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Athletics Discrimination: International Remedies

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Law is a reflection of values and principles, rights and responsibilities, as well as commitments and obligations of governments to their people. For over three decades, there has been a dramatic increase in national laws and international treaties and legal principles promising women and girls an end to discrimination and equality of opportunity. These laws have allowed many women to make enormous progress, in many spheres, in many parts of the world. The impressive progress made by women in sport is a part of this pattern, and women athletes' extraordinary accomplishments demonstrate how much can be gained when opportunity is provided for them.

Laws prohibiting gender discrimination in education, employment, political leadership and participation, accommodations and health care all apply to aspects of women and sport. They can reach physical education, athletic participation, coaching and management positions, as well as leadership in sports governing bodies. In many circumstances, in fact, it is these more general laws that have provided the strongest tools for eliminating discrimination against women in sport, although laws with a specific focus on sport can also be of great importance.

However, even when strong laws are in place, it is undeniable that the progress has been uneven at best. In fact, laws around the world are not as strong as they need to be, their vigorous enforcement has yet to be achieved, and their promise has yet to be fully realized. What follows is an overview of the contours of international legal principles promising equality in sport for women and girls, and strategies used in countries around the world to secure enforcement of these principles.

I. Convention on the Elimination of Discrimination Against Women ("CEDAW")

¹ Laura Zellinger, a law student at American University College of Law, provided invaluable assistance in the preparation of this paper.

Adopted in 1979, and now one of the international human rights instruments that has been ratified by the largest number of States Parties, CEDAW contains a broad and comprehensive prohibition against gender discrimination and promotes equality in employment, education, health, and political and social participation.² It contains a specific provision, Article 10§g, which explicitly addresses sports:

"Each State Party shall take all appropriate measures to eliminate discrimination against women and to ensure to women equal rights with men in the field of education and in particular to ensure, on the basis of equality of men and women . . . (g) (t)he same opportunities to participate actively in sports and physical education."

This provision has not received the sustained attention and implementation efforts necessary to ensure that the State Parties live up to their commitment. CEDAW can be used to secure real changes in the ratifying countries around the world. A review of some of the ways in which CEDAW has been used in other contexts illustrates ways in which enhanced compliance with Article 10§g might be secured.

1. CEDAW has influenced national courts in interpreting national laws and led to the adoption of new laws³:

• Botswana:

Court held that CEDAW has created an international regime that can be applied in interpreting state constitutional provisions against claims of sex discrimination. Therefore, the Botswana Court expressed a willingness to interpret its state constitution in accordance with CEDAW principles.

• India:

Supreme Court cited to CEDAW in interpreting sexual harassment protections in Indian law more broadly than had been the case. Further, in <u>Githa Hariharan v. Reserve Bank of India</u> (1999), the Court referred to CEDAW in expanding mothers' right to act as natural guardian of the child.

• Greece:

Revised its constitutional provision providing for positive measures for the promotion of equality between men and women, as consistent with CEDAW. "The state shall ensure that inequalities which exist in practice, in particular, those which are detrimental to women, are abolished."

² It is important to note that a number of countries have ratified CEDAW with reservations that can limit its effectiveness.

³ O'Connell, Sharna, "Treaty for the Rights of Women Deserves Full U.S. Support," American Bar Association (2003).

• Australia: Sex Discrimination Act of 1984, which addresses

accommodations, education, employment, clubs, provision of goods, facilities and services and covers direct and indirect discrimination was described as in part designed to give effect to

CEDAW.

• Turkey: CEDAW used to rescind a government policy forcing female

students to undergo virginity examinations.

• Tanzania: The High Court cited CEDAW when it invalidated a law

prohibiting women from inheriting clan land from their fathers.

• Columbia: Courts cited CEDAW in rulings that gave legal recourse to female

victims of domestic violence.

• Germany: Position that it must interpret its constitutional rights to the extent

possible in conformity with international law, with many German scholars calling CEDAW groundbreaking in its quest for de facto

equality.4

2. CEDAW contains an Optional Protocol (Article 8), in place since 1995, to address CEDAW violations through an enhanced enforcement mechanism.

- Under the protocol, individuals, groups of individuals or NGO's can file written complaints with the Committee on the Elimination of Discrimination Against Women ("Committee") for those countries who have agreed to be bound by the Protocol.
- The Committee can conduct inquiries into grave or systemic abuse, and can request a Party State to amend its legislation, stop discriminatory practices, or implement affirmative action.
- 3. CEDAW reporting procedures, under Article 18, require that each ratifying country file complete reports within one year after ratification and every four years thereafter. This reporting requirement applies to all of the provisions of CEDAW, and therefore these reports should address the Party States' programs to meet Article 10\sq with specificity, including data and statistics adequate to assess these sports and physical education programs in place in the Party State. The Committee can supply in advance a list of issues or questions that the reports need to address, meet with the state delegation, secure answers to questions both in writing and orally, and publish its concluding comments in a Report to the General Assembly. The Committee could be pressed to focus on Article 10\sq g in its questions and comments.
 - The reports of <u>Argentina</u>, <u>Bangladesh</u>, <u>Dominican Republic</u>, <u>Equatorial Guinea</u>, and Spain are tentatively listed to be examined during 2004.

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⁴ Peters, "Women, Quotas and Constitutions," 273, n81 (1999).

4. The Committee can issue jurisprudence to clarify Party States' obligations and issue general recommendations setting out details and specifics on how countries can comply with CEDAW – in the area of sport and physical education – as it has for equal remuneration for work of equal value, female circumcision, violence, women and health, political and public life, among others. Many of these general recommendations are lengthy, detailed and strong in their analysis of the discrimination at issue and the ways it should be addressed. Such a specific recommendation focused on sport and physical education could highlight the problems as well as specific, effective solutions for Party States to adopt.

II. **Other International Instruments**

1. The Beijing Platform for Action, adopted at the Fourth World Conference on Women in 1995, requires states to report on 12 critical areas. It, like CEDAW, has been used to garner the attention of countries to problems women face, contains mechanisms that could be used to highlight the specific issues of sport which the Platform has recognized as important, and has affected the law in some countries. In the area of health, as a part of the Strategic Objective C.2 to strengthen prevention programs that promote women's health, sport is specifically addressed. Under the list of actions to be taken, 107(f) provides:

> "Create and support programmes in the educational system, in the workplace and in the community to make opportunities to participate in sport, physical activity and recreation available to girls and women of all ages on the same basis as they are made available to men and boys."

- Some of the few that have not adopted CEDAW have, pursuant to the Beijing Platform, submitted action plans, replied to a questionnaire and/or have machineries in place to address gender equality. (Iran, Kiribati, Marshall Islands, Monaco, Orman, Palau, Palestine, Qatar, Sudan, Swaziland, United Arab Emirates, United States are such countries.) Therefore, while they are not covered by CEDAW, the Beijing Platform can provide an alternate means of focusing attention on the problem of women and sport.
- The Platform has been cited as influencing the law in particular countries. India's Supreme Court, for example, cited the Beijing Platform for Action, in addition to CEDAW, in strengthening the country's protection against sexual harassment.
- The European Union, in addressing positive, or affirmative action, did so stating it was an effort to build on the Beijing Platform for Action.
- In March 2005, the United Nations Commission on the Status of Women will conduct the 10 year Review of the Beijing Platform Action (B+10). That upcoming Review may provide an opportunity for more attention to be paid to women and sport.

- 2. International Covenant on Civil and Political Rights provides that women and men enjoy all the civil and political rights in the Convention on a basis of equality. Civil and political rights incorporate athletic participation, as well as leadership positions in sports governing bodies. This covenant has broad application, contains an enforcement mechanism, and has been used to secure greater gender equality in areas that are analogous to sport.
 - Article 26 provides that all people are equal before the law, are entitled to equal protection of the law without discrimination and that the law shall guarantee equal and effective protection against discrimination.
 - The Covenant has an enforcement mechanism 1st Optional Protocol under which individuals can submit written communications to the U.N. Human Rights Committee.
 - The Human Rights Committee has decided that Article 26 prohibits discrimination in law or in fact in any field regulated by public authorities – and that its scope is not limited to civil and political rights. In Broeks v. Netherlands, it was applied in a gender context to a social security law.
 - UNESCO recognizes the human right to participate in recreational activities and sports.
- 3. The Brighton Declaration on Women and Sport is another part of the growing international expression of the importance of equality for women in sport.
 - Organized by the British Sports Council, supported by the International Olympic Committee, and attended by 280 delegates from 82 countries representing governmental and nongovernmental organizations, national Olympic Committees, international and national sport federations and other NGO's, it was the first international conference on women and sport.
 - The Declaration endorsed by the delegates was intended to provide the principles to guide action to increase the involvement of women in sport at all levels and in all functions and roles, and to accelerate change toward a more equitable sporting culture worldwide.
 - It made an express link between the principles in the Declaration and international law, providing in Section B(1)(a):

"Every effort should be made by state and government machineries to ensure that institutions and organizations responsible for sport comply with the equality provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the U.N. Convention on the

Elimination of All Forms of Discrimination against Women "

4. International Olympic Committee

The supreme authority of the Olympic Movement, the IOC not only has a critically important role in the Olympics, but its principles provide an additional impetus toward equality of women in sport far beyond the Olympics themselves. Its nondiscrimination principles are part of the international consensus around equality of opportunity for women and sports.

The IOC:

"Strongly encourages, by appropriate means, the promotion of women in sport at all levels and in all structures, particularly in the executive bodies of national and international sports organizations with a view to the strict application of the principle of equality of men and women."

UNESCO, recognizing the central role of the IOC, called for national enforcement of the Olympic Charter, "particularly the principles of non-discrimination."

5. Council of Europe

This multinational organization is comprised of 45 countries (including 21 in Central and Eastern Europe), and five observers (Holy See, United States, Canada, Japan and Mexico). The Council develops continent-wide agreements to standardize member countries' social and legal practices, and has described as one of its purposes to defend human rights, parliamentary democracy and the rule of law. It has addressed the issue of women and is another important example of the range of official bodies demonstrating a consensus on women and sport.

- It has legally binding European treaties or conventions many of which are open to non-member states.
- In 1996, it adopted Resolution 1092, on Discrimination against women in the field of sport, and more particularly in the Olympic Games, as follows:

"Whenever fundamental human rights are infringed, the Assembly considers it has a duty to intervene in the internal affairs of any state, irrespective of whether it is a member of the Council of Europe. Even if there are cultural differences and traditions, this should be no argument for accepting any policy of discrimination against women in sport."

• It's legal arm, the Venice Commission, advises countries on how to revise their laws. This Commission could provide specific guidance on the elimination of discrimination against women in sport.

6. European Union

The European Union's structure and enforcement mechanisms could also be directed to the implementation of gender equality principles in the member countries.

- The European Equal Treatment Directive obliges member states to reverse national law and administrative rules that do not conform to the Community principle of gender equality.
- Its directives can be enforced in the European Court of Justice or at the national level

7. International Customary Law

Once created, the rules under international customary law can be universally binding. The law is established once there is a stable and fairly uniform international practice with which many states have consistently complied. A case can be made that nondiscrimination and equal opportunity principles applying to women and sport have emerged as a principle of international customary law:

- That principle is reflected explicitly in CEDAW and Article 10 §g; in the Beijing Platform for Action and Strategic Objective C.2(107)(f); by UNESCO; in the Brighton Declaration; by the IOC in its Charter and principles; and by the Council of Europe, Resolution 1092.
- The principle is also reflected in numerous nations' laws, in addition to the international treaties and instruments listed above, such as Title IX in the United States.

Role of Advocacy in Creating Legal Rights: Title IX as a Case Study III.

In the United States, a series of laws and constitutional protections against sex discrimination were adopted over the last 40 years. One of the most important laws used to expand opportunities for women in sport is Title IX. Enacted in 1972, Title IX prohibits sex discrimination in education. While the statute itself as enacted made no specific reference to sports, the government agency responsible for the law's enforcement (the U.S. Department of Education) issued lengthy regulations in 1975, setting out detailed guidance on how the nondiscrimination principle was to be applied in a range of educational activities, including athletics.

The history of Title IX enforcement in the area of sport has been one of constant resistance by many powerful forces in men's athletics to weaken its reach, and by

women's advocates to defend its scope and effect. The strategies used, and the challenges faced in applying Title IX's promise of women's equality in sport demonstrate the importance of law as a tool for change, but also the inadequacy of law alone if there is not the will to overcome determined resistance to its enforcement to require real change.

The National Women's Law Center was founded in 1972, the year Title IX was passed.⁵ It has been centrally involved in the fight ever since in the Courts, in the U.S. Congress and in the government enforcement agency, the Department of Education, to protect and apply its provisions. The fight continues to this day. Highlighted below are some of the challenges and strategies used.

- Before Title IX was passed, fewer than 32,000 women participated in college sports today the number has expanded nearly five-fold; high school participation has increased by 800%. It has been recognized, for example, that "U.S. Women's soccer owes its pre-eminence to the gender-equity reforms visited upon colleges by Congress [30]-odd years ago." Still today, only 36% of college-level athletic operating budgets are for women's teams, and women receive only 41% of the opportunities to play intercollegiate sports.
- In 1974, the National Women's Law Center sued the U.S. Department of Education to require it to issue implementing regulations and begin Title IX enforcement. The lawsuit, and court monitoring, continued for over 10 years while the 1975 regulations and supplementary athletics guidance in 1979 were issued.
- In the 1970's and 1980's, many bills were introduced in Congress to amend Title IX, and weaken its scope. Women's organizations successfully lobbied to defeat the amendments and none passed.
- Individual women athletes brought lawsuits under Title IX to open athletic opportunities in their high schools, colleges and universities. The National Women's Law Center provided the lawyers bringing the first Title IX lawsuit against an entire university intercollegiate athletic program in 1979.
- Women's organizations also lobbied to pass the Athletics Disclosure Act, which requires colleges and universities to make public their record of the specific numbers of opportunities to compete provided and financial expenditures for the men's as compared to the women's programs. This disclosure caused some schools to fix inequities themselves, allowed women's organizations at the colleges and universities to press for change, and women's organizations like the National Women's Law Center to file Title IX complaints with the government enforcement agency to conduct investigations and require changes.

⁶ Frederick C. Klein, "Goals for Women's Soccer," <u>The Wall Street Journal</u>, April 16, 1999, p. W7. <u>See also Amy Shipley, "Bearing Down, Catching Up," <u>Washington Post</u>, June 13, 1999, p. D1.</u>

⁵ For information about the National Women's Law Center, and Title IX, see www.nwlc.org.

- Male athletes began to bring lawsuits, especially from the 1990's to the present, challenging Title IX regulations and guidelines as going too far in favor of women and as "reverse discrimination" against men. All of these challenges have been vigorously defended by women's rights advocates in court, and all have been unsuccessful to date. The National Women's Law Center is involved in one such challenge that is currently pending, on appeal, after the representatives of the male athletes lost in the District Court.
- In the last few years, efforts were targeted to convince the U.S. Department of Education to weaken the Title IX regulations and guidelines. After a Commission was established, and hearings were held around the country, a massive protest effort resulted led by women's rights advocates, and in July, 2003, the U.S. Department of Education announced it would keep the policies in place.

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Following is a list of NGO's working to promote equality of women in sports, who are in a position to use the international tools described in this paper, as well as the laws in their own countries, to continue to press to make equality of women in sport a reality. History has shown that only with a sustained and determined effort will such progress be made, and kept.

International NGOs Working to Promote Equality of Women in Sports

Organization	Brief Description	Internet Address
Womensport Australia	In 1990 representatives from a number of women's sport and recreation groups met with national and state government department representatives to discuss the formation of a non government national organisation which would represent the interests of women and girls in sport and physical activity. A Working Party was formed to further develop the notion of a national body and in 1991 Womensport Australia (WSA) was established to meet this need.	http://www.ausport.gov.au/wsp a/wsabout.htm
	Womensport Australia's objectives are:	
	1. To promote and communicate the importance of women in sport to shape opinion and influence decisions nationally.	
	2. To source information and scan the environment to provide current and relevant advice about women in sport.	
	3. To build and nurture relationships to sustain the social value of women in sport.4. To seek diverse income streams to ensure our viability.	
WomenSport International	WSI was formed to meet the challenge of ensuring that sport and physical activity receive the attention and priority they deserve in the lives of girls and women and to meet the need for an international umbrella organization that can bring about positive change for girls and women in these important areas of their lives.	http://www.sportsbiz.bz/wome nsportinternational/about/index .htm
	WSI is both an issues and action based organization. Our members represent over 30 countries and a broad range of expertise and interest in the following areas: sports science medicine, health and fitness, nutrition, coaching, administration and education as well as athletes and girls and women who want the opportunity to make sport and physical activity an ongoing part of their lives. The aim of WSI is to bring about increased opportunities and positive change for women and girls at all levels of involvement in sport and physical education.	

Japanese	Education	http://www.jws.or.jp/eng/index.
Association for Women in Sport	 □ Increase public awareness on women's sports □ Implement educational programs on women's sports in the school system □ Provide fact-based information on the effect and benefit of sport and fitness for women □ Increase the fair coverage of sportswomen in the media □ Provide educational programs to train female athletes and coaches with media □ Advance research on women in sport 	<u>html</u>
	Participation	
	 □ Increase women's participation in sport □ Encourage and facilitate the creation of more sport opportunities for women □ Help with planning,designing,and managing of sport and leisure facilities to account for the needs of women □ Promote volunteers in sport 	
	Leadership	
	 □ Increase the number of women in sport careers in general,and in leadership and decision-making positions in particular,and enhance the status of women in sport □ Support personal career development of women in sport □ Develop training program for teachers,coaches,administrators,and referees □ Help women conduct research in sport 	
	Networking	
	 □ Cooperate and network with other national and international sport organizations □ Seek support of key-sports-persons as partners □ Establish formal contacts with other women and sport organizations worldwide □ Foster solidarity among Asian nations in promoting women's sports 	
	Coordination	
	☐ Enhance the status of women's sports in governmental and international bodies in carrying out JWS activities	

	☐ Interact with governmental and international bodies and make suggestions in carrying out JWS activities	
Women's Sport Foundation UK	Vision We have a vision of a society that celebrates the diversity of women and girls,	http://www.wsf.org.uk/about/index.php
	and enables them to benefit from, excel at and fulfil their potential through the sport of their choice. Mission	
	WISSION	
	Our mission is to influence and work with key decision-makers in the UK, in order to change sports policy, practice and culture for the benefit of all women and girls.	
	Who will we work with?	
	Sports policy and strategy-makers at national and regional levels, to realise our mission and enable our vision.	
	Core activities	
	We aim to:	
	 inform and share: by providing advice and information on up-to-date research, policy and strategy development, sources of funding, and national and regional initiatives 	
	 influence and lead: by influencing national and regional government, and sports council strategy and policy to make sure that all policies, strategies and programmes are equitable 	
	 promote and motivate: by collecting, developing and sharing examples of best practice. 	
The Canadian Association for the	The Canadian Association for the Advancement of Women in Sport is a national not-for-profit organization founded in 1981. CAAWS works in partnership with	http://www.caaws.ca/

Advancement of Women in Sport	Sport Canada and with Canada's sport and active living communities to achieve gender equity in the sport community. CAAWS operates with a strong base of volunteers and a small team of effective and efficient staff.	
Women In Sports Careers Foundation	Mission Statement To provide women and girls professional guidance, education, and support to pursue and manage sports related careers. Organizational Objectives	http://www.wiscfoundation.org/ mission/mission.htm
	 To educate women and girls about career management and the complexities of the career process. To provide the tools, resources and practical solutions for effective career management, as offered by female sports industry leaders. To provide a supportive networking environment through career forums and seminars. To retain women in sports related careers. To challenge, inspire and motivate women to follow their career dreams. Click here to sign up for our HOT Jobs of the Week Online Newsletter	
	 Career Education Access to Career Advice including; Resume Preparation, Interviewing & Salary Negotiating Tips, etc. Seminars Career Management seminars are available for organizations and can be custom designed to meet organizational needs. WISC Internship Program To provide access to internship opportunities for young women with an interest in sports related caree 	

The Women's Sports Foundation

Founded in 1974 by Billie Jean King, the Women's Sports Foundation is a charitable educational organization dedicated to advancing the lives of girls and women through sports and fitness.

http://www.womenssportsfoundation.org

Our mission is to ensure equal access to participation and leadership opportunities for all girls and women in sports and fitness.

GOALS

- WORLDWIDE LEADER
 - Be recognized as the foremost worldwide resource and advocate for girls and women in sports and fitness.
- EXPERT EDUCATOR
 - To have an educated public that encourages females' participation and supports gender equality in sport.
- PARTICIPATION CATALYST Increase sports and fitness participation of and leadership by girls and women.
- SUCCESSFUL FUNDRAISER
 Acquire the resources necessary to continue to be a catalyst for social change.
- EXCELLENT STEWARD

 Manage internal resources in a cost-effective manner to ensure service quality and the public's trust.

OUR VISION IS A SOCIETY IN WHICH:

- girls and women of all ages fully experience and enjoy sports and fitness with no barriers to their participation.
- girls and women are confident and comfortable identifying themselves as athletes.
- everyone believes that sports and fitness are important to the health, leadership development and well-being of all girls and women.
- everyone agrees that society benefits when females reach their full potential.
- no one underestimates the sports ability of a person simply because of

	 gender or appearance sports for males and females embrace positive values and respect for others. equal opportunity is assured and equal ability assumed in the sports workplace. there is extensive interest in, and quality media coverage of, women in sports. 	
	WE VALUE:	
	Volunteers, contributors and Foundation employees who provide productive, expert and passionate support.	
	Parents, fans and sport leaders who offer guidance and encouragement to all female athletes.	
	Champion athletes, pioneers and visionaries who create new opportunities and aspirations for girls and women in sports.	
	WE ARE COMMITTED TO THE IMPORTANCE OF:	
Woman in Law	All sports, recreational and fitness activities and participants at all skill levels because sports and fitness play an important role in our everyday lives Diversity including people of every age, color, gender, national origin, physical disability, race, religion and sexual orientation. Strategic alliances acting collaboratively with other organizations to provide only those programs and activities not better provided by others. Efficiency carefully utilizing the resources available to us Non-discrimination offering Foundation programs or activities regardless of age, color, national origin, physical disability, race, religion and sexual orientation.	http://cita.mwab.co.zw/wildaf/
Women in Law and Development in Africa	Women in Law and Development in Africa (WiLDAF) is a pan African women's rights network dedicated to promoting and strengthening strategies which link law and development to increase women's participation and influence at the community, national and international levels.	http://site.mweb.co.zw/wildaf/
	WiLDAF brings together organisations and individuals who share this objective	

and who are operating at local national and regional levels to make it a reality.	

European Women	The European Women and Sport	http://www.ews-online.com/en/
and Sport		
	• is a free-standing group which consists of representatives and contact persons	
	related to or interested in gender equality work of non-governmental or governmental sports organisations and bodies in their respective countries;	
	governmental sports organisations and bodies in their respective countries,	
	aims at promoting the national equality work in sport and at disseminating	
	information with European sports organisations and bodies at non-governmental and governmental level;	
	and governmental level,	
	• counts at present 41 member countries represented by 44 contact persons;	
	analyses the need of action and develops recommendations for equality work as	
International	reflected by the biennially organised EWS Conferences.	http://www.udel.edu/HESC/bke
Association of	Aims:	Ily/usa.html
Physical		y/aoamam
Education and	To bring together women of many countries working in the field of	
Sports for Girls	physical education and sport.	
and Women	To strengthen international contacts.	
	To afford opportunities for the discussion of mutual problems.	
	To promote activity in such fields as the exchange of persons and ideas among member countries and research into problems affecting physical	
	education and sport for girls and women.	
	To cooperate with other organizations which are encouraging particular	
	services of and to women in society.	
	Countries Represented in I.A.P.E.S.G.W.	
	Argentina, Australia, Austria, Belgium, Botswana, Brazil, Canada, Chile,	
	Columbia, Czechoslovakia, Denmark, Egypt, Equador, Fed. Rep. of Germany,	
	Finland, France, Greece, Guatemala, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Korea, Lesotho, Luxembourg, Mexico, Namibia, Netherlands, New	
	Zealand, Norway, Paraquay, Peru, Phillipines, Poland, Portugal, Puerto Rico,	
	Rep. of China, Rep. of South Africa, Romania, Spain, Swaziland, Sweden,	
	Switzerland, Thailand, Transkei Turkey, United Kingdom, United States of	

America, Uruguay, Russia, Venezuela, Zimbabwe.	