. *Subsequent practice 'establish[ing] the agreement of the parties regarding its interpretation'.* The fourth and final element is that the subsequent practice must establish the agreement of the parties regarding the interpretation of the treaty, namely that the definition of discrimination against women in Article 1 CEDAW includes gender-based violence against women. As intimated by the ILC, this is the more difficult of the requirements to satisfy, given that, as at 18 February 2026, there are 189 States Parties to CEDAW, and the reference to 'the parties' means to 'all the parties'.

Two aspects warrant particular comment. First, the question arises as to whether the agreement is required to take a particular form. Although, in the case of multilateral treaties, when looking for agreement on the part of States Parties as to the interpretation of a treaty provision, interpreters have tended to look at resolutions,⁷⁰ that is by no means a requirement.⁷¹ As the *Beagle Channel* arbitral tribunal put it, '[t]he terms of the Vienna Convention do not specify the ways in

⁶⁶ *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization* (Advisory Opinion) [1960] ICJ Rep 150, 168.

⁶⁷ See also Gardiner (n 50) 261; Buga (n 50) 57; Dörr and Schmalenbach (n 57) para 81.

⁶⁸ General Recommendation 19 (n 2) para 7.

⁶⁹ *ibid.*

⁷⁰ e.g. *Whaling in the Antarctic (Australia v Japan; New Zealand intervening)* (Judgment) [2014] ICJ Rep 226, 257, para 83; Nolte Fourth Report (n 36) para 45.

⁷¹ e.g. Nolte Fourth Report (n 36) para 46. See also L Hill-Cawthorne, 'Common Article 1 of the Geneva Conventions and the Method of Treaty Interpretation' (2023) 72 ICLQ 869, 881–88.

which “agreement” may be manifested’.⁷² Indeed, ‘any identifiable agreement of the parties is sufficient’.⁷³ Insofar as human rights treaties which benefit from a treaty body are concerned, as discussed in Section 2.2.1, the very existence of such a body, with its mandate to issue general comments, Views and concluding observations, lends itself to act as a catalyst for the generation of subsequent practice of States in their engagement with the treaty body. And some States themselves have noted the possible catalytic effect of pronouncements of treaty bodies.⁷⁴ It is in the nature of these bodies that the agreement of States Parties will be evidenced through a series of bilateral documents between individual States Parties and the treaty body rather than a joint document of all States Parties.

The second issue concerns the role of silence on the part of individual States Parties. It is widely accepted that the agreement must be that of *all* the parties, though that does not require that ‘every party must individually have engaged in the practice’.⁷⁵ Nonetheless, involvement in the practice is the ‘clearest evidence’ of the agreement.⁷⁶

The ILC has explained how to interpret the silence of States Parties in relation to a pronouncement of an expert treaty body. Conclusion 13(3) provides that ‘[s]ilence by a party shall not be presumed to constitute subsequent practice under article 31, paragraph 3 (b), accepting an interpretation of a treaty as expressed in a pronouncement of an expert treaty body’. The emphasis in that Conclusion is arguably misleading. The general rule, expressed in Conclusion 10(2), provides that ‘[s]ilence on the part of one or more parties can constitute acceptance of the subsequent practice when the circumstances call for some reaction’.⁷⁷ This position is frequently reiterated in the jurisprudence.⁷⁸ As the Commentary to Conclusion 13(3) explains, Conclusion 13(3) ‘does not purport to recognize an exception to this general rule, but rather intends to specify and apply this rule to the typical cases of pronouncements of expert bodies’.⁷⁹ Accordingly, even in regard to a pronouncement of an expert treaty body, silence on the part of a State Party can constitute acceptance of the subsequent practice; much turns on whether the circumstances call for some reaction.

According to the ILC, ‘[t]he “circumstances” that will “call for some reaction” include the particular setting in which the States parties interact with each other in respect of the treaty’.⁸⁰ Importantly, the ILC drew a distinction between treaty body

⁷² *Dispute between Argentina and Chile concerning the Beagle Channel*, Award of 18 February 1977, XXI UNRIIA 53, 187, para 169(a).

⁷³ Nolte Second Report (n 55) para 54.

⁷⁴ e.g. the US, although noting that this will not be a ‘common occurrence’. Comments of Governments (n 38) 35.

⁷⁵ UNYBILC (n 45) 222, para 15. This is the accepted position. See, e.g. Nolte Second Report (n 55) para 60; Buga (n 50) 22; Nolte (n 44) 344.

⁷⁶ Gardiner (n 50) 267.

⁷⁷ ILC Conclusions (n 39) conclusion 10(2).

⁷⁸ e.g. *Temple of Preah Vihear (Cambodia v Thailand)* (Judgment) [1962] ICJ Rep 6, 23; *Beagle Channel* (n 72) 187, para 169(a); *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* (Judgment) [2008] ICJ Rep 12, 50–51, para 121.

⁷⁹ ILC Conclusions (n 39) commentary to conclusion 13, para 18.

⁸⁰ *ibid* commentary to conclusion 10(1), para 14. See also Appellate Body Report, *European Communities — Customs Classification of Frozen Boneless Chicken Cuts*, WT/DS269/AB/R and WT/DS286/AB/R, adopted 12 September 2005, para 272.

pronouncements which were directed at a single State and those directed at other States Parties or States Parties generally, noting that:

[I]t cannot usually be expected that States parties take a position with respect to every pronouncement by an expert treaty body, be it addressed to another State or to all States generally. On the other hand, State parties may have an obligation, under a duty to cooperate under certain treaties, to take into account and to react to a pronouncement of an expert treaty body that is specifically addressed to them, or to individual communications regarding their own conduct.⁸¹

2.2.3. *The relevant practice evidencing agreement*

The subsequent practice at issue consists primarily of State Party reports to the CEDAW Committee, as well as arguments made in the context of individual communications. The practice can be divided into five sorts, although some of them bleed into others. They are: reiterations of General Recommendation 19;⁸² taking measures pursuant to General Recommendation 19; explicit references to General Recommendation 19 in their reporting on gender-based violence against women; reporting on measures taken in response to a question posed by the CEDAW Committee which explicitly mentions General Recommendation 19; and reporting on measures taken to eliminate gender-based violence against women without mentioning General Recommendation 19.

A number of States Parties have *reiterated* General Recommendation 19 in a way that suggests that they agree with the Recommendation. For example, Nicaragua noted that, '[i]n its general recommendation No. 19 ... the Committee on the Elimination of Discrimination against Women took the important decision to officially broaden the general prohibition of gender discrimination to include gender-based violence'.⁸³ And Brazil reiterated that General Recommendation 19 stated that the definition of discrimination in Article 1 CEDAW includes 'violence on the basis of sex'.⁸⁴ Other States reiterating General Recommendation 19 include the Bahamas,⁸⁵ Canada,⁸⁶ Denmark,⁸⁷ Haiti,⁸⁸ Italy⁸⁹ and Malaysia.⁹⁰

The domestic courts of some States have also cited General Recommendation 19. Georgia, for example, indicated that, '[i]n a decision of 23 April 2020, while deliberating on the case of domestic violence against a woman, the Akhaltsikhe District Court refers to the provisions of the Convention and the CEDAW General

⁸¹ ILC Conclusions (n 39) commentary to conclusion 13, para 19. See also Nolte Fourth Report (n 36) para 48.

⁸² General Recommendation Nos 12 and 35 are also occasionally referenced.

⁸³ CEDAW Committee, 'Consideration of Reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth Periodic Report of States Parties: Nicaragua' (5 July 2005) UN Doc CEDAW/C/NIC/6, para 210. For subsequent citations, only the UN document number and date will be provided.

⁸⁴ UN Doc CEDAW/C/BRA/1-5 (7 November 2002) 28.

⁸⁵ UN Doc CEDAW/C/BHS/4 (1 October 2009) 189.

⁸⁶ UN Doc CEDAW/C/50/D/26/2010 (30 November 2011) para 4.4.

⁸⁷ UN Doc CEDAW/C/55/D/33/2011 (15 August 2013) para 6.3.

⁸⁸ UN Doc CEDAW/C/HTI/Q/7/Add.1 (7 November 2008) para 10.

⁸⁹ UN Doc CEDAW/C/82/D/148/2019 (18 July 2022) para 4.11.

⁹⁰ UN Doc CEDAW/C/MYS/3-5 (17 October 2016) para 7 n 3.

Recommendation No. 19: Violence against women'.⁹¹ Other domestic courts which have referred to General Recommendation 19, seemingly with approval, include the Supreme Court of Bangladesh,⁹² the Supreme Court of India⁹³ and the Supreme Court of the Philippines.⁹⁴

Some States Parties have also referred to General Recommendation 19, seemingly with approval, in their arguments to the CEDAW Committee in the context of individual communications, as was the case with Canada,⁹⁵ Denmark,⁹⁶ Georgia,⁹⁷ Italy⁹⁸ and the Netherlands.⁹⁹ Others, such as Kazakhstan, have reported on the implementation of Views where those Views refer to and follow General Recommendation 19.¹⁰⁰

Still other States Parties have explained that they have *taken measures pursuant to General Recommendation 19*. In this vein, Gambia reported that its Sexual Offences Act 2013 had defined sexual harassment 'in accordance with General Recommendation No. 19'.¹⁰¹ And the Philippines reported that, '[i]n response to General Recommendation No. 19, [it] enacted two laws to address VAW'.¹⁰² Other States doing the same include Argentina,¹⁰³ Azerbaijan,¹⁰⁴ Belgium,¹⁰⁵ Bosnia and Herzegovina,¹⁰⁶ Burundi,¹⁰⁷ China,¹⁰⁸ Colombia,¹⁰⁹ Cuba,¹¹⁰ Equatorial Guinea,¹¹¹ Honduras,¹¹² Iraq,¹¹³ Republic of Korea,¹¹⁴

⁹¹ UN Doc CEDAW/C/GEO/RQ/6 (30 January 2023) para 27.

⁹² *Bangladesh National Women Lawyers Association (BNWLA), represented by its Executive Director, Ms Salma Ali v Government of Bangladesh*, Writ Petition No 5916 of 2008 (2009) 29 BLD (HCD) 415, ILDC 3088 (BD 2009) (14 May 2009) para 31; *Dolon and Hossain (Joining) v Government of Bangladesh*, Writ Petition, No 4495 of 2009, ILDC 1917 (BD 2011) (2 February 2011) paras 19–22.

⁹³ *Vishaka v State of Rajasthan* (Initial Decision) No 3011 of 1997, ILDC 442 (IN 1997) (13 August 1997) para 13.

⁹⁴ *Secretary of National Defense and Chief of Staff, Armed Forces of the Philippines v Manalo and Manalo*, Petition for Review, GR No 180906, ILDC 1295 (PH 2008) (7 October 2008) para 95.

⁹⁵ *Guadalupe Herrera Rivera v Canada* Communication No 26/2010 (18 October 2011) UN Doc CEDAW/C/50/D/26/2010, para 4.4.

⁹⁶ e.g. *MEN v Denmark* Communication No 35/2011 (26 July 2013) UN Doc CEDAW/C/55/D/35/2011, para 4.9.

⁹⁷ *X and Y v Georgia* Communication No 24/2009 (13 July 2015) UN Doc CEDAW/C/61/D/24/2009, para 7.1.

⁹⁸ *AF v Italy* Communication No 148/2019 (18 July 2022) UN Doc CEDAW/C/82/D/148/2019, para 4.11.

⁹⁹ *N v the Netherlands* Communication No 39/2012 (17 February 2014) UN Doc CEDAW/C/57/D/39/2012, paras 4.3, 4.14.

¹⁰⁰ *Belousova v Kazakhstan* Communication No 45/2012 (13 July 2015) UN Doc CEDAW/C/61/D/45/2012, para 9.4; UN Doc CEDAW/C/KAZ/Q/5/Add.1 (17 September 2019) para 16.

¹⁰¹ UN Doc CEDAW/C/GMB/6 (6 October 2021) para 112.

¹⁰² UN Doc CEDAW/C/PHI/5-6 (2 August 2004) para 206.

¹⁰³ UN Doc CEDAW/C/ARG/7 (2 March 2015) 2.

¹⁰⁴ UN Doc CEDAW/C/AZE/CO/4/Add.1 (15 April 2011) para 8.

¹⁰⁵ UN Doc CEDAW/C/BEL/7 (19 February 2013) para 66.

¹⁰⁶ UN Doc CEDAW/C/BIH/4-5 (21 December 2011) para 7.

¹⁰⁷ UN Doc CEDAW/C/BDI/5-6 (24 June 2015) para 137.

¹⁰⁸ UN Doc CEDAW/C/CHN/9 (16 December 2020) para 45.

¹⁰⁹ UN Doc CEDAW/C/COL/5-6 (11 April 2005) 12.

¹¹⁰ UN Doc CEDAW/C/CUB/Q/6/Add.1 (8 June 2006) para 3.

¹¹¹ UN Doc CEDAW/C/GNQ/6 (14 April 2011) para 133.

¹¹² UN Doc CEDAW/C/HND/7-8 (2 June 2015) para 59.

¹¹³ UN Doc CEDAW/C/IRQ/4-6 (11 January 2013) para 27.

¹¹⁴ UN Doc CEDAW/C/KOR/Q/7/Add.1 (16 February 2011) 13.

Lithuania,¹¹⁵ Mauritius,¹¹⁶ Mexico,¹¹⁷ Norway,¹¹⁸ Oman,¹¹⁹ Paraguay,¹²⁰ Slovakia,¹²¹ South Africa,¹²² Tanzania¹²³ and Timor-Leste.¹²⁴

Some States Parties have *explicitly mentioned* General Recommendations 12 and/or 19 in their reporting on violence against women, in a way which suggests that they agree with the approach adopted in these Recommendations. For example, Brunei Darussalam reported to the CEDAW Committee on violence against women '[i]n light of Recommendation 12 & 19'.¹²⁵ And Portugal's report reads: '[t]aking into account the CEDAW Committee's Recommendations No 19 and No 12, regarding the obligation of States to report on violence against women, Portugal presents the following information under this topic'.¹²⁶ Other States which have reported similarly include Chile,¹²⁷ Ghana,¹²⁸ Guyana,¹²⁹ Jordan,¹³⁰ Maldives,¹³¹ Nepal,¹³² Seychelles,¹³³ Thailand¹³⁴ and Vanuatu.¹³⁵ For its part, Saint Vincent and the Grenadines indicated that 'no specific action' has been taken with respect to 'sexual harassment at the workplace (General Recommendation No. 19)'.¹³⁶ In so explaining, the State implicitly accepts General Recommendation 19.

Numerous States Parties have *reported on* measures they have taken to eliminate violence against women in response to a question posed by the Committee which explicitly mentions General Recommendation 19. For example, the relevant section of Lao People's Democratic Republic's report commences with the CEDAW Committee's question before answering it. It reads as follows:

In line with the Committee's general recommendation No. 19 and further to the Committee's previous concluding comments (see para. 36), please provide information on the scope of all forms of violence against women and legislative and other measures taken to combat such violence.

...

¹¹⁵ UN Doc CEDAW/C/LTU/5 (21 December 2011) para 4.

¹¹⁶ UN Doc CEDAW/C/MAR/3-5 (19 January 2005) 21.

¹¹⁷ UN Doc CEDAW/C/MEX/7-8 (7 February 2011) para 83.

¹¹⁸ UN Doc CEDAW/C/NOR/CO/8/Add.1 (14 July 2014) 2.

¹¹⁹ UN Doc CEDAW/C/OMN/2-3 (1 June 2016) para 47.

¹²⁰ UN Doc CEDAW/C/PAR/6 (12 August 2010) para 44.

¹²¹ UN Doc CEDAW/C/SVK/CO/4/Add.1 (12 January 2010) para 4.

¹²² UN Doc CEDAW/C/ZAF/5 (28 October 2019) para 14.

¹²³ UN Doc CEDAW/C/TZA/7-8 (3 December 2014) para 135.

¹²⁴ UN Doc CEDAW/C/TLS/1 (24 November 2008) 30.

¹²⁵ UN Doc CEDAW/C/BRN/1-2 (1 November 2013) para 3.7.

¹²⁶ UN Doc CEDAW/C/PRT/7 (29 January 2008) 84.

¹²⁷ UN Doc CEDAW/C/CHI/4 (17 May 2004) 61.

¹²⁸ UN Doc CEDAW/C/GHA/3-5 (18 April 2005) para 150.

¹²⁹ UN Doc CEDAW/C/GUY/7-8 (12 August 2010) para 363.

¹³⁰ UN Doc CEDAW/C/JOR/3-4 (10 March 2006) para 19.

¹³¹ UN Doc CEDAW/C/MDV/Q/3/Add.1 (27 September 2006) para 12.

¹³² UN Doc CEDAW/C/NPL/4-5 (9 November 2010) para 220.

¹³³ UN Doc CEDAW/C/SYC/1-5 (22 March 2012) para 68.

¹³⁴ UN Doc CEDAW/C/THA/2-3 (7 April 1997) para 269.

¹³⁵ UN Doc CEDAW/C/VUT/1-3 (30 November 2005) para 52.

¹³⁶ UN Doc CEDAW/C/VCT/4-8 (13 December 2013) 47.

Based on the Law on the development and protection of women, there are two kinds of violence against women: physical and emotional violence or damages to asset. The scope of violence remains pervasive, from the domestic to the public domain, including work places ...¹³⁷

At times, the information can be found across different documents. For example, in the case of the Russian Federation, the CEDAW Committee stated in its Concluding Observations on Russia's eighth periodic report:

22. Recalling its general recommendation No. 19 (1992) on violence against women, the Committee urges the State party:

(a) To adopt comprehensive legislation to prevent and address violence against women ...¹³⁸

In Russia's ninth periodic report, under the heading, 'Paragraphs 21 and 22 of the concluding observations', Russia informed the CEDAW Committee of its 'efforts to prevent violence against women' during the reporting period.¹³⁹

Along these lines, some 100 States Parties have reported on measures taken to eliminate violence against women in response to a question by the CEDAW Committee which explicitly refers to General Recommendation 19. This includes Afghanistan,¹⁴⁰ Albania,¹⁴¹ Algeria,¹⁴² Angola,¹⁴³ Armenia,¹⁴⁴ Australia,¹⁴⁵ Austria,¹⁴⁶ Benin,¹⁴⁷ Bahrain,¹⁴⁸ Bangladesh,¹⁴⁹ Barbados,¹⁵⁰ Belarus,¹⁵¹ Belize,¹⁵² Bhutan,¹⁵³ Botswana,¹⁵⁴ Bulgaria,¹⁵⁵

¹³⁷ UN Doc CEDAW/C/LAO/Q/7/Add.1 (22 June 2009) para 11.

¹³⁸ UN Doc CEDAW/C/RUS/CO/8 (20 November 2015) para 22.

¹³⁹ UN Doc CEDAW/C/RUS/9 (8 January 2020) para 44.

¹⁴⁰ UN Doc CEDAW/C/AFG/CO/1-2 (23 July 2013) para 23; UN Doc CEDAW/C/AFG/3 (24 January 2019) paras 87–104.

¹⁴¹ UN Doc CEDAW/C/ALB/Q/5 (7 March 2022) para 10; CEDAW/C/ALB/RQ/5 (21 January 2023) para 56.

¹⁴² UN Doc CEDAW/C/DZA/CO/3-4/Add.1 (29 May 2015) paras 18, 22–23.

¹⁴³ UN Doc CEDAW/C/AGO/Q/6 (21 August 2012) para 6; UN Doc CEDAW/C/AGO/Q/6/Add.1 (23 January 2013) para 21.

¹⁴⁴ UN Doc CEDAW/C/ARM/Q/4/Add.1 (16 December 2008) para 10.

¹⁴⁵ UN Doc CEDAW/C/AUL/Q/7/Add.1 (29 January 2010) para 94.

¹⁴⁶ UN Doc CEDAW/C/AUT/CO/7-8/Add.1 (29 April 2015) para 25.

¹⁴⁷ UN Doc CEDAW/C/BEN/Q/4/Add.1 (7 August 2013) para 7.

¹⁴⁸ UN Doc CEDAW/C/BHR/4 (11 October 2018) para 93; UN Doc CEDAW/C/BHR/CO/3 (10 March 2014) para 22.

¹⁴⁹ UN Doc CEDAW/C/BGD/6-7 (24 March 2010) paras 87–88.

¹⁵⁰ UN Doc CEDAW/C/BRB/5-8 (5 October 2015) 8.

¹⁵¹ UN Doc CEDAW/C/BLR/CO/8 (25 November 2016) para 23(f); UN Doc CEDAW/C/BLR/8 (16 June 2016) para 107.

¹⁵² UN Doc CEDAW/C/BLZ/CO/4 (10 August 2007) para 20; UN Doc CEDAW/C/BLZ/5-9 (13 November 2024) paras 113–131.

¹⁵³ UN Doc CEDAW/C/BTN/QPR/10 (10 March 2021) para 8; UN Doc CEDAW/C/BTN/10 (12 December 2022) para 103.

¹⁵⁴ UN Doc CEDAW/C/BWA/Q/4 (3 August 2018) para 8; UN Doc CEDAW/C/BWA/Q/4/Add.1 (16 January 2019) reply to para 8.

¹⁵⁵ UN Doc CEDAW/C/BGR/QPR/8 (15 March 2018) para 10; UN Doc CEDAW/C/BGR/8 (23 October 2019) para 67.

Burkina Faso,¹⁵⁶ Cabo Verde,¹⁵⁷ Cambodia,¹⁵⁸ Cameroon,¹⁵⁹ Central African Republic,¹⁶⁰ Chad,¹⁶¹ Comoros,¹⁶² Republic of the Congo,¹⁶³ Costa Rica,¹⁶⁴ Cote d'Ivoire,¹⁶⁵ Croatia,¹⁶⁶ Cyprus,¹⁶⁷ Czech Republic,¹⁶⁸ Dominican Republic,¹⁶⁹ Ecuador,¹⁷⁰ Egypt,¹⁷¹ El Salvador,¹⁷² Eritrea,¹⁷³ Eswatini,¹⁷⁴ Ethiopia,¹⁷⁵ Fiji,¹⁷⁶ Finland,¹⁷⁷ France,¹⁷⁸ Gabon,¹⁷⁹ Germany,¹⁸⁰ Greece,¹⁸¹ Guatemala,¹⁸² Hungary,¹⁸³ India,¹⁸⁴ Japan,¹⁸⁵ Kenya,¹⁸⁶

¹⁵⁶ UN Doc CEDAW/C/BFA/CO/6/Add.1 (9 June 2016) paras 19–20.

¹⁵⁷ UN Doc CEDAW/C/CPV/CO/9 (30 July 2019) para 22; UN Doc CEDAW/C/CPV/10 (1 November 2023) para 64.

¹⁵⁸ UN Doc CEDAW/C/KHM/CO/4-5 (29 October 2013) para 21; UN Doc CEDAW/C/KHM/6 (9 July 2018) para 57.

¹⁵⁹ UN Doc CEDAW/C/CMR/Q/3 (6 March 2008), para 9; UN Doc CEDAW/C/CMR/Q/3/Add.1 (10 November 2008), para 9.

¹⁶⁰ UN Doc CEDAW/C/CAF/Q/6 (11 July 2022) para 13; UN Doc CEDAW/C/CAF/RQ/6 (18 December 2023) paras 37–42.

¹⁶¹ UN Doc CEDAW/C/TCD/Q/4 (30 March 2010) para 15; UN Doc CEDAW/C/TCD/Q/4/Add.1 (15 September 2010) paras 44–60.

¹⁶² UN Doc CEDAW/C/COM/Q/1-4 (30 March 2012) para 7; UN Doc CEDAW/C/COM/Q/4/Add.1 (15 April 2011) para 8.

¹⁶³ UN Doc CEDAW/C/COG/Q/6 (10 August 2011) paras 7, 44.

¹⁶⁴ UN Doc CEDAW/C/CRI/Q/8 (7 March 2022) paras 11–12; UN Doc CEDAW/C/CRI/RQ/8 (13 March 2023) paras 46–60.

¹⁶⁵ UN Doc CEDAW/C/CIV/Q/4/Add.1 (20 June 2019) para 29.

¹⁶⁶ UN Doc CEDAW/C/HRV/CO/4-5/Add.1 (11 December 2017) paras 1–9.

¹⁶⁷ UN Doc CEDAW/C/CYP/Q/6-7 (21 August 2012) para 7; UN Doc CEDAW/C/CYP/Q/6-7/Add.1 (27 November 2012) para 32.

¹⁶⁸ UN Doc CEDAW/C/CZE/CO/6/Add.1 (22 March 2018) paras 18, 21.

¹⁶⁹ UN Doc CEDAW/C/DOM/6-7 (21 December 2011) para 253.

¹⁷⁰ UN Doc CEDAW/C/ECU/CO/8-9/Add.1 (12 April 2017) paras 6–7.

¹⁷¹ UN Doc CEDAW/C/EGY/Q/7 (13 March 2009) para 12; UN Doc CEDAW/C/EGY/Q/7/Add.1 (23 November 2009) para 12.

¹⁷² UN Doc CEDAW/C/SLV/7 (19 April 2007) 12.

¹⁷³ UN Doc CEDAW/C/ERI/Q/6 (31 July 2019) para 6; UN Doc CEDAW/C/ERI/RQ/6 (6 February 2020) para 12.

¹⁷⁴ UN Doc CEDAW/C/SWZ/CO/1-2/Add.1 (3 May 2017) para 21.

¹⁷⁵ UN Doc CEDAW/C/ETH/Q/6-7 (4 November 2010) para 11; UN Doc CEDAW/C/ETH/Q/6-7/Add.1 (17 March 2011) 8.

¹⁷⁶ UN Doc CEDAW/C/FJI/Q/2-4/Add.1 (27 January 2010) para 9.

¹⁷⁷ UN Doc CEDAW/C/FIN/CO/6/Add.1 (10 April 2010) paras 3–4.

¹⁷⁸ UN Doc CEDAW/C/FRA/7-8 (20 March 2014) para 2.5.

¹⁷⁹ UN Doc CEDAW/C/GAB/7 (1 October 2019) para 91.

¹⁸⁰ UN Doc CEDAW/C/DEU/CO/6 (12 February 2009) para 42; UN Doc CEDAW/C/DEU/7-8 (21 October 2015) para 112.

¹⁸¹ UN Doc CEDAW/C/GRC/QPR/8 (17 November 2020) para 9; UN Doc CEDAW/C/GRC/8-9 (3 August 2023) para 93.

¹⁸² UN Doc CEDAW/C/GUA/7 (7 January 2008) 53–54.

¹⁸³ UN Doc CEDAW/C/HUN/Q/9 (10 March 2021) para 13; UN Doc CEDAW/C/HUN/RQ/9 (25 February 2022) para 56.

¹⁸⁴ UN Doc CEDAW/C/IND/Q/3/Add.1 (13 December 2006) question 8.

¹⁸⁵ UN Doc CEDAW/C/JPN/Q/6/Add.1 (14 April 2009) 23–24.

¹⁸⁶ UN Doc CEDAW/C/KEN/Q/7 (2 September 2010) para 11; UN Doc CEDAW/C/KEN/Q/7/Add.1 (10 December 2010) para 11.

Kuwait,¹⁸⁷ Kyrgyzstan,¹⁸⁸ Latvia,¹⁸⁹ Lebanon,¹⁹⁰ Lesotho,¹⁹¹ Liechtenstein,¹⁹² Luxembourg,¹⁹³ Madagascar,¹⁹⁴ Mauritania,¹⁹⁵ Micronesia,¹⁹⁶ Monaco,¹⁹⁷ Mongolia,¹⁹⁸ Montenegro,¹⁹⁹ Morocco,²⁰⁰ Myanmar,²⁰¹ Namibia,²⁰² New Zealand,²⁰³ Niger,²⁰⁴ North Macedonia,²⁰⁵ Pakistan,²⁰⁶ Peru,²⁰⁷ Qatar,²⁰⁸ Republic of Moldova,²⁰⁹ Rwanda,²¹⁰ Saint Kitts and Nevis,²¹¹ Samoa,²¹² Sao Tome and Principe,²¹³ Saudi Arabia,²¹⁴ Serbia,²¹⁵ Sierra

¹⁸⁷ UN Doc CEDAW/C/KWT/Q/6 (6 March 2023) para 10.

¹⁸⁸ UN Doc CEDAW/C/KGZ/FCO/5 (21 June 2023) 6.

¹⁸⁹ UN Doc CEDAW/C/LVA/CO/4-7 (10 March 2020) para 24; UN Doc CEDAW/C/LVA/FCO/4-7 (10 March 2022) para 9.

¹⁹⁰ UN Doc CEDAW/C/LBN/Q/3 (16 August 2007) para 7.

¹⁹¹ UN Doc CEDAW/C/LSO/CO/1-4 (8 November 2011) para 23; UN Doc CEDAW/C/LSO/5-7 (8 January 2024) para 24.

¹⁹² UN Doc CEDAW/C/LIE/FCO/ (11 August 2022) para 6.

¹⁹³ UN Doc CEDAW/C/LUX/Q/5/Add.1 (15 October 2007) para 11.

¹⁹⁴ UN Doc CEDAW/C/MDG/6-7 (10 April 2014) para 122.

¹⁹⁵ UN Doc CEDAW/C/MRT/Q/4 (10 March 2021) para 9; UN Doc CEDAW/C/MRT/RQ/4 (3 January 2023) paras 33–34.

¹⁹⁶ UN Doc CEDAW/C/FSM/Q/1-3 (2 August 2016) para 9; UN Doc CEDAW/C/FSM/Q/1-3/Add.1, para 25.

¹⁹⁷ UN Doc CEDAW/C/MCO/Q/1-3 (13 March 2017) para 9; UN Doc CEDAW/C/MCO/Q/1-3/Add.1 (19 June 2017) para 52.

¹⁹⁸ UN Doc CEDAW/C/MNG/7 (12 April 2007) 6, 38.

¹⁹⁹ UN Doc CEDAW/C/MNE/CO/1 (4 November 2011) para 19; UN Doc CEDAW/C/MNE/CO/1/Add.1 (10 April 2014) para 19.

²⁰⁰ UN Doc CEDAW/C/MAR/Q/5-6 (17 November 2020) para 9; UN Doc CEDAW/C/MAR/RQ/5-6 (25 February 2022) paras 68–72.

²⁰¹ UN Doc CEDAW/C/MMR/Q/3 (6 March 2008) para 10; UN Doc CEDAW/C/MMR/Q/3/Add.1 (14 October 2008) para 24.

²⁰² UN Doc CEDAW/C/NAM/CO/4-5 (28 July 2015) para 21; UN Doc CEDAW/C/NAM/6 (18 September 2020) recommendation 21.

²⁰³ UN Doc CEDAW/C/NZL/7 (7 January 2011) 57.

²⁰⁴ UN Doc CEDAW/C/NER/Q/2 (5 October 2006) para 13; UN Doc CEDAW/C/NER/Q/2/Add.1 (20 February 2007) 12.

²⁰⁵ UN Doc CEDAW/C/MKD/Q/6 (20 March 2018) para 8; UN Doc CEDAW/C/MKD/Q/6/Add.1 (19 June 2018) para 32.

²⁰⁶ UN Doc CEDAW/C/PAK/CO/4 (27 March 2013) para 22; UN Doc CEDAW/C/PAK/CO/4/Add.1 (29 March 2016) para 2.

²⁰⁷ UN Doc CEDAW/C/PER/6 (3 February 2004) recommendation P.

²⁰⁸ UN Doc CEDAW/C/QAT/Q/2 (20 November 2018) para 8; UN Doc CEDAW/C/QAT/Q/2/Add.1 (6 May 2019) para 28.

²⁰⁹ UN Doc CEDAW/C/MDA/Q/6 (31 July 2019) para 8; UN Doc CEDAW/C/MDA/RQ/6 (16 December 2019) para 30.

²¹⁰ UN Doc CEDAW/C/RWA/Q/6/Add.1 (2 February 2009) 9.

²¹¹ UN Doc CEDAW/C/KNA/Q/5-9 (17 November 2020) para 2; UN Doc CEDAW/C/KNA/RQ/5-9 (5 October 2022) para 9.

²¹² UN Doc CEDAW/C/WSM/4-5 (7 January 2011) recommendation 3.1.

²¹³ UN Doc CEDAW/C/STP/Q/1-5 (7 March 2022) para 11; UN Doc CEDAW/C/STP/RQ/1-5 (10 May 2023) para 37.

²¹⁴ UN Doc CEDAW/C/SAU/Q/3-4 (31 July 2017) para 13; UN Doc CEDAW/C/SAU/Q/3-4/Add.1 (9 November 2017) para 45.

²¹⁵ UN Doc CEDAW/C/SRB/Q/4 (3 August 2018) para 8; UN Doc CEDAW/C/SRB/Q/4/Add.1 (29 November 2018) para 3.

Leone,²¹⁶ Singapore,²¹⁷ Slovenia,²¹⁸ Spain,²¹⁹ Sri Lanka,²²⁰ State of Palestine,²²¹ Suriname,²²² Sweden,²²³ Switzerland,²²⁴ Syrian Arab Republic,²²⁵ Tajikistan,²²⁶ Trinidad and Tobago,²²⁷ Tunisia,²²⁸ Türkiye,²²⁹ Turkmenistan,²³⁰ Uganda,²³¹ United Arab Emirates,²³² Uruguay,²³³ Uzbekistan,²³⁴ Yemen,²³⁵ Venezuela²³⁶ and Zimbabwe.²³⁷

The remaining 40 or so States Parties have reported to the CEDAW Committee on measures that they have taken to eliminate violence against women *without referencing* General Recommendations 12 and/or 19 in their reports. Some such States seem to refer implicitly to the General Recommendation(s). Notably, Djibouti indicated in its report that:

Having ratified the Convention without reservations, the Republic of Djibouti adopted the definition of discrimination against women, as set forth in the Convention, including the extension of its prohibition on gender-based violence ...²³⁸

²¹⁶ UN Doc CEDAW/C/SLE/Q/5/Add.1 (26 March 2007) para 13.

²¹⁷ UN Doc CEDAW/C/SGP/CO/5 (21 November 2017) para 21; UN Doc CEDAW/C/SGP/FCO/5 (17 December 2019) paras 24–25.

²¹⁸ UN Doc CEDAW/C/SVN/QPR/7 (27 July 2020) para 10; UN Doc CEDAW/C/SVN/7 (6 October 2021) para 82.

²¹⁹ UN Doc CEDAW/C/ESP/QPR/9 (19 August 2019) para 9; UN Doc CEDAW/C/ESP/9 (10 August 2022) para 132.

²²⁰ UN Doc CEDAW/C/LKA/5-7 (24 March 2010) para 19.

²²¹ UN Doc CEDAW/C/PSE/Q/1 (30 November 2017) para 9; UN Doc CEDAW/C/PSE/Q/1/Add.1 (7 March 2018) para 46.

²²² UN Doc CEDAW/C/SUR/Q/3/Add.1 (10 October 2006) para 8.

²²³ UN Doc CEDAW/C/SWE/CO/8-9 (10 March 2016) para 27; UN Doc CEDAW/C/SWE/CO/8-9/Add.1 (7 March 2018) paras 25–27.

²²⁴ UN Doc CEDAW/C/CHE/3 (23 April 2008) para 32.

²²⁵ UN Doc CEDAW/C/SYR/CO/1 (11 June 2007) para 20; UN Doc CEDAW/C/SYR/2 (25 October 2012) para 48.

²²⁶ UN Doc CEDAW/C/TJK/CO/4-5 (29 October 2013) para 18; UN Doc CEDAW/C/TJK/CO/4-5/Add.1 (21 October 2015) 2–9.

²²⁷ UN Doc CEDAW/C/TTO/4-7 (2 March 2015) para 37.

²²⁸ UN Doc CEDAW/C/TUN/6 (20 May 2009) para 54.

²²⁹ UN Doc CEDAW/C/TUR/Q/6/Add.1 (12 February 2010) para 15.

²³⁰ UN Doc CEDAW/C/TKM/Q/5 (30 November 2017) para 10; UN Doc CEDAW/C/TKM/Q/5/Add.1 (15 February 2018) para 10.

²³¹ UN Doc CEDAW/C/UGA/Q/7 (31 August 2010) para 12; UN Doc CEDAW/C/UGA/Q/7/Add.1 (31 August 2010) paras 62–65.

²³² UN Doc CEDAW/C/ARE/RQ/4 (25 February 2022) para 9.

²³³ UN Doc CEDAW/C/URY/Q/7/Add.1 (19 June 2008) para 4.

²³⁴ UN Doc CEDAW/C/UZB/CO/4/Add.1 (25 February 2013) para 22.

²³⁵ UN Doc CEDAW/C/YEM/Q/6 (27 September 2007) para 8; UN Doc CEDAW/C/YEM/Q/6/Add.1 (4 March 2008) para 8.

²³⁶ UN Doc CEDAW/C/VEN/Q/9 (11 July 2022) para 11; UN Doc CEDAW/C/VEN/RQ/9 (6 April 2023) para 48.

²³⁷ UN Doc CEDAW/C/ZWE/Q/6 (31 July 2019) para 8; UN Doc CEDAW/C/ZWE/RQ/6 (15 January 2020) para 25.

²³⁸ UN Doc CEDAW/C/DJI/1-3 (16 April 2010) para 139.

And Togo reported that the prohibition on discrimination against women ‘extends to any violence against women’.²³⁹

Although these 40 or so States Parties are silent on General Recommendations 12 and 19, as the reports of Djibouti and Togo indicate, they are not silent on the idea that violence against women falls within the scope of the Convention. If these States considered that violence against women did not fall within the auspices of the Convention, they would not have reported on the issue to the Committee mandated to monitor implementation of the Convention or they would have reported with a caveat that they do not accept the underlying premise.²⁴⁰ Accordingly, even reporting on measures taken to eliminate violence against women without referencing General Recommendation 19 (and without a caveat) constitutes acceptance that violence against women falls within the auspices of the CEDAW and thus, by implication, that violence against women constitutes discrimination. The States in question are: Andorra,²⁴¹ Antigua and Barbuda,²⁴² Bolivia,²⁴³ Cook Islands,²⁴⁴ Democratic Peoples’ Republic of Korea,²⁴⁵ Democratic Republic of the Congo,²⁴⁶ Estonia,²⁴⁷ Grenada,²⁴⁸ Guinea,²⁴⁹ Guinea-Bissau,²⁵⁰ Iceland,²⁵¹ Indonesia,²⁵² Ireland,²⁵³ Israel,²⁵⁴ Jamaica,²⁵⁵ Kiribati,²⁵⁶ Liberia,²⁵⁷ Libyan Arab Jamahiriya,²⁵⁸

²³⁹ UN Doc CEDAW/C/TGO/1-5 (18 March 2004) 3–4.

²⁴⁰ See, e.g. in relation to the HRC, US: UN Doc CCPR/C/USA/5 (11 November 2021) paras 4–10, 16.

²⁴¹ UN Doc CEDAW/C/AND/Q/2-3/Add.1 (13 June 2013) para 10; UN Doc CEDAW/C/AND/4 (10 July 2018) paras 60–94.

²⁴² UN Doc CEDAW/C/ATG/Q/4-7/Add.2 (15 November 2018) paras 23–26.

²⁴³ UN Doc CEDAW/C/BOL/5-6 (27 March 2006) paras 104–107; UN Doc CEDAW/C/BOL/5-6 (17 December 2013) paras 51, 82, 109–122; UN Doc CEDAW/C/BOL/7 (8 January 2020) para 38.

²⁴⁴ UN Doc CEDAW/C/COK/4-5 (3 December 2024) paras 31–41; UN Doc CEDAW/C/COK/2-3 (15 May 2017) paras 33–36, 93–94.

²⁴⁵ UN Doc CEDAW/C/PRK/Q/2-4/Add.1 (5 July 2017) para 39.

²⁴⁶ UN Doc CEDAW/C/COD/1 (18 June 1999) 15; UN Doc CEDAW/C/COD/4-5 (30 November 2004) 45–50; UN Doc CEDAW/C/COD/6-7 (21 December 2011) 21–25; UN Doc CEDAW/C/COD/8 (1 May 2018) para 60.

²⁴⁷ UN Doc CEDAW/C/EST/Q/5-6/Add.1 (19 July 2016) 8.

²⁴⁸ UN Doc CEDAW/C/GRD/1-5 (13 April 2011); UN Doc CEDAW/C/GRD/Q/1-5/Add.1 (10 November 2011).

²⁴⁹ UN Doc CEDAW/C/GIN/7-8 (18 January 2013) para 45.

²⁵⁰ UN Doc CEDAW/C/GNB/6 (30 June 2009) paras 104–105; UN Doc CEDAW/C/GNB/7-10 (28 February 2025) paras 42–55.

²⁵¹ UN Doc CEDAW/C/ICE/5 (26 November 2003) 30–35; UN Doc CEDAW/C/ICE/6 (4 December 2007) 14–24; UN Doc CEDAW/C/ISL/RQ/9 (6 April 2023) para 13.

²⁵² UN Doc CEDAW/C/IDN/4-5 (27 July 2005) para 33; UN Doc CEDAW/C/IDN/8 (8 January 2020) paras 66–82.

²⁵³ UN Doc CEDAW/C/IRL/4-5 (10 June 2003) 117; UN Doc CEDAW/C/IRL/6-7 (30 September 2016) paras 86–101; UN Doc CEDAW/C/IRL/8 (14 November 2024) paras 82–87.

²⁵⁴ UN Doc CEDAW/C/ISR/1-2 (8 April 1997) 65–90; UN Doc CEDAW/C/ISR/3 (16 November 2001) 29–52; UN Doc CEDAW/C/ISR/4 (2 June 2005) paras 95–135; UN Doc CEDAW/C/ISR/4 (24 March 2010) paras 111–183; UN Doc CEDAW/C/ISR/6 (14 July 2017) 10.

²⁵⁵ UN Doc CEDAW/C/JAM/5 (18 February 2004) paras 86–111; UN Doc CEDAW/C/JAM/8 (18 September 2020) paras 49–68; UN Doc CEDAW/C/JAM/RQ/8 (31 July 2023) paras 96–103.

²⁵⁶ UN Doc CEDAW/C/KIR/1-3 (25 March 2019) paras 8–9, 41, 53–56.

²⁵⁷ UN Doc CEDAW/C/LBR/6 (13 October 2008) paras 7.10–7.30; UN Doc CEDAW/C/LBR/7-8 (10 April 2014) 14.

²⁵⁸ UN Doc CEDAW/C/LBY/Q/2/Add.1 (9 January 2009) para 10.

Malawi,²⁵⁹ Mali,²⁶⁰ Malta,²⁶¹ Marshall Islands,²⁶² Mozambique,²⁶³ Nauru,²⁶⁴ Nigeria,²⁶⁵ Panama,²⁶⁶ Papua New Guinea,²⁶⁷ Poland,²⁶⁸ Romania,²⁶⁹ Saint Lucia,²⁷⁰ San Marino,²⁷¹ Senegal,²⁷² Solomon Islands,²⁷³ South Sudan,²⁷⁴ Tuvalu,²⁷⁵ Ukraine,²⁷⁶ UK,²⁷⁷ Viet Nam²⁷⁸ and Zambia.²⁷⁹ For its part, Dominica has not submitted a periodic report to the Committee; it also failed to respond to the list of issues prepared by the Committee. However, the Committee held an interactive dialogue with Dominica in the absence of a periodic report and Dominica reported orally to the Committee on aspects of violence against women.²⁸⁰

2.2.4. Conclusion

From this considerable practice, there is ‘the manifestation of an agreement’²⁸¹ of the parties to CEDAW regarding the interpretation of its Article 1. Although the practice is

²⁵⁹ UN Doc CEDAW/C/MWI/6 (20 October 2008) paras 44–47; UN Doc CEDAW/C/MWI/8 (1 April 2021) paras 35–40; UN Doc CEDAW/C/MWI/Q/7/Add.1 (21 July 2015) paras 23–27.

²⁶⁰ UN Doc CEDAW/C/MLI/Q/6-7/Add.1 (7 March 2016) 14.

²⁶¹ UN Doc CEDAW/C/MLT/1-3 (18 December 2002) paras 1.1, 1.13, 2.14–2.17; 3.14, 4.12, 5.19, 16.19; UN Doc CEDAW/C/MLT/Q/4/Add.1 (29 June 2010) para 21.

²⁶² UN Doc CEDAW/C/MHL/Q/1-3/Add.1 (13 November 2017) paras 42–54.

²⁶³ UN Doc CEDAW/C/MOZ/1-2 (14 November 2005) paras 24–26; UN Doc CEDAW/C/MOZ/3-5 (8 May 2018) paras 44, 50–51.

²⁶⁴ UN Doc CEDAW/C/NRU/1-2 (1 June 2016) paras 42–56; UN Doc CEDAW/C/NRU/Q/1-2/Add.1 (11 July 2017) para 25.

²⁶⁵ UN Doc CEDAW/C/NGA/Q/7-8/Add.1 (27 June 2017) para 49.

²⁶⁶ UN Doc CEDAW/C/PAN/7 (9 September 2008) paras 80–94; UN Doc CEDAW/C/PAN/8 (6 October 2021) para 70.

²⁶⁷ UN Doc CEDAW/C/PNG/3 (22 May 2009) 23.

²⁶⁸ UN Doc CEDAW/C/POL/7-8 (11 March 2013) paras 42–65; CEDAW/C/POL/4-5 (13 December 2004) paras 96–115; UN Doc CEDAW/C/POL/6 (13 December 2004) para 59.

²⁶⁹ UN Doc CEDAW/C/ROM/6 (15 December 2003) paras 27–29; UN Doc CEDAW/C/ROU/7-8 (16 February 2017) para 63; UN Doc CEDAW/C/ROU/9 (3 December 2024) paras 41–52.

²⁷⁰ UN Doc CEDAW/C/LCA/1-6 (12 September 2005) para 5.2.

²⁷¹ UN Doc CEDAW/C/SMR/1-5 (8 July 2024) paras 93–112.

²⁷² UN Doc CEDAW/C/SEN/3-7 (13 December 2013) paras 38, 49–50; UN Doc CEDAW/C/SEN/8 (12 December 2019) paras 68–73; UN Doc CEDAW/C/SEN/RQ/8 (2 February 2022) para 48.

²⁷³ UN Doc CEDAW/C/SLB/1-3 (1 November 2013) para 74; UN Doc CEDAW/C/SLB/4-5 (21 November 2024) paras 120–142.

²⁷⁴ UN Doc CEDAW/C/SSD/1 (19 February 2020) paras 19–22; UN Doc CEDAW/C/SSD/RQ/1 (15 September 2021) para 59.

²⁷⁵ UN Doc CEDAW/C/TUV/2 (3 September 2008) 26–28; UN Doc CEDAW/C/TUV/3-4 (13 February 2013) paras 39–59; UN Doc CEDAW/C/TUV/5-6 (17 January 2025) paras 70–93.

²⁷⁶ UN Doc CEDAW/C/UKR/8 (5 October 2015) paras 114–142; UN Doc CEDAW/C/UKR/9 (29 December 2021) para 109.

²⁷⁷ UN Doc CEDAW/C/GBR/7 (11 August 2011) paras 250–306; UN Doc CEDAW/C/GBR/8 (18 December 2017) paras 180–191; UN Doc CEDAW/C/UK/Q/6 (14 June 2007) paras 569–658; UN Doc CEDAW/C/UK/Q/6/Add.1 (13 May 2008) paras 67–74.

²⁷⁸ UN Doc CEDAW/C/VNM/5-6 (22 June 2005) 53–54; UN Doc CEDAW/C/VNM/CO/7-8/Add.1 (25 January 2018) paras 2–15; UN Doc CEDAW/C/VNM/9 (3 August 2023) paras 192–195.

²⁷⁹ UN Doc CEDAW/C/ZMB/5-6 (18 May 2010) para 8.

²⁸⁰ UN Doc CEDAW/C/SR.870 (6 March 2009) para 6; UN Doc CEDAW/C/SR.871 (27 February 2009) para 6.

²⁸¹ Nolte First Report (n 60) para 74.

in the form of separate interactions between the 189 States Parties and the CEDAW Committee, the separate interactions evidence an agreement on the interpretation of the provision.

Importantly, the parties are also aware that they share a common position.²⁸² In the present context, the interactions between the CEDAW Committee and each individual State Party are known to other States Parties, as the interactions have taken place in public, spanned over 30 years and were generated by the CEDAW Committee's general recommendations. Indeed, there is also joint practice between some of the parties supporting this conclusion. In a series of resolutions, the then Commission on Human Rights '[r]emind[ed] Governments that their obligations under the Convention on the Elimination of All Forms of Discrimination against Women must be fully implemented with regard to violence against women, taking into account General Recommendation No. 19'.²⁸³ Some 101 States were members of the Commission in the period in which the resolutions were adopted.²⁸⁴

The subsequent practice of States Parties thus establishes the agreement of all the parties regarding the interpretation of Article 1 CEDAW, namely that gender-based violence against women constitutes discrimination against women.²⁸⁵ This does not mean that States have accepted every single aspect of General Recommendation 19. Indeed, at least one State has disagreed over non-refoulement.²⁸⁶ Rather, States Parties have agreed that the definition of discrimination against women in Article 1 CEDAW includes gender-based violence against women.

The consequence is that, pursuant to Article 2 CEDAW, States Parties agree to condemn violence against women in all its forms and undertake, inter alia, to 'adopt appropriate legislative and other measures ... prohibiting' violence against women, to 'refrain from engaging in' violence against women, and to 'take all appropriate measures to eliminate' violence against women 'by any person, organization or enterprise'.²⁸⁷ Or,

²⁸² Nolte Second Report (n 55) para 55. See also ILC Conclusions (n 39) commentary to conclusion 10, para 7. See *Kasikili/Sedudu Island* (n 45) 1077, paras 55, 74.

²⁸³ UNCHR Res 1996/49 (19 April 1996) UN Doc E/CN.4/RES/1996/49. See also, with minor modifications, UNCHR Res 1998/52 (17 April 1998) UN Doc E/CN.4/RES/1998/52; UNCHR Res 1999/42 (26 April 1999) UN Doc E/CN.4/RES/1999/42; UNCHR Res 2000/45 (20 April 2000) UN Doc E/CN.4/RES/2000/45; UNCHR Res 2001/49 (24 April 2001) UN Doc E/CN.4/2001/49; UNCHR Res 2002/52 (23 April 2002) E/CN.4/RES/2002/52; UNCHR Res 2003/45 (23 April 2003) E/CN.4/RES/2003/45; UNCHR Res 2004/46 (20 April 2004) UN Doc E/CN.4/RES/2004/46.

²⁸⁴ Algeria, Angola, Argentina, Armenia, Australia, Austria, Bahrain, Bangladesh, Belarus, Belgium, Benin, Bhutan, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Cape Verde, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, DRC, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Ethiopia, France, Gabon, Germany, Guatemala, Honduras, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Latvia, Liberia, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Malaysia, Malawi, Mali, Mauritania, Mauritius, Mexico, Morocco, Mozambique, Nepal, Netherlands, Nicaragua, Niger, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Rwanda, Saudi Arabia, Senegal, Sierra Leone, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Syrian Arab Republic, Thailand, Togo, Tunisia, Uganda, Ukraine, the UK, the US, Uruguay, Venezuela, Viet Nam, Zambia and Zimbabwe.

²⁸⁵ Andrew Byrnes reached the same conclusion based on, inter alia, the submissions of 109 States Parties' reports submitted between 2010 and 2015. See Byrnes (n 42) 41.

²⁸⁶ See *ibid*, referring to Denmark's submissions in *MEN v Denmark* (n 96) para 4.9.

²⁸⁷ CEDAW (n 1) art 2(b), (d), (e), respectively. See also Byrnes (n 42) 38.

to put it another way: (i) gender-based violence against women is prohibited; and (ii) States Parties must act with due diligence to eliminate gender-based violence against women.²⁸⁸

One issue that arises is what these findings mean for purported rules of customary international law.

3. Customary international law

3.1. *The interplay of treaties and custom*

The relationship between a treaty rule and a customary one is multifaceted. As the ICJ has explained, a treaty rule might codify a preexisting rule of customary international law, lead to the crystallisation of an emerging customary rule, or generate a new one.²⁸⁹

Violence against women emerged as an issue for the international community at the Nairobi World Conference on Women in 1985.²⁹⁰ It came on to the international law agenda with the CEDAW Committee's General Recommendation 19, which was adopted in 1992; the Declaration on the Elimination of Violence against Women (DEVAW), which was adopted in 1993; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, which was adopted in 1994.²⁹¹ As the three instruments placed the issue on the international law agenda, they did not codify a pre-existing rule of customary international law nor did they crystallise a customary rule which was in the process of emerging.

In order to determine whether there is a customary rule relating to the prohibition on violence against women, it needs to be considered whether CEDAW, as interpreted by the CEDAW Committee, and in light of the subsequent practice establishing the agreement of the States Parties regarding its interpretation, has generated a rule of custom. Generation of a customary rule by a treaty rule is 'one of the recognized methods by which new rules of customary international law may be formed'.²⁹² Yet, '[a]t the same time this result is not likely to be regarded as having been attained'.²⁹³

3.2. *A treaty rule generating a customary rule*

As the ICJ observed in the *North Sea Continental Shelf* cases, a treaty rule might generate a customary rule 'partly because of [the treaty's] impact, partly on the basis of subsequent State practice'.²⁹⁴ The Court explained that this argument:

involves treating [the relevant treaty] Article as a norm-creating provision which has constituted the foundation of, or has generated a rule which, while only conventional or

²⁸⁸ General Recommendation 19 (n 2) para 9.

²⁸⁹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Judgment) [1986] ICJ Rep 14, 95, para 177.

²⁹⁰ C Chinkin, 'Violence against Women' in MA Freeman, C Chinkin and B Rudolf (eds), *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (OUP 2012) 443, 444–47.

²⁹¹ See S Sivakumaran, 'Crafting the Prohibition on Violence against Women' (2025) 36 EJIL 327.

²⁹² *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)* (Judgment) [1969] ICJ Rep 3, 41, para 71.

²⁹³ *ibid.*

²⁹⁴ *ibid* para 70.

contractual in its origin, has since passed into the general *corpus* of international law, and is now accepted as such by the *opinio juris*, so as to have become binding even for countries which have never, and do not, become parties to the Convention.²⁹⁵

The Court provided guidance as to when such a situation would arise. First, the provision in question ‘should, at all events potentially, be of a fundamentally norm-creating character such as could be regarded as forming the basis of a general rule of law’.²⁹⁶ Second, ‘a very widespread and representative participation in the convention might suffice of itself, provided it included that of States whose interests were specially affected’.²⁹⁷ Third, ‘State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked; and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved’.²⁹⁸ This latter point requires that ‘there be a general practice “in the sense of the provision invoked”, which is accepted as law by parties and non-parties alike’.²⁹⁹

3.2.1. Fundamentally norm-creating character

Although some see the requirement that the treaty provision be of a fundamentally norm-creating character as circular,³⁰⁰ it is commonly taken to mean that ‘the rule stated in the provision be generalizable so as to lend itself to possible application independently of the particular treaty context’.³⁰¹ That is to say, the rule should not be ‘the mere expression of contractual obligations’.³⁰²

The two rules identified in Section 2.2.4, namely that (i) gender-based violence against women is prohibited and that (ii) States are obliged to act with due diligence to eliminate it, have been widely accepted outside the confines of the various treaties. They are routinely set out in other instruments, including DEVAW,³⁰³ the Beijing Declaration and Platform for Action,³⁰⁴ the UN General Assembly Resolution on Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action,³⁰⁵ and the Agreed Conclusions of the fifty-seventh session of the

²⁹⁵ *ibid* para 71. See also *Van Anraat v the Netherlands* Application No 65389/09 (ECtHR, 6 July 2010) para 88.

²⁹⁶ *North Sea Continental Shelf* (n 292) para 72.

²⁹⁷ *ibid* para 73.

²⁹⁸ *ibid* para 74.

²⁹⁹ M Wood and O Sender, *Identification of Customary International Law* (OUP 2024) 217, quoting from *North Sea Continental Shelf*.

³⁰⁰ R Kolb, ‘Selected Problems in the Theory of Customary International Law’ (2003) 50 NILR 119, 147–48.

³⁰¹ Wood and Sender (n 299) 219. See also ME Villiger, *Customary International Law and Treaties* (Martinus Nijhoff 1985) 190–91, paras 274–275; M Fitzmaurice, ‘Third Parties and the Law of Treaties’ (2002) 6 Max Planck UNYB 37, 59.

³⁰² E Lauterpacht and D Bethlehem, ‘The Scope and Content of the Principle of *Non-refoulement*: Opinion’ in E Feller, V Türk and F Nicholson (eds), *Refugee Protection in International Law* (CUP 2003) 87, para 201.

³⁰³ UNGA Res 48/104 (20 December 1993) UN Doc A/RES/48/104, art 4.

³⁰⁴ Fourth World Conference on Women, ‘Beijing Declaration and Platform for Action’ (15 September 1995) para 124.

³⁰⁵ UNGA Res S-23/3 (10 June 2000) UN Doc A/RES/S-23/3, para 13.

Commission on the Status of Women on the elimination and prevention of all forms of violence against women and girls.³⁰⁶

3.2.2. Widespread and representative participation in the Convention

The second aspect identified by the Court is that there be ‘a very widespread and representative participation in the convention ... provided it included that of States whose interests were specially affected’.³⁰⁷ The latter clause is less relevant for present purposes as there are no specially affected States in this context.

As seen in Section 2, although CEDAW does not contain a provision on violence against women as such, through the Committee’s General Recommendation 19 and the subsequent practice of States Parties in the application of the treaty, States Parties have reached agreement that the definition of discrimination against women in Article 1 CEDAW includes gender-based violence against women. At the time of writing, there are 189 State Parties to CEDAW. This is more than very widespread and representative participation in the treaty; there is near universal acceptance of the conventional rules.

Following the dictum of the Court, the very widespread and representative participation in CEDAW might be said to resolve the matter,³⁰⁸ such participation being considered to suffice as evidence of both State practice and *opinio juris*. However, ironically, the determination of the existence of a rule of customary international law is made more challenging by the sheer number of States which are parties to the Convention. This is due to the need to determine whether the practice of the relevant State constitutes practice relating to its treaty obligations or whether the practice was based on a belief that there was a rule of customary international law requiring it.

In the *North Sea Continental Shelf* cases, on the facts, the Court stated that it could draw no inference as to the existence of a rule of customary international law from the actions of States Parties, or soon to be States Parties, to the Geneva Convention on the Continental Shelf because they were ‘presumably ... acting actually or potentially in the application of the Convention’.³⁰⁹ The Court seemed to be indicating that the practice of the parties was not supported by *opinio juris* since the practice was undertaken pursuant to their obligations, or soon to be obligations, under the convention.

Richard Baxter has described the ‘paradox’ thus:

the proof of a consistent pattern of conduct by non-parties becomes more difficult as the number of parties to the instrument increases. The number of participants in the process of creating customary law may become so small that the evidence of their practice may be minimal or altogether lacking. Hence the paradox that as the number of parties to a treaty increases, it becomes more difficult to demonstrate what is the state of customary international law *dehors* the treaty.³¹⁰

³⁰⁶ Commission on the Status of Women, ‘Report on the Fifty-Seventh Session (4–15 March 2013)’ UN Doc E/2013/27-E/CN.6/2013/11, 1–2, paras 12, 14, 16.

³⁰⁷ *North Sea Continental Shelf* (n 292) para 73.

³⁰⁸ But cf P Tomka, ‘Custom and the International Court of Justice’ (2013) 12 LPICT 195, 207.

³⁰⁹ *North Sea Continental Shelf* (n 292) para 76.

³¹⁰ R Baxter, ‘Treaties and Custom’ (1970) 129 RdC 25, 64. See also *Prosecutor v Delalić et al* (Trial Judgment) IT-96-21-T (16 November 1998) para 302.

Although this is not, strictly speaking, a ‘genuine paradox’,³¹¹ it does make it more complicated to discern a rule of customary international law.³¹² As Yoram Dinstein has remarked, ‘proof of the specific conviction of Contracting Parties that their practice is required by custom — separately from, and independently of, the treaty — may be fraught with intractable difficulties’.³¹³

Accordingly, a number of suggestions have been made for ameliorating the difficulties. Fausto Pocar has suggested that the practice of States Parties to the treaty should be taken into account in determining the existence of a customary rule, as ‘the treaty itself is an important piece of State practice for the determination of customary law’ and ‘the impact that any subsequent practice of the contracting States in the application of the treaty which establishes their agreement or disagreement regarding its interpretation may bear on the development of a customary norm’.³¹⁴ Tullio Treves has made a similar point and noted that ‘the borderline separating practice that can be seen as interpretation, application or even modification of a convention, from that giving rise to new customary rules ... is very thin indeed’.³¹⁵

Drawing on the jurisprudence of the Eritrea-Ethiopia Claims Commission, James Crawford has suggested ‘a *presumption of opinio juris* from wide participation in a treaty’.³¹⁶ Hugh Thirlway seems to share this view insofar as ‘humanitarian’ treaties are concerned because, in his view, ‘in the case of such a convention non-participation by a State is likely to be attributable less to rejection of the principles embodied in it than to (for example) inertia, political prejudice, etc’.³¹⁷ Thirlway has also indicated that it would be sufficient to consider the practice of States non-parties to the treaty, even if such States are limited in number as, although such States are creating a rule of ‘*general custom*’, the rule is ‘binding as such only on themselves – with the possible inclusion of an even smaller number of other non-convention States who have not put themselves in the position of “persistent objectors”’.³¹⁸

Although convenient, there are difficulties with some of these approaches. For example, it is not necessarily the case that non-participation in a humanitarian treaty is due to ‘inertia, political pressure, etc’ rather than ‘rejection of the principles embodied in [the treaty]’.³¹⁹ Nor is it clear why creation of a rule of *general custom* would be binding *only* on States non-parties to the treaty. It is in the very nature of *general custom* that it is binding on all States (subject to any persistent objectors) and thus it would be curious if a general rule could emerge from the practice of a handful of States. The point

³¹¹ J Crawford, ‘Chance, Order, Change: The Course of International Law’ (The Hague Academy of International Law, 2014) para 169.

³¹² H Thirlway, ‘Professor Baxter’s Legacy: Still Paradoxical?’ (2017) 6(3) ESIL Reflection 1, describes it as an ‘inconvenience’.

³¹³ Y Dinstein, ‘The Interaction between Customary International Law and Treaties’ (2006) 322 RdC 243, 377.

³¹⁴ F Pocar, ‘Protocol I Additional to the 1949 Geneva Conventions and Customary International Law’ in Y Dinstein et al (eds), *The Progression of International Law* (Brill 2011) 199, 202–03 (internal citation omitted).

³¹⁵ T Treves, ‘The Expansion of International Law’ (2015) 398 RdC 33, 217–18.

³¹⁶ Crawford (n 311) para 167 (emphasis in original).

³¹⁷ Thirlway (n 312).

³¹⁸ *ibid* (emphasis in original).

³¹⁹ *ibid*.

might be that the rule is binding on all States, but States Parties to the treaty would not be impacted by the customary status of the rule as they are anyway bound by the same rule qua treaty. Yet, the treaty rule and the customary rule ‘retain a separate existence’.³²⁰ Furthermore, they may not be identical.³²¹ And different consequences might follow from each, such as in relation to the jurisdiction of a court³²² and as regards who they bind.³²³

3.2.3. Extensive and virtually uniform State Practice

A third aspect is whether State practice is extensive and virtually uniform in the sense of the provision invoked and has occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved. Even if a relaxation along the lines suggested by Crawford or Thirlway is not accepted, the difficulty in establishing relevant practice is not insurmountable despite the very large number of States Parties to CEDAW.

First, even States Parties to a treaty can indicate, subsequent to the conclusion of that treaty, that they intend ‘to accept more than a merely conventional norm’.³²⁴ There may be good reason for this. States Parties may ‘not only want themselves to be bound as treaty parties’ but they may also ‘want to see these patterns of behaviour become general norms binding all states’.³²⁵ Indeed, there are numerous examples of States Parties to a treaty and States non-parties to that treaty jointly indicating that they have an obligation to do certain things. As States non-parties are involved, the reference to the obligation would seem to be a reference to an obligation under general international law. Although this could theoretically be a reference to general principles of law,³²⁶ owing to its specificity and given that general principles are either ‘derived from national legal systems’ or ‘formed within the international legal system’,³²⁷ it is far more likely that it refers to an obligation arising under customary international law. This is most evident in resolutions on violence against women adopted by the UN General Assembly, Commission on Human Rights and Human Rights Council, which are discussed in Section 3.2.3.1.

Second, even States Parties to a treaty may act for reasons other than pursuant (solely) to a treaty obligation.³²⁸ This is implicit in the Court’s statement in the *North Sea Continental Shelf* cases that treaty parties ‘presumably ... act[] actually or potentially

³²⁰ *Obligations of States in Respect of Climate Change* (Advisory Opinion) (General List No 187, 23 July 2025) para 310.

³²¹ *ibid* (Joint Declaration of Judges Charlesworth, Brant, Cleveland and Aurescu) para 8.

³²² See *Nicaragua* (n 289) 94–5, 96.

³²³ Custom may be binding on other international legal persons, such as international organisations.

³²⁴ ILA Committee on Formation of Customary (General) International Law, ‘Statement of Principles Applicable to the Formation of General Customary International Law’ (2000) 52.

³²⁵ R Müllerson, *Ordering Anarchy: International Law in International Society* (Martinus Nijhoff 2000) 230–31.

³²⁶ See generally B Simma and P Alston, ‘The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles’ (1989) 12 *AustYBIL* 82.

³²⁷ ILC, ‘General Principles of Law, Texts and Titles of the Draft Conclusions adopted by the Drafting Committee on Second Reading’ (20 May 2025) UN Doc A/CN.4/L.1018.

³²⁸ cf Thirlway (n 312) who contends that what a State Party to a treaty ‘cannot say is that it is itself acting in a particular way because it is satisfied that there is a customary rule *obliging* it to do so’ (emphasis in original).

in the application of the Convention'.³²⁹ As Crawford has indicated, a State Party to a treaty might 'act[] as if a treaty provision has moved into custom, or believes that it has'.³³⁰ Ultimately, this is a 'question of proof rather than of principle'.³³¹ States acting for reasons other than pursuant to their conventional obligations can be seen most clearly in the reasons some States have given for enacting legislation on eliminating violence against women, discussed in Section 3.2.3.2.

Third, the practice and *opinio juris* of States non-parties to CEDAW may point to the existence of customary rules. It is widely accepted that the practice of States non-party to a treaty will be of particular relevance.³³² As Mark Villiger has indicated:

[r]ecognition of the customary rule – evidence of the *opinio* – and State practice can equally be found, for instance, when non-parties, without express reference to the conventional rule, continuously apply, *inter se* or *vis-à-vis* parties, the substance of the conventional rule *qua* customary law (or *qua* emerging customary law).³³³

3.2.3.1 States' acceptance of more than a conventional norm.

General Assembly Resolutions

A good example of States Parties to CEDAW recognising obligations under customary international law on the elimination of violence against women are the UN General Assembly resolutions on the subject.

Resolutions of the General Assembly, although resolutions of the Assembly rather than of Member States, nonetheless 'reflect the collective expression of the views of such States' and, accordingly, 'may afford an insight into the attitudes of the member States'.³³⁴ They are particularly useful as the General Assembly has 'virtually universal participation'.³³⁵ Although a resolution 'cannot, of itself, create a rule of customary international law', it 'may provide evidence for determining the existence and content of a rule of customary international law, or contribute to its development'.³³⁶ And the ICJ has drawn on General Assembly resolutions extensively in certain cases.³³⁷ As the Court put it in the *Nuclear Weapons* Advisory Opinion:

General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*. To establish whether this is true of a given General Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it is also necessary to see whether an *opinio juris* exists as to its normative

³²⁹ *North Sea Continental Shelf* (n 292) para 76 (emphasis added).

³³⁰ See, e.g. Crawford (n 311) para 168.

³³¹ T Meron, 'The Geneva Conventions as Customary Law' (1987) 81 AJIL 348, 367.

³³² See e.g. ILC, 'Draft Conclusions on Identification of Customary International Law, with Commentaries' (2018) UN Doc A/73/10 (ILC Conclusions on Custom) commentary to conclusion 11, para 7; Sir Michael Wood, 'Third Report on Identification of Customary International Law' (27 March 2015) UN Doc A/CN.4/682, para 41.

³³³ Villiger (n 301) 193, para 280.

³³⁴ ILC Conclusions on Custom (n 332) commentary to conclusion 12, para 3.

³³⁵ *ibid* para 2.

³³⁶ ILC Conclusions on Custom (n 332) conclusion 12, paras 1, 2, respectively.

³³⁷ e.g. *Nicaragua* (n 289) 99, paras 188, 102, 103; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep 95, 131, paras 149–161.

character. Or a series of resolutions may show the gradual evolution of the *opinio juris* required for the establishment of a new rule.³³⁸

The ‘starting point’ is the ‘precise wording used’.³³⁹ In a series of General Assembly resolutions, the General Assembly, drawing on the language of General Recommendation 19 and DEVAW, ‘re-emphasiz[ed] that violence against women and girls violates, and impairs their full enjoyment of, all human rights’.³⁴⁰ Furthermore, in these resolutions, drawing on the language of General Recommendation 19, the General Assembly indicated that ‘States ... must exercise due diligence to prevent, investigate and punish perpetrators of violence against women’.³⁴¹ The language of ‘must’ confirms that it is an obligation and departs from the language of Article 4 DEVAW which uses the word ‘should’. Indeed, certain other resolutions are clearer on the notion that States are under an obligation to act in a particular way. For example, in Resolution S-23/3 (2000), the General Assembly ‘accepted that States have an obligation to exercise due diligence to prevent, investigate and punish acts of violence’.³⁴²

The bare references to ‘must’ and an unspecified ‘obligation’, coupled with the fact that States non-parties to CEDAW supported the resolutions, suggests that the obligations to which the resolutions refer are obligations under customary international law rather than under CEDAW.³⁴³ Parties and non-parties to CEDAW alike are referencing the substance of the conventional rules, as interpreted by the CEDAW Committee, qua customary international law.

Also important are the ‘conditions of [the resolution’s] adoption’ or the ‘degree of support’ for the resolution.³⁴⁴ Apart from two instances, all the resolutions were adopted without a vote. In the instances in which a vote was held, the resolutions were adopted by very significant majorities. Resolution 75/161 passed by 175-0-11 votes

³³⁸ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226, 254, para 70.

³³⁹ ILC Conclusions on Custom (n 332) commentary to conclusion 12, para 6. See also *Chagos* Advisory Opinion (n 337) 132–33, paras 152–153.

³⁴⁰ UNGA Res 77/193 (15 December 2022) UN Doc A/RES/77/193. See also UNGA Res 55/68 (4 December 2000) UN Doc A/RES/55/68; UNGA Res 61/143 (19 December 2006) UN Doc A/RES/61/143; UNGA Res 63/155 (18 December 2008) UN Doc A/RES/63/155; UNGA Res 65/187 (21 December 2010) UN Doc A/RES/65/187; UNGA Res 67/144 (20 December 2012) UN Doc A/RES/67/144; UNGA Res 69/147 (18 December 2014) UN Doc A/RES/69/147; UNGA Res 71/170 (19 December 2016) UN Doc A/RES/71/170; UNGA Res 75/160 (16 December 2020) UN Doc A/RES/75/160. See also UNGA Res S-23/3 (10 June 2000) UN Doc A/RES/S-23/3.

³⁴¹ UNGA Res 61/143 (19 December 2006) UN Doc A/RES/61/143. See also UNGA Res 62/133 (18 December 2007) UN Doc A/RES/62/133; UNGA Res 63/155 (18 December 2008) UN Doc A/RES/63/155; UNGA Res 64/137 (18 December 2009) UN Doc A/RES/64/137; UNGA Res 65/187 (21 December 2010) UN Doc A/RES/65/187; UNGA Res 67/144 (20 December 2012) UN Doc A/RES/67/144; UNGA Res 71/170 (19 December 2016) UN Doc A/RES/71/170; UNGA Res 75/161 (23 December 2020) UN Doc A/RES/75/161. The precise language of the resolutions varies. Some resolutions concern domestic violence specifically. Others use the language of prevent, investigate, prosecute and hold to account.

³⁴² See also UNGA Res 58/147 (22 December 2003) UN Doc A/RES/58/147.

³⁴³ On the possibility that the reference is to general principles, see text at n 327. On States non-parties to CEDAW, see Section 3.2.3.3.

³⁴⁴ *Chagos* Advisory Opinion (n 337) 132, para 152; ILC Conclusions on Custom (n 332) commentary to conclusion 12, para 6.

and Resolution 77/193 by 170-1-8 votes. The negative vote in respect of Resolution 77/193 came from Iran. However, Iran 'subsequently informed the Secretariat that it had intended to abstain'.³⁴⁵ The abstentions were for a variety of reasons,³⁴⁶ but none related to the customary rules at issue. Numerous States also expressed their disappointment that a vote had been requested.³⁴⁷ Although the ILC has indicated that 'resolutions which attract negative votes or abstentions are unlikely to be regarded as reflecting customary international law', as the ICJ has indicated, it is the *degree* of the negative votes or abstentions that is crucial.³⁴⁸ It is suggested here that there is very considerable support for the resolutions. Some 15 General Assembly resolutions on the elimination of violence against women were adopted without a vote; two were adopted with a vote and passed by very large majorities. And the resolutions have been adopted regularly since 2000.

Commission on Human Rights and Human Rights Council resolutions

As the ILC has noted, '[r]esolutions adopted by organs ... with more limited membership may also be relevant, but their weight in identifying a rule of customary international law is likely to be less'.³⁴⁹ It is thus important to consider also resolutions of the Commission on Human Rights and its successor, the Human Rights Council.

The resolutions of these bodies confirm the reading of the General Assembly resolutions. Indeed, they are even clearer. Drawing on the language of General Recommendation 19 and DEVAW, the resolutions routinely 'affirm' or 're-emphasize' that 'violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms'.³⁵⁰ Using the language of CEDAW, the resolutions also emphasise the 'duty' of States to 'refrain from engaging in' violence against women.³⁵¹ And drawing on the language of General Recommendation 19, the resolutions refer to a 'duty' to 'exercise due

³⁴⁵ UNGA, '54th Plenary Meeting' (15 December 2022) UN Doc A/77/PV.54, 5.

³⁴⁶ There were no explanations of votes following the votes in the General Assembly. However, a number of States provided an explanation of their vote following an earlier vote on the resolution in the Third Committee. See, respectively, UNGA Third Committee, '75th Session, Summary Record of the 9th Meeting' (16 November 2020) UN Doc A/C.3/75/SR.9; UNGA Third Committee, '77th Session, Summary Record of the 46th Meeting' (10 November 2022) UN Doc A/C.3/77/SR.46.

³⁴⁷ See *ibid.*

³⁴⁸ *Nuclear Weapons Advisory Opinion* (n 338) 254, para 71 (referring to resolutions adopted 'with substantial numbers of negative votes and abstentions').

³⁴⁹ ILC Conclusions on Custom (n 332) commentary to conclusion 12, para 2.

³⁵⁰ e.g. UNCHR Res 2000/45 (20 April 2000). See also UNCHR Res 1996/49 (19 April 1996); UNCHR Res 2001/49 (24 April 2001); UNCHR Res 2002/52 (23 April 2002); UNCHR Res 2003/45 (23 April 2003); UNHRC Res 17/11 (17 June 2011) UN Doc A/HRC/RES/17/11; UNHRC Res 29/14 (2 July 2015) UN Doc A/HRC/RES/29/14; UNHRC Res 32/19 (1 July 2016) UN Doc A/HRC/RES/32/19; UNHRC Res 38/5 (5 July 2018) UN Doc A/HRC/RES/38/5; UNHRC Res 41/17 (12 July 2019) UN Doc A/HRC/RES/41/17; UNHRC Res 47/15 (13 July 2021) UN Doc A/HRC/RES/47/15; UNHRC Res 53/27 (14 July 2023) UN Doc A/HRC/RES/53/27.

³⁵¹ e.g. UNCHR Res 1995/85 (8 March 1995); UNCHR Res 1996/49 (19 April 1996); UNCHR Res 1997/44 (11 April 1997); UNCHR Res 1998/52 (17 April 1998); UNCHR Res 1999/42 (26 April 1999); UNCHR Res 2000/45 (20 April 2000); UNCHR Res 2001/49 (24 April 2001); UNCHR Res 2002/52 (23 April 2002); UNCHR Res 2003/45 (23 April 2003); UNCHR Res 2004/46 (20 April 2004).

diligence to prevent, investigate and ... punish' violence against women.³⁵² As with the General Assembly resolutions, States do not refer to their obligations under CEDAW in this regard. Instead, they are using the language, *inter alia*, of the conventional rule, as interpreted by the CEDAW Committee, as obligations under customary international law.

The resolutions do refer in places to obligations under CEDAW. They thus separate out the obligations of States generally from the obligations of States Parties to CEDAW. For example, the Commission on Human Rights' Resolution 2002/52 'emphasizes the duty of Governments to refrain from engaging in violence against women and to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women ...' and simultaneously '[r]eminds Governments that their obligations under the Convention on the Elimination of All Forms of Discrimination against Women must be implemented fully with regard to violence against women, taking into account general recommendation 19'.³⁵³ Given the latter explicitly refers to obligations under the Convention, the former refers to obligations arising outside the Convention.

Like the vast majority of the General Assembly resolutions, the resolutions of the Commission on Human Rights and the Human Rights Council have been adopted without a vote and adopted regularly since 1995.

Reliance in these resolutions on the treaty provisions,³⁵⁴ as interpreted by the CEDAW Committee, suggests that the provisions generated rules which, while only conventional in origin, have 'since passed into the general *corpus* of international law, and [are] now accepted as such by the *opinio juris*, so as to have become binding even for countries which have never, and do not, become parties to the Convention'.³⁵⁵ Or to put it another way, States Parties to CEDAW have, through these resolutions, provided 'their clear intention to accept more than a merely conventional norm'.³⁵⁶ Customary law is being generated through the conventional rules, as interpreted by the CEDAW Committee, and the new customary rules thus have the same substance as the conventional rules, as interpreted by the CEDAW Committee.³⁵⁷

³⁵² e.g. UNCHR Res 1995/85 (8 March 1995); UNCHR Res 1996/49 (19 April 1996); UNCHR Res 1997/44 (11 April 1997); UNCHR Res 1998/52 (17 April 1998); UNCHR Res 1999/42 (26 April 1999); UNCHR Res 2000/45 (20 April 2000); UNCHR Res 2001/49 (24 April 2001); UNCHR Res 2002/52 (23 April 2002); UNCHR Res 2003/45 (23 April 2003); UNCHR Res 2004/46 (20 April 2004); UNCHR Res 2005/41 (19 April 2005); UNHRC Res 12/17 (2 October 2009) UN Doc A/HRC/RES/12/17; UNHRC Res 14/12 (30 June 2010) UN Doc A/HRC/RES/14/12; UNHRC Res 17/11 (17 June 2011) UN Doc A/HRC/RES/17/11; UNHRC Res 29/14 (2 July 2015) UN Doc A/HRC/RES/29/14; UNHRC Res 35/10 (22 June 2017) UN Doc A/HRC/RES/35/10.

³⁵³ See also UNCHR Res 1996/49 (19 April 1996); UNCHR Res 1998/52 (17 April 1998); UNCHR Res 1999/42 (26 April 1999); UNCHR Res 2000/45 (20 April 2000); UNCHR Res 2001/49 (24 April 2001); UNCHR Res 2003/45 (23 April 2003); UNCHR Res 2004/46 (20 April 2004).

³⁵⁴ States also relied on the wording of DEVAW in the UNGA and Commission on Human Rights/Human Rights Council resolutions. However, a notable difference between DEVAW and the resolutions is that, whereas DEVAW provides that States 'should' refrain from engaging in violence against women and that States 'should' exercise due diligence, the UNGA and Commission on Human Rights/Human Rights Council resolutions frame them as obligations of States.

³⁵⁵ *North Sea Continental Shelf* (n 292) para 71.

³⁵⁶ ILA (n 324) 52.

³⁵⁷ On the operation of the process, see Villiger (n 301) 192–93, paras 278–281.

3.2.3.2. *States acting for reasons other than pursuant (solely) to a treaty obligation.* States Parties to CEDAW have also acted other than pursuant to their treaty obligations. Numerous States have enacted legislation on eliminating violence against women. In enacting the legislation, some States have made clear that they are not acting solely pursuant to a conventional obligation. For example, the Maldives, in its Domestic Violence Act, has indicated that one of the purposes of the Act is ‘to comply with *international standards* for the prevention of domestic violence and to apply and enforce relevant principles of justice in accordance with such standards’.³⁵⁸ For its part, Kiribati, in its ‘Bill for an Act to provide for the Protection of Victims of Domestic Violence, the Prevention and Elimination of the Crime of Violence within Domestic Relationships; and for related Purposes’, stated that one of the objects of the Bill is ‘to enact provisions that are consistent with certain *principles* underlying the *Declaration on the Elimination of Violence against Women*’.³⁵⁹ These States are thus not acting on the basis of their conventional obligations but pursuant to obligations arising under general international law. Although the language of principles is perhaps suggestive of general principles of law, the level of detail at issue is more suggestive of customary international law.

States have similarly adopted policies relating to violence against women for a variety of reasons. For example, Antigua and Barbuda reported that it adopted its National Strategic Action Plan to End Gender-based Violence ‘to fulfil the mandates of CEDAW, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para), the Beijing Declaration and Platform for Action and the Millennium Development Goals’.³⁶⁰ Antigua and Barbuda thus acted pursuant to its conventional and extra-conventional obligations.

These examples show that States can and do act for reasons other than pursuant (solely) to their treaty obligations. Indeed, contrary to the Court’s position in the *North Sea Continental Shelf* cases, it is not entirely clear why there should be a presumption that States are acting ‘in the application of the Convention’.³⁶¹ States act for all sorts of reasons. They may act on the basis of their conventional obligation; equally, they may not, or they may act simultaneously on the basis of both treaty and customary obligations.

3.2.3.3. *Practice of States non-parties to CEDAW.* The practice of States which are not parties to the relevant treaty is of particular value in ascertaining the existence of a rule of customary international law.³⁶² At the time of writing, the States non-parties to CEDAW are Iran, Palau, Somalia, Sudan, Tonga and the US. Somalia and Sudan are also not party to the regional convention, the Maputo Protocol,³⁶³ and the US is likewise not a party to the Convention of Belém do Pará.³⁶⁴

³⁵⁸ Act Number 3/2012, Section 2(j) (unofficial translation) (emphasis added).

³⁵⁹ Section 3(1)(e) (emphasis added).

³⁶⁰ UN Doc CEDAW/C/ATG/4-7 (18 December 2017) para 26.

³⁶¹ *North Sea Continental Shelf* (n 292) 43, para 76.

³⁶² See, e.g. *Prosecutor v Kupreškić et al* (Trial Judgment) IT-95-16-T (14 January 2000) para 524.

³⁶³ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) AU Doc CAB/LEG/66.6.

³⁶⁴ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (adopted 9 June 1994, entered into force 5 March 1995) 33 ILM 1618.

The General Assembly resolutions discussed in Section 3.2.3.1 reflect the practice and *opinio juris* also of States which are or were not parties to CEDAW. Indeed, in 2000, at the time the first resolutions were adopted, there were 189 States Members of the UN and only 165 States Parties to CEDAW. Accordingly, the only basis for an obligation for the States that had agreed³⁶⁵ to General Assembly Resolution S-23/3 (2000) but which were not parties to CEDAW was general international law. Contrary to what the Court indicated in the *North Sea Continental Shelf* cases, it would be curious to discount the practice of States which would go on to become parties to the CEDAW on the basis that they were acting ‘potentially in the application of the Convention’.³⁶⁶ The relevant moment in time is the time of their acting, at which point there was no conventional obligation on their part.³⁶⁷

Somalia, Sudan and the US were also members of the Commission on Human Rights and/or Human Rights Council at the time those bodies adopted resolutions referring to obligations for States regarding violence against women, similarly evidencing a non-conventional basis for those obligations.³⁶⁸ As discussed in Section 3.2.3.1, the resolutions were adopted without a vote.

In addition to this joint practice of States Parties and non-parties to CEDAW, there is individual practice of non-parties suggestive of obligations under customary international law. Indeed, these States have reported on measures they have taken to eliminate violence against women as part of the Universal Periodic Review (UPR).³⁶⁹ All of them have taken measures to prohibit violence against women and eliminate it. These measures include the adoption of legislation,³⁷⁰ the formulation of domestic policies³⁷¹ and the establishment of internal structures.³⁷² As William Schabas has

³⁶⁵ As indicated, the resolutions were adopted without a vote.

³⁶⁶ *North Sea Continental Shelf* (n 292) para 76.

³⁶⁷ See also Thirlway (n 312).

³⁶⁸ US (1995–2006, 2009–2015, 2022–2024), Somalia (2019–2024), Sudan (1995, 1998–2000, 2002–2006, 2022–2025).

³⁶⁹ See, e.g. National Report Submitted in accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Iran (Islamic Republic of) (4 August 2014) UN Doc A/HRC/WG.6/20/IRN/1, paras 77, 83. For subsequent citations, only the State and UN document number will be provided: Palau (10 November 2015) UN Doc A/HRC/WG.6/24/PLW/1, paras 18, 95–108; Somalia (26 February 2021) UN Doc A/HRC/WG.6/38/SOM/1, paras 23–24, 42–43; Sudan (27 August 2021) UN Doc A/HRC/WG.6/39/SDN/1, paras 74–94, 99; Tonga (16 February 2023) UN Doc A/HRC/WG.6/43/TON/1, paras 50, 73, 78, 107, 132; US (13 August 2020) UN Doc A/HRC/WG.6/36/USA/1, paras 37–41.

³⁷⁰ e.g. Iran, Law on Combating Human Trafficking (2004); Palau, Family Protection Act (2012); Somalia, Provisional Constitution (2012) art 15(2); Sudan, Anti-Human Trafficking Act (2014, amended 2021); Tonga, Family Protection Act (2013); US, Violence against Women Act (1994).

³⁷¹ e.g. Iran, Fourth Economic, Social and Cultural Development Plan (2004) art 111(c); Somalia, National Strategy to End Violence Against Women and Girls 2024–2029, as cited in Federal Government of Somalia, Beijing+30 National Review and Reporting (2024); Sudan, National Policy for the Empowerment of Women (2007, updated 2017); Sudan, National Standard Operating Procedures (SOPs) for Prevention of and Response to Gender-based Violence (GBV) in Sudan (2020); Tonga, National Women’s Empowerment and Gender Equality Tonga Policy and Strategic Plan of Action 2019–2025; US, National Plan to End Gender-Based Violence (May 2023).

³⁷² e.g., ‘In 2017, the Somali Office of the Attorney General established a Sexual and Gender-Based Violence unit, with trained special prosecutors, half of which are women’: UN Doc A/HRC/WG.6/38/SOM/1 (n 370) para 23. In Sudan, the Unit to Combat Violence against Women was created: UN Doc A/HRC/WG.6/39/SDN/1 (n 370) para 81. The US, in 2013, established an ‘agency-wide Council on Combating Violence against Women’: UN Doc A/HRC/WG.6/36/USA/1 (n 370) para 40.

observed, these measures are evidence that States recognise the existence of a prohibition on violence against women and that they are required to take steps to eliminate it.³⁷³

That recognition is sometimes expressed explicitly. For example, as part of Somalia's UPR, Finland recommended that Somalia '[a]dopt legislation prohibiting all forms of violence against women and girls *in line with international law*'.³⁷⁴ Somalia accepted the recommendation,³⁷⁵ thereby accepting that there was a prohibition on all forms of violence against women and girls under international law. Somalia has also accepted elsewhere that gender-based violence against women constitutes discrimination.³⁷⁶

Along similar lines, during Iran's UPR, Sierra Leone recommended to Iran that it '[e]xpeditiously the adoption of the pending draft bill on the provision of women's security against violence and exercise due diligence in preventing and punishing gender-based violence *in line with international norms*'.³⁷⁷ Iran partially supported the recommendation³⁷⁸ and reported on it in its subsequent national report, referring, *inter alia*, to measures it had taken, including the provision of legal assistance, training courses, safe houses, clinics, hotlines, support and rehabilitation centres and health centres.³⁷⁹ Iran, too, seems to accept that there is an international law norm which requires States to exercise due diligence in preventing and punishing gender-based violence.

Tonga, in its national report that feeds into the UPR process, observed that:

Despite the fact that Tonga has not ratified CEDAW ... Tonga has established a lot of legal frameworks, policies and institution[s], which reflects the *principles* of CEDAW for example:

...

(d) Establishment of the Family Protection Legal Aid Centre (FPLAC / Center) in 2018. The Centre is now part of the Ministry of Justice and it has its own specific budget to assist victims of domestic violence.

(e) The Centre (FPLAC) in partnership with the United Nations Development Programme (UNDP) developed an online portal to enable domestic violence (DV) and gender-based violence (GBV) survivors access legal information and reporting mechanism.

(f) Family Protection Trust Fund under the Family Protection Act [Cap 6.02] (FPA) provides a government budget allocation for the prevention of domestic violence.³⁸⁰

Tonga thus accepts that there are 'principles' underlying CEDAW relating to gender-based violence. As discussed in [Section 3.2.3.1](#), these 'principles' are more likely rules of

³⁷³ See W Schabas, *The Customary International Law of Human Rights* (OUP 2021) 141.

³⁷⁴ UN Doc A/HRC/48/11 (7 July 2021) para 132.204 (emphasis added).

³⁷⁵ UN Doc A/HRC/48/11/Add.1 (10 September 2021) paras 132, 204.

³⁷⁶ Somalia, 'State Report' (2025) UN Doc E/C.12/SOM/1, paras 22, 26.

³⁷⁷ UN Doc A/HRC/43/12 (27 December 2019) para 26.250 (emphasis added).

³⁷⁸ UN Doc A/HRC/43/12/Add.1 (20 February 2020) para 14. Although, in respect of Israel's recommendation to Iran that it '[e]xercise due diligence to prevent, deter, investigate and punish those accountable for violence against women and girls', Iran did not accept the recommendation. See Islamic Republic of Iran (22 December 2014) UN Doc A/HRC/28/12, para 138.197; Islamic Republic of Iran, Addendum (2 March 2015) UN Doc A/HRC/28/12/Add.1, para 7(c).

³⁷⁹ See UN Doc A/HRC/WG.6/48/IRN/1 (5 November 2024) paras 73–77 n 84.

³⁸⁰ UN Doc A/HRC/WG.6/43/TON/1 (16 February 2023) para 50 (emphasis added).

customary international law.³⁸¹ Elsewhere, Tonga has also recognised that, under CEDAW, gender-based violence constitutes discrimination against women and that, although Tonga has not signed or ratified CEDAW, it ‘may be used to interpret family laws in relation to the treatment of women’.³⁸² For its part, Sudan has described CEDAW as ‘part of applicable human rights standards’, despite not being a party to that Convention.³⁸³

All this suggests that even the few States that are not party to CEDAW consider there to be obligations in respect of violence against women arising under general (customary) international law.

3.3. Customary rules on gender-based violence against women

On the basis of the above, there are two rules³⁸⁴ of customary international law relating to gender-based violence against women. These are: (i) gender-based violence against women is prohibited under international law; and (ii) States are under an obligation to exercise due diligence in eliminating gender-based violence against women.

To the extent that there is contrary practice, and there clearly is, this contrary practice would amount to violations of the rules.³⁸⁵ States variously deny allegations that they have committed gender-based violence against women as unfounded, claim that the practice in question does not amount to violence, or contend that they are taking measures to address the violence. They do not argue that the practice amounts to recognition of a new rule. The violations also tend to be condemned by other States.

4. Conclusion

The legal status of the prohibition on gender-based violence against women is contested. It has been suggested that there is a normative gap and that, aside from the regional treaties, the prohibition only exists in soft law. Conversely, it has been said that States have accepted the soft law pronouncements and that the prohibition exists as a matter of customary international law. Many of these contentions are based on assertion or non-traditional means of identifying customary international law.

Following an orthodox approach to treaty interpretation and the identification of customary international law, this article has sought to establish the legal status of the prohibition. It first considered whether, as a matter of treaty interpretation, the definition of discrimination against women in Article 1 CEDAW includes gender-based violence against women. It then considered whether the treaty provisions, as interpreted by the CEDAW Committee and States Parties, have generated rules of customary international law.

The article found that the subsequent practice of States Parties has established the agreement of all the parties regarding the interpretation of Article 1 CEDAW, namely

³⁸¹ See text at n 327.

³⁸² Tonga, Magistrates’ Court Bench Book (undated) 8–9.

³⁸³ HRC, ‘Third Periodic Report’ (2007) UN Doc CCPR/C/SDN/3, para 155.

³⁸⁴ This is without prejudice to the existence of other customary rules.

³⁸⁵ See *Nicaragua* (n 289) 98, para 186; *Prosecutor v Furundžija* (Trial Judgment) IT-95-17/1-T (10 December 1998) para 138.

that discrimination against women includes gender-based violence against women. The CEDAW Committee's General Recommendation 19 was found to have catalysed this State practice. The CEDAW Committee used the interpretation in General Recommendation 19, that the definition of discrimination against women includes gender-based violence against women, in its interactions with States Parties. States Parties, in turn, engaged with that interpretation in their interactions with the CEDAW Committee. Notably, there is practice in this regard from every single State Party to the Convention.

The consequence of this agreement between the parties is that pursuant to Article 2 CEDAW, States Parties agree to refrain from engaging in violence against women, adopt legislative measures prohibiting violence against women, and 'take all appropriate measures to eliminate' violence against women 'by any person, organization or enterprise'.³⁸⁶ To put it another way: (i) gender-based violence against women is prohibited under the Convention; and (ii) States are under an obligation to exercise due diligence in eliminating gender-based violence against women.³⁸⁷

In terms of customary international law, following the approach set out by the Court in the *North Sea Continental Shelf* cases, certain provisions of CEDAW, as interpreted by the CEDAW Committee and States Parties, have generated rules of customary international law relating to gender-based violence against women. There is 'a general practice "in the sense of the provision invoked", which is accepted as law by parties and non-parties alike'.³⁸⁸ Specifically: (i) there is a customary prohibition on gender-based violence against women; and (ii) States are under an obligation to exercise due diligence in eliminating gender-based violence against women.

Obligations in respect of gender-based violence against women thus arise out of conventional and customary international law and not solely soft law.

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³⁸⁶ CEDAW (n 1) art 2(b), (d), (e) respectively. See also Byrnes (n 42) 38.

³⁸⁷ General Recommendation 19 (n 2) para 9.

³⁸⁸ Wood and Sender (n 299) 217, quoting *North Sea Continental Shelf*.

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