



# The United Nations Convention on the Rights of the Child: Background and Policy Issues

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## Summary

U.S. ratification of the United Nations (U.N.) Convention on the Rights of the Child (hereafter referred to as CRC or the Convention) may be a key area of focus during the 112<sup>th</sup> Congress, particularly if the Barack Obama Administration seeks the advice and consent of the Senate. CRC is an international treaty that aims to protect the rights of children worldwide. It defines a child as any human being under the age of 18, and calls on States Parties to take all appropriate measures to ensure that children's rights are protected—including the right to a name and nationality; freedom of speech and thought; access to healthcare and education; and freedom from exploitation, torture, and abuse. CRC entered into force in September 1990, and has been ratified by 193 countries, making it the most widely ratified human rights treaty in the world. Two countries, the United States and Somalia, have not ratified CRC. The President has not transmitted CRC to the Senate for its advice and consent to ratification.

Despite widespread U.S. support for the overall objectives of the Convention, policymakers have raised concerns as to whether it is an effective mechanism for protecting children's rights. The Clinton Administration signed the Convention in February 1995, but did not submit it to the Senate primarily because of strong opposition from several Members of Congress. The George W. Bush Administration opposed CRC and expressed serious political and legal concerns with the treaty, arguing that it conflicted with U.S. laws regarding privacy and family rights. The election of President Barack Obama in 2008 has focused renewed attention on the possibility of U.S. ratification. The Administration has stated that it supports the goals of the Convention and that any decision to pursue ratification of CRC will be determined through an interagency policy review. Perhaps more than other human rights treaties, CRC addresses areas that are usually considered to be primarily or exclusively under the jurisdiction of state or local governments, including education, juvenile justice, and access to healthcare. Some of these conflicting areas will likely need to be resolved by the executive branch and the Senate before the United States ratifies the Convention.

The question of U.S. ratification of CRC has generated contentious debate. Opponents argue that U.S. ratification would undermine U.S. sovereignty by giving the United Nations authority to determine the best interests of U.S. children. Some are also concerned that CRC could interfere in the private lives of families, particularly the rights of parents to educate and discipline their children. Moreover, some contend that CRC is an ineffective mechanism for protecting children's rights. They emphasize that countries that are widely regarded as abusers of children's rights, including China and Sudan, are party to the Convention. Supporters of U.S. ratification, on the other hand, hold that CRC's intention is not to circumvent the role of parents but to protect children against government intrusion and abuse. Proponents emphasize what they view as CRC's strong support for the role of parents and the family structure. Additionally, supporters hold that U.S. federal and state laws generally meet the requirements of CRC, and that U.S. ratification would strengthen the United States' credibility when advocating children's rights abroad.

This report provides an overview of CRC's background and structure and examines evolving U.S. policy toward the Convention, including past and current Administration positions and congressional perspectives. It also highlights issues for the 112<sup>th</sup> Congress, including the Convention's possible impact on federal and state laws, U.S. sovereignty, parental rights, and U.S. family planning and abortion policy. In addition, the report addresses the effectiveness of CRC in protecting the rights of children internationally and its potential use as an instrument of U.S. foreign policy. It will be updated as events warrant.

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## Introduction

The 112<sup>th</sup> Congress may demonstrate an interest in U.S. ratification of the United Nations (U.N.) Convention on the Rights of the Child (hereafter referred to as CRC or the Convention), particularly if the Barack Obama Administration submits it to the Senate for its advice and consent. CRC is an international treaty that addresses the rights of children worldwide. It calls on States Parties to take all appropriate measures to ensure that children receive special rights, including the right to a name and nationality; access to healthcare, education, and parental care; and protection from exploitation, abuse, and neglect.<sup>1</sup> CRC entered into force on September 2, 1990, and 193 countries are currently party to the Convention, making it the most widely ratified human rights treaty. The United States has signed, but not ratified, the Convention. One other country, Somalia, has not ratified CRC.<sup>2</sup>

Past Administrations have generally supported the overall objectives of CRC, but have had concerns as to whether the Convention is the most effective mechanism for addressing children's rights domestically and abroad. The Ronald Reagan and George H. W. Bush Administrations played significant roles in negotiating the text of CRC; due to concerns regarding the Convention's possible impact on U.S. sovereignty and on state and federal laws, however, neither Administration signed or transmitted the treaty to the Senate for advice and consent to ratification. The Bill Clinton Administration supported CRC, and on February 16, 1995, then-Secretary of State Madeleine Albright signed the Convention on behalf of the United States. The Clinton Administration did not transmit the treaty to the Senate, however, because of opposition from key Members of Congress, including then-Senate Foreign Relations Committee Chairman Jesse Helms. The George W. Bush Administration did not support ratification of CRC, citing "serious political and legal concerns" with the treaty. It questioned the impact of U.S. ratification on state and federal laws and argued that the treaty was at odds with the emphasis of the United States on the duty of parents to protect and care for their children.

The election of President Barack Obama has focused renewed attention on the possibility of U.S. ratification of the Convention. During the 2008 presidential campaign, Obama stated that his Administration would review the treaty. Similarly, Susan Rice, appointed U.S. permanent representative to the United Nations, said at her January 2009 confirmation hearing that the Obama Administration supported CRC objectives and would conduct a legal review of the treaty. In November 2009, a State Department spokesperson confirmed that the Administration is conducting an interagency policy review of CRC and other human rights treaties that the United States has not ratified.<sup>3</sup> Most recently, in March 2011, the Administration reiterated its support for the goals of the Convention and indicated that the treaty was still under review.<sup>4</sup>

This report provides a brief history of the Convention and outlines its objectives and structure, including the role and responsibilities of the treaty's monitoring body, the Committee on the

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<sup>1</sup> The term "States Parties" refers to countries that have ratified or acceded to the Convention.

<sup>2</sup> The U.S. government is party to the CRC Optional Protocol on Children and Armed Conflict and the Optional Protocol on the Sale of Children. See the "Objectives and Structure" section for more information.

<sup>3</sup> Department of State Daily Press Briefing by Ian Kelly, State Department Spokesperson, Washington, DC, November 24, 2009, at <http://www.state.gov/r/pa/prs/dpb/2009/nov/132362.htm>.

<sup>4</sup> U.S. Response to U.N. Human Rights Council Working Group Report, Report of the United States of America Submitted to the U.N. High Commissioner for Human Rights in Conjunction with Universal Periodic Review, March 10, 2011, at <http://www.state.gov/drl/upr/157986.htm>.

Rights of the Child. It examines U.S. policy toward CRC, including the positions of past and current Administrations and congressional perspectives. The report also addresses selected policy issues that the 112<sup>th</sup> Congress may wish to take into account if considering ratification of CRC—including the treaty’s possible impact on U.S. sovereignty, federal and state laws, and parental rights. Other issues for possible consideration include the effectiveness of the Convention in protecting children’s rights, and its role as a U.S. foreign policy instrument.

## Evolution of the Convention

U.N. member states first collectively recognized the rights of children in the Universal Declaration of Human Rights, a non-binding resolution adopted by the U.N. General Assembly in 1948.<sup>5</sup> The declaration states, “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” U.N. member states further enunciated children’s rights by unanimously adopting the Declaration on the Rights of the Child in 1959. The declaration, which incorporates language from the Universal Declaration of Human Rights, calls on governments, families, and individuals to ensure that all children enjoy certain rights, including appropriate legal protections, a name and nationality, access to healthcare, and protection from abuse and exploitation.<sup>6</sup> The international community also acknowledged the special rights of children in the International Covenant on Economic, Social, and Cultural Rights (CESCR) and the International Covenant on Civil and Political Rights (CCPR), which both entered into force in 1976.<sup>7</sup>

The possibility of a Convention on the Rights of the Child was first raised by the government of Poland in 1978 as U.N. member states planned activities and programs that would take place during the International Year of the Child in 1979.<sup>8</sup> For the next decade, U.N. member states participated in a U.N. Commission on Human Rights (now the Human Rights Council) working group to draft the CRC text. The Convention was adopted by the U.N. General Assembly after a decade of negotiations on November 20, 1989, and entered into force on September 2, 1990.<sup>9</sup>

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<sup>5</sup> The Universal Declaration of Human Rights was not the first international document to address the rights of children. On September 16, 1924, members of the League of Nations agreed to the Geneva Declaration on the Rights of the Child. The Declaration recognized that children must be: given material and spiritual means for normal development; fed or nursed, reclaimed when delinquent, and sheltered when orphaned; the first to receive relief in times of distress; and put in a position to earn a livelihood and be sheltered from exploitation. It was adopted by U.N. General Assembly resolution 217 A (III) on December 10, 1948 by a vote of 48 in favor, zero against, and eight abstentions.

<sup>6</sup> U.N. General Assembly resolution 1386 (XIV), November 20, 1959.

<sup>7</sup> Article 10 of CESCR states, “Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions...” Article 24 of CCPR states that every child shall have “the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” CESCR entered into force on January 3, 1976, and CCPR entered into force on March 23, 1976. The United States ratified CCPR on October 21, 1994. It signed CESCR on October 5, 1997, but has not ratified it.

<sup>8</sup> U.N. member states periodically designate years or decades to highlight special issues, events, or disadvantaged groups.

<sup>9</sup> CRC was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 on November 20, 1989.

## Objectives and Structure

CRC defines a child as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”<sup>10</sup> It states that the best interest of the child should be the primary consideration in all actions concerning children. Countries that are party to CRC agree to take all appropriate legislative, administrative, and other measures to ensure that all children in their jurisdiction have the rights set forth in the Convention. Such rights include life and development; name, nationality, and parental care; health and access to healthcare services; and education. They also include protection from abuse and neglect, and freedom of expression, religion, association, and peaceful assembly. CRC calls for the protection of children from economic, sexual, and other forms of exploitation; torture; and capital punishment for offenses committed before the age of 18. It also provides special protections for orphans, refugees, and the disabled.

Article 5 of CRC recognizes the role of parents, requiring that “States Parties shall respect the responsibilities, rights and duties of parents ... to provide ... appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.” The Convention also states that children have the right to know and be cared for by their parents, and recognizes that the “rights and duties” of parents should be taken into account when States Parties seek to ensure a child’s well-being.<sup>11</sup>

## Committee on the Rights of the Child

The Committee on the Rights of the Child (the Committee) was established under Article 43 of CRC to examine progress made by States Parties in meeting their obligations under the Convention. It is comprised of 18 independent experts who serve four-year terms. Each State Party may nominate one candidate from among its nationals, and Committee members are elected by States Parties by an absolute majority, taking into account equitable geographic distribution.<sup>12</sup> The Committee generally meets in Geneva, Switzerland, for three sessions per year—including a three-week plenary and a one-week pre-session working group. It may hold special sessions at the request of the Committee chairperson in consultation with other Committee members. Special sessions may also be convened at the request of a majority of Committee members or at the request of a State Party to the Convention.<sup>13</sup> Committee members elect a chairperson, three vice-chairpersons, and a rapporteur to serve two-year terms. The chairperson directs Committee discussions and decision making and ensures that Committee rules are followed. The Committee submits a report on its activities to the U.N. General Assembly through the U.N. Economic and Social Council every two years.

The Committee’s primary responsibility is to monitor reports submitted by States Parties on national implementation of CRC. Countries are required to submit an initial report to the Committee within two years of ratifying or acceding to CRC, followed by regular reports every five years. According to the Convention, these reports should include any “factors and

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<sup>10</sup> See Article 1, CRC. The text of the Convention is available at <http://www.ohchr.org/english/law/crc.htm>.

<sup>11</sup> See CRC Articles 7(1) and 3(2). For more information, see the “Parental Rights” section.

<sup>12</sup> Committee members are eligible for re-election if nominated. See Article 43 for more information on the Committee.

<sup>13</sup> U.N. document, CRC/C/4/Rev.1, part I, rule 3, April 25, 2005.

difficulties,” affecting the fulfillment of the obligations under the Convention. States Parties present their reports at regular Committee meetings and engage in an open dialogue with Committee members to address progress and challenges to implementing CRC, as well as priorities and future goals.<sup>14</sup> Committee members adopt concluding observations that include suggestions and observations, and may request further information from the reporting State Party as needed. The Committee also adopts general comments on articles, provisions, and themes of CRC to assist States Parties in fulfilling their obligations under the Convention. These comments address a range of issues—including juvenile justice, protection from corporal punishment and other forms of punishment, and HIV/AIDS prevention and treatment.

## **Optional Protocols on Children in Armed Conflict and the Sale of Children**

The Convention has two optional protocols that provide specific protections for children: (1) the Optional Protocol on the Involvement of Children in Armed Conflict; and (2) the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.<sup>15</sup> Though both Optional Protocols operate under CRC, they are independent multilateral agreements under international law.<sup>16</sup> The Optional Protocol on Children in Armed Conflict limits the recruitment of children under the age of 18 for armed conflict and requires parties to provide children who have participated in armed conflict with appropriate physical and psychological rehabilitation. It entered into force on February 12, 2002, and has been ratified by 142 countries. The Optional Protocol on the Sale of Children requires parties to criminalize child pornography and prostitution, close establishments that practice such activities, and seize any proceeds. It entered into force on January 18, 2002, and has been ratified by 145 countries.

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<sup>14</sup> For more information on Committee meetings, see “Committee on the Rights of the Child—Working Methods,” at <http://www2.ohchr.org/english/bodies/crc/workingmethods.htm>.

<sup>15</sup> Both Optional protocols were adopted without a vote by U.N. General Assembly resolution 54/263 on May 25, 2000. Text of the Optional Protocols and a list of States Parties are available at <http://www2.ohchr.org/english/law/crc-sale.htm>.

<sup>16</sup> See Article 13 of the Optional Protocol on the Sale of Children and Article 9 of the Optional Protocol on Children in Armed Conflict.

## U.S. Actions

The United States has signed, but not ratified, the Convention on the Rights of the Child, and the President has not transmitted CRC to the Senate for its advice and consent to ratification. In 2002, the United States ratified the CRC Optional Protocols on Children in Armed Conflict and the Sale of Children. The Optional Protocols to CRC were considered less controversial than the Convention itself because, in the view of many, existing U.S. laws generally met the standards of the agreements.<sup>18</sup>

## Obama Administration

President Obama has indicated his overall support for the objectives of CRC and has stated his intent to conduct a legal review of the treaty.<sup>19</sup> Susan Rice, appointed U.S. permanent representative to the United Nations, reiterated at her January 2009 confirmation hearing that the Obama Administration was committed to the objectives of CRC and would review the Convention. Rice acknowledged that CRC was a “complicated” treaty in many respects, particularly given the U.S. system of federalism. She remarked that the Administration needed to “take a close look at how we [the United States] manage the challenges of domestic implementation and what reservations and understandings might be appropriate in the context of ... ratification.” Rice further stated that she could provide no information on how long it would take for the Administration to conduct a legal review of the Convention.<sup>20</sup>

### Summary of Steps in the U.S. Process of Making Multilateral Treaties

The making of multilateral treaties for the United States involves a series of steps that generally include (1) negotiation and conclusion; (2) signing by the President; (3) transmittal to the Senate by the President, which may include any proposed reservations, declarations, and understandings; (4) referral to the Senate Committee on Foreign Relations; (5) Committee consideration and report to the Senate recommending approval and a proposed resolution of ratification, which may include reservations, declarations, or understandings; (6) Senate approval of advice and consent to ratification by a two-thirds majority; (7) ratification by the President; (8) deposit of instrument of ratification; and (9) proclamation.

While the House of Representatives does not participate in the treaty-making process, legislation implementing any treaties requires action by both Houses of Congress.<sup>17</sup>

<sup>17</sup> For more information, see, *Treaties and other International Agreements: The Role of the United States Senate, A Study Prepared for the Committee on Foreign Relations by the Congressional Research Service*, S. Prt 106-71, 106<sup>th</sup> Congress, 2d Session, January 2001.

<sup>18</sup> The Clinton Administration signed the Optional Protocols on July 5, 2000, and transmitted both treaties to the Senate on July 25, 2000 (Treaty Doc. 106-37). The Bush Administration strongly supported the ratification of the Optional Protocols. The Senate provided its advice and consent to ratification of both agreements on June 18, 2002. The United States became party to the treaties on December 24, 2002, and they entered into force for the United States on January 23, 2003.

<sup>19</sup> When asked about the Convention during the 2008 presidential campaign Obama stated, “It is embarrassing to find ourselves [the United States] in the company of Somalia, a lawless land. I will review this [treaty] and other treaties to ensure that the United States resumes its global leadership in human rights.” See Patrick Geary, “United States: Is Obama’s Win also a Victory for Children’s Rights?” Child Rights Information Network, November 7, 2008. A video of President Obama’s statement is available at <http://debate.waldenu.edu/video/question-12/>.

<sup>20</sup> Congressional Transcripts, Congressional Hearings, “Senate Foreign Relations Committee Holds Hearing on the Nomination of Susan Rice to be the U.S. Permanent Representative to the United Nations,” *Congressional Quarterly*, January 15, 2009.



On November 24, 2009, a State Department spokesperson stated that the Administration is conducting an “interagency policy review” of CRC and other human rights treaties to which the United States is not a party.<sup>21</sup> The spokesperson further stated that the Administration supports the objectives of the Convention and is “committed to undertaking a thorough and thoughtful review of it.”<sup>22</sup> Most recently, in a March 10, 2011, report to a U.N. Human Rights Council working group, the Administration reiterated its support for the goals of CRC and stated that it intends “to review how we [the United States] could move towards its ratification.”<sup>23</sup>

## Previous Administrations

The Ronald Reagan and George H. W. Bush Administrations played a leading role in drafting the CRC. Neither Administration supported U.S. ratification, however, due to concerns regarding the Convention’s impact on state and federal laws, parental rights, and U.S. sovereignty. As a result, the Convention remained under legal review during the George H. W. Bush presidency.<sup>24</sup>

On February 16, 1995, then-U.S. Permanent Representative to the United Nations Madeleine Albright signed CRC on behalf of the Clinton Administration. The Administration announced that it would send the treaty to the Senate with a number of reservations, understandings, and declarations (RUDs) that are typically attached to treaties ratified by the United States. It stated that it would ask for RUDs to protect states’ rights and maintain “existing tools of the criminal justice system,” a likely reference to CRC provisions that prohibit the death penalty for minors.<sup>25</sup> The Administration did not submit CRC to the Senate for advice and consent to ratification, however, due in part to strong opposition from members of the U.S. Senate, particularly Senator Jesse Helms, then-chairperson of the Senate Committee on Foreign Relations (SFRC).<sup>26</sup>

The George W. Bush Administration opposed the Convention, citing “serious political and legal concerns” with its impact on U.S. sovereignty and parental rights.<sup>27</sup> Administration officials acknowledged that while CRC may be a useful tool for protecting children in countries that have ratified it, it was “misleading and inappropriate” to use the Convention as a “litmus test” for measuring the United States’ commitment to children.<sup>28</sup>

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<sup>21</sup> Department of State Daily Press Briefing by Ian Kelly, Spokesperson, Washington, DC, November 24, 2009, at <http://www.state.gov/r/pa/prs/dpb/2009/nov/132362.htm>.

<sup>22</sup> Ibid.

<sup>23</sup> U.S. Response to U.N. Human Rights Council Working Group Report, Report of the United States of America Submitted to the U.N. High Commissioner for Human Rights in Conjunction with Universal Periodic Review, March 10, 2011, at <http://www.state.gov/g/drl/upr/157986.htm>.

<sup>24</sup> The United States made recommendations on 38 of 40 substantive CRC articles. See Cynthia Price Cohen, “Role of the United States in Drafting the Convention on the Rights of the Child: Creating a New World For Children,” *Loyola Poverty Law Journal*, Vol. 9, Spring 1998.

<sup>25</sup> U.S. Mission to the United Nations press release #26-(95), “Remarks by Ambassador Madeleine K. Albright to the United Nations on the Occasion of the Signing of the U.N. Convention on the Rights of the Child,” February 16, 1995. In 2005, the Supreme Court found in *Roper v. Simmons* that the imposition of the death penalty on juvenile offenders is unconstitutional. See 543 U.S. 551 (2005).

<sup>26</sup> In 1995, Senator Jesse Helms warned President Clinton that as long as he was Chairperson of SFRC, “it is going to be very difficult for this treaty [CRC] even to be given a hearing.” *Congressional Record*, Senate, Vol. 141, No. 97, p. S 8401, June 14, 1995.

<sup>27</sup> “United States Participation in the United Nations for 2002: Report by the Secretary of State to the Congress,” October 2003, Part 2: Economic and Social Affairs, pp. 79-80.

<sup>28</sup> Statement by Ambassador E. Michael Southwick in the Preparatory Committee for the General Assembly Special (continued...)

## Congressional Perspectives

Congressional perspectives on U.S. ratification of CRC have varied. Members who support U.S. ratification maintain that it would reaffirm the U.S. commitment to children’s rights and enhance U.S. leadership in protecting children worldwide.<sup>29</sup> In September 1990, for instance, the House of Representatives passed a resolution supporting U.S. ratification, stating that “the issue of children’s rights and their well-being is important to both the United States and the world at large.”<sup>30</sup> Congressional opponents of U.S. ratification argue that the treaty would undermine U.S. sovereignty, particularly in policy areas traditionally addressed by states—including education and juvenile justice.<sup>31</sup> In March 2011, for example, Senator Jim DeMint introduced a resolution that expressed the sense of the Senate that CRC undermines U.S. sovereignty and the freedom and independence of U.S. families. The resolution stated that the President “should not transmit the Convention to the Senate for its advice and consent.”<sup>32</sup> Some Members of Congress have also expressed concern regarding the Convention’s possible impact on parental rights and responsibilities. In January 2011, for example, Representative John Fleming introduced a resolution proposing an amendment to the U.S. Constitution which states that the “liberty of parents” to raise and educate their children is a “fundamental right,” and that no international treaty may “supersede, modify, interpret, or apply” this right. A similar resolution was introduced by Representative Peter Hoekstra during the 111<sup>th</sup> Congress.<sup>33</sup>

## Policy Issues

The question of U.S. ratification of CRC has generated passionate debate. This section provides an overview of selected policy issues which have emerged during these discussions. These issues may continue to play a role in the ratification debate—particularly if the Obama Administration decides to seek the Senate’s advice and consent.<sup>34</sup>

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(...continued)

Session on the Children’s World Summit, U.S. Mission to the United Nations press release #15(01), February 1, 2001.

<sup>29</sup> See, for example, H.Res. 416 [111<sup>th</sup>], “Expressing the sense of the House of Representatives that the United States should become an international human rights leader by ratifying and implementing certain core international conventions,” introduced on May 7, 2009, by Rep. John Lewis and referred to the Committee on Foreign Affairs.

<sup>30</sup> H.Res. 312 [101<sup>st</sup>], “Urging the President to submit the Convention on the Rights of the Child to the Senate for its advice and consent to ratification,” passed/agreed to in the House by a voice vote on September 17, 1990. Similar legislation was introduced in the Senate and House during the 102<sup>nd</sup>, 103<sup>rd</sup>, and 105<sup>th</sup> Congresses.

<sup>31</sup> Former Senator Jesse Helms was a strong opponent of CRC, and in June 1995 he introduced a resolution in the 104<sup>th</sup> Congress that reflected the concerns of some CRC opponents. The resolution stated that CRC is “fundamentally flawed,” and “incompatible with the God-given right and responsibility of parents to raise their children.” See S.Res. 133 [104<sup>th</sup>], introduced June 14, 1995, and referred to the Committee on Foreign Relations.

<sup>32</sup> S.Res. 99, introduced on March 10, 2011, was referred to the Senate Committee on Foreign Relations. Similar legislation was introduced during the 111<sup>th</sup> Congress. See S.Res. 519, introduced on May 10, 2010, and H.Res. 1376, introduced on May 19, 2010.

<sup>33</sup> H.J.Res. 3, introduced on January 24, 2011, was referred to the Subcommittee on the Constitution. For the 111<sup>th</sup> Congress, see S.J.Res. 13, introduced on March 3, 2009; H.J.Res. 42, introduced on April 27, 2009; and S.J.Res. 16, introduced on May 14, 2009.

<sup>34</sup> Under Article II, section 2 of the U.S. Constitution, the President is responsible for making treaties by and with the advice and consent of the Senate. Once the President transmits a treaty to the Senate, it is, under the rules of the Senate, referred to the Committee on Foreign Relations. Thus, the issues for Congress discussed herein are issues that may be included in any consideration of the Convention by SFRC and/or the full Senate.

## Federal and State Laws

Perhaps more than other human rights treaties, CRC addresses areas that are usually considered to be primarily or exclusively under the jurisdiction of state or local governments. In general, both federal and state laws are consistent with the Convention's standards; however, there are some key differences that may need to be resolved within the executive branch before CRC is transmitted to the Senate for its advice and consent to ratification. Areas where state and federal laws might conflict include juvenile justice, child labor, child education, welfare, custody and visitation, and adoption.<sup>36</sup> State and local jurisdictions often address these issues differently and, according to some, U.S. ratification of CRC could, for the first time, apply federal laws to issues traditionally handled by individual states—thereby undermining the U.S. system of federalism.<sup>37</sup> Some are also concerned that states may not adequately enforce implementation of U.S. laws that are in accord with the Convention.

Advocates of U.S. ratification contend that possible conflicts between state and federal laws may be addressed through reservations, understandings, and declarations (RUDs) that often accompany treaty ratifications. The use of a “non-self-executing” declaration, for example, would require implementing legislation to bring the Convention's provisions into use—thereby addressing any potential conflicts with U.S. laws or values. In addition, a “federalism” understanding would make clear that the federal government would fulfill U.S. treaty obligations where it exercises jurisdiction and take appropriate measures to ensure that states and localities fulfill the provisions. Other supporters of U.S. ratification, however, contend that the inclusion of such RUDs would demonstrate the United States' unwillingness to fully implement the Convention.<sup>38</sup> Some proponents argue that instead of placing limiting conditions on U.S. ratification, U.S. law should be brought into conformance with international standards when, in their view, the international

### Reservations, Understandings, and Declarations that may Accompany U.S. Ratification of Multilateral Treaties

The Senate Committee on Foreign Relations may recommend that the Senate approve a treaty conditionally, granting its advice and consent subject to certain stipulations that the President must accept before proceeding to ratification. These stipulations are generally referred to as “Reservations, Understandings, and Declarations” (RUDs). The President may also propose RUDs at the time he transmits the treaty to the Senate or during the Senate's consideration of the treaty.

“**Reservations**” are specific qualifications or stipulations that modify U.S. obligations without necessarily changing the treaty language.

“**Understandings**” are interpretive statements that clarify or elaborate, rather than change, the provisions of an treaty. They are generally deemed to be consistent with the obligations imposed by the treaty.

“**Declarations**” are statements of purpose, policy, or position related to matters raised by the treaty in question but not altering or limiting any of its provisions.<sup>35</sup>

<sup>35</sup> Drawn in part from *Treaties and other International Agreements: The Role of the United States Senate, A Study Prepared for the Committee on Foreign Relations by the Congressional Research Service*, S. Prt 106-71, 106<sup>th</sup> Congress, 2d Session, January 2001.

<sup>36</sup> For a detailed analysis of how U.S. state and federal laws may be affected by the Convention, see Cynthia Price Cohen and Howard A. Davidson, ed., *Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law*, American Bar Association, 1990.

<sup>37</sup> Sally J. Cummings and David P. Stewart, *Digest of United States Practice in International Law, 2002*, Office of the Legal Advisor, Department of State, p. 291.

<sup>38</sup> RUDs accompanying U.S. ratification of human rights treaties are controversial among some analysts and policymakers due to concerns that they might undermine the effectiveness or intent of the treaty. See “U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker,” by Louis Henkin, *The American Journal of International Law*, Vol. 89:431, April 1995, pp. 341-350. Also see the “Effectiveness of the Convention” section.

standard is higher. Supporters of ratification also emphasize that countries with a system of federalism similar to the United States—such as Canada and Australia—ratified the Convention.<sup>39</sup>

## **U.S. Sovereignty**

Opponents of CRC argue that U.S. ratification would undermine U.S. sovereignty. They maintain that since ratified treaties are considered the “supreme Law of the Land”<sup>40</sup> under the U.S. Constitution, the Convention could supersede both national and local laws.<sup>41</sup> Some opponents hold that if the United States ratifies the Convention, the CRC Committee—a panel of 18 independent experts that monitors states’ compliance with the treaty—would have authority over U.S. government and private citizens’ actions toward children. A number of critics, for example, have taken issue with some CRC Committee decisions regarding parental rights, abortion, and the role of national governments in raising children.<sup>42</sup>

Supporters of U.S. ratification maintain that federal and state laws generally meet the requirements of the Convention, thereby posing little threat to U.S. sovereignty. They also contend that the inclusion of RUDs—such as a non-self executing declaration that requires implementing legislation to bring the Convention’s provisions into use—could address any additional sovereignty concerns. Proponents further emphasize that under the Convention, the CRC Committee may only comment on the reports of States Parties or make general recommendations. They emphasize that the Committee relies primarily on States Parties to comply with CRC obligations and has no established rules for treaty non-compliance.<sup>43</sup> Supporters also contend that enforcement mechanisms under CRC are weaker than those of other human rights treaties ratified by the United States.<sup>44</sup>

## **Parental Rights**

A key area of debate regarding U.S. ratification of CRC is its possible impact on the rights of parents. Some critics have expressed strong concern that the Convention will give the U.N. Committee on the Rights of the Child or the U.S. government authority over the family structure

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<sup>39</sup> For more information on this issue, see Lawrence L. Stentzel, II, “Federal-State Implications of the Convention” in *Children’s Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law*, Cynthia Price Cohen and Howard A. Davidson, ed., American Bar Association, 1990, pp. 57-86. Parts of this section are drawn from archived CRS Report 96-736, *Human Rights Treaties: Some Issues for U.S. Ratification*, by Vita Bite.

<sup>40</sup> Article six of the U.S. Constitution states, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

<sup>41</sup> See, for example, Joseph Abrams, “Boxer Seeks to Erode Treaty that May Erode U.S. Rights,” *FoxNews.com*, February 25, 2009. For further discussion of this issue, see Martin S. Flaherty, “History Right?: Historical Scholarship, Original Understanding, and Treaties as “Supreme Law of the Land,”” *Columbia Law Review*, Vol. 99, No. 8, December 1999, pp. 2095-2153.

<sup>42</sup> *An Analysis of the United Nations Committee on the Rights of the Child’s Concluding Observations*, National Center for Home Education, November 11, 1999, updated March 2007.

<sup>43</sup> See Jonathan Todres, et al., *The U.N. Convention on the Rights of the Child, An Analysis of Treaty Provisions and Implications of U.S. Ratification*, Transnational Publishers, Inc., 2006, p. 28.

<sup>44</sup> *Ibid.* The International Covenant on Civil and Political Rights, for example, provides for “state-to-state” complaints. CRC, on the other hand, states that only the CRC Committee may comment on the report of a state party.

and how parents choose to raise their children.<sup>45</sup> Many believe that parents should be able to raise their children in a way that reflects their morals and values without interference from outside parties, and some have argued that under CRC parental responsibility exists only in the context of its role in furthering the independent choices of children.<sup>46</sup> Moreover, CRC opponents argue that U.S. ratification would encourage children to disregard parental authority, possibly leading them to file complaints against or sue their parents.<sup>47</sup> Such actions, they argue, would undermine parental rights and give children inappropriate influence over their own lives.<sup>48</sup>

In particular, some Convention opponents are concerned about how the CRC Committee may interpret the Convention's provisions on the "best interest of the child," which is referenced in several articles, including 3, 9, 18, and 40. Critics maintain that allowing a U.N. Committee to interpret what is in the best interest of U.S. children severely undermines the role of U.S. parents to determine how to raise, educate, and discipline their children.<sup>49</sup> Opponents have also taken issue with other CRC provisions that, in their view, could be interpreted to undermine parental rights and responsibilities:

- **Privacy**—Article 16(1) states, "no child shall be subjected to arbitrary or unlawful interference with his or her privacy." Some have interpreted this to mean that parents may not have the right to search their children's rooms or be notified if a child is arrested or undergoes an abortion.
- **Freedom of expression**—Article 13(1) provides that the child shall have the "right to freedom of expression," including "freedom to seek, receive, and impart information and ideas of all kinds." Some contend that this could be interpreted to allow children to speak their minds at all times, regardless of parental authority or discipline.
- **Freedom of thought, conscience, and religion**—Some maintain that Article 14(1), which states that "States Parties shall respect the right of the child to freedom of thought, conscience and religion," might give children the right to object to their parents' religious beliefs or training.
- **Access to information**—Article 17 states that States Parties shall ensure that "the child has access to information and material from a diversity of national and international sources." Some interpret this to mean that children have a right to access any type of information regardless of their parents' preferences, including television, books, and other sources they find objectionable.<sup>50</sup>

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<sup>45</sup> See (1) Michael Smith, "Home-schooling: U.N. Treaty Might Weaken Families," *The Washington Times*, January 11, 2009, and (2) Andie Coller, "Parental Rights: The New Wedge Issue," *Politico*, April 8, 2009.

<sup>46</sup> "United Nations Special Session on Children Set to Meet," *National Center for Home Education*, May 3, 2002.

<sup>47</sup> When emphasizing these concerns, some opponents point to a 1997 CRC Committee report on Ethiopia, which recommended that "the limitation of the right to legal counsel of children be abolished as a matter of priority." (U.N. document, CRC/C/15/Add.67, January 24, 1997.) Some also reference the Committee's 1999 recommendation to Belize expressing concern regarding "the absence of an independent mechanism to register and address complaints from children concerning violations of their rights under the Convention. The Committee suggests that an independent child-friendly mechanism be made accessible to children..." (U.N. document, CRC/C/15/Add.99, May 10, 1999).

<sup>48</sup> Michael P. Farris, "Nannies in Blue Berets: Understanding the U.N. Convention on the Rights of the Child," *parentalrights.org*, December 15, 2008.

<sup>49</sup> "Congressional Action: The United Nations Convention on the Rights of the Child," *Lifesite News*, July/August 1993, at <http://www.lifesitenews.com/warofamily/unicef/homeschoolalert.html>.

<sup>50</sup> CRC Article 17 further states that children should especially have access to sources "aimed at the promotion of his or (continued...)"

- **Education**—Critics assert that Article 28(1), which states that States Parties recognize “the right of the child to education,” could lead to the government or CRC Committee mandating public schooling or interfering with the right of parents to home-school or send their children to private school. Some are concerned that Article 29(1), which addresses elements that shall be included in a child’s education, could lead to government interference in private school and home-school curricula.<sup>51</sup>
- **Corporal punishment**—Article 19(1) states, “no child should be subjected to physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,” at school or by a parent or legal guardian. Some interpret this to mean that parents may not be allowed to discipline their children through corporal punishment, such as spanking.<sup>52</sup>
- **Freedom of association**—Some are concerned that Article 15(1), which calls on States Parties to “recognize the rights of the child to freedom of association and to freedom of peaceful assembly” could give children the right to associate with people that his or her parents do not approve of, including cults or gangs.<sup>53</sup>

Supporters of the Convention emphasize that it was established not to circumvent the role of parents but to protect children against government intrusion and abuse. They contend, for example, that Article 16 on the child’s right to privacy is meant to protect children not from their parents but from government intrusion into the child’s or family’s privacy.<sup>54</sup> Similarly, proponents maintain that Article 13 on a child’s right to freedom of expression is intended to protect children from states that undermine parental authority by denying children the right to artistic, religious, or other forms of expression. Some also make a similar argument regarding Article 14 on a child’s right to thought, conscience, and religion. In their view, the Article is not meant as a means for children to challenge their parent’s religion or discipline, but to protect children from state interference in these areas, particularly if children are separated from their families. Some supporters have cited the experiences of Jewish children during the Holocaust and the plight of Christian children in China as examples of instances where children should be protected from government actions regarding religion.<sup>55</sup>

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her social, spiritual, and moral well-being and physical or mental health.” Critics hold that Article 17 could also prevent parents from restricting children’s access to pornographic material or other sources of information that contradict the parents’ values.

<sup>51</sup> *Oppose the U.N. Convention on the Rights of the Child*, National Center for Home Education, November 1, 1999, updated March 2007.

<sup>52</sup> To support this point of view, critics point to a CRC Committee concluding observation for Canada in 2003 recommending “that the State party adopt legislation to remove the existing authorization of the use of ‘reasonable force’ in disciplining children and explicitly prohibit all forms of violence against children, however light, within the family in schools and in other institutions where children may be placed.” (U.N. document, CRC/C/15/Add.215, October 27, 2003.)

<sup>53</sup> *Oppose the U.N. Convention on the Rights of the Child*, National Center for Home Education, November 1, 1999, updated March 2007.

<sup>54</sup> See (1) *Opposition to the Convention on the Rights of the Child: Exploring Counterarguments and Seeking Clarification*, presentation by the U.S. Fund for UNICEF, Voices for America’s Children, Homeschooler’s U.N. Club,” at <http://childrightscampaign.org/documents/OppositiontotheCRC.pdf>; and (2) Barbara Bennett Woodhouse, “The Family Supporting Nature of the U.N. Convention on the Rights of the Child,” in *The U.N. Convention on the Rights of the Child*, by Jonathan Todres et al., Transnational Publishers, Inc., 2006, p. 37.

<sup>55</sup> Barbara Bennett Woodhouse, “The Family Supporting Nature of the U.N. Convention on the Rights of the Child,” in (continued...)

Similarly, supporters emphasize that CRC provisions on children's access to information (Article 17) and freedom of association (Article 15) are meant to protect children not from parental authority, but from government intrusion in these areas.<sup>56</sup> CRC supporters also note that provisions that address a child's right to education (Articles 28 and 29) are not intended to undermine the role of parents in choosing a child's education. Rather, they are meant to establish and protect children's rights in countries with poor or unbalanced educational systems. In some countries, for example, girls are forbidden or discouraged from receiving an education. In such cases, supporters argue, ratification of the Convention could play a role in ensuring equal access to education for both girls and boys.

Many CRC advocates also emphasize what they view as the Convention's strong support for the role of parents and the family structure. They contend that CRC's provisions—including those regarding education, corporal punishment, and references to the "best interest of the child"—should be balanced with what many perceive as the Convention's overall emphasis on the important role of parents in raising their children. Proponents support this view by citing Article 7, which states, "as far as possible, the child has a right to be known and be cared for by his or her parents," and Article 3, which states:

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, *taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her* [emphasis added].

Supporters also emphasize the Convention's references to the role of the family and parents in 18 other articles, as well as the CRC preamble, which states that the family is "the fundamental group of society," and recognizes, "the child, for the full and harmonious development of his or her personality, should grow up in a family environment."<sup>57</sup> Advocates further assert that there is no language in the Convention that allows for prosecutions, lawsuits, or investigations of parents or guardians. Any such actions, they argue, would be based on existing U.S. laws rather than CRC provisions or recommendations of the CRC Committee.<sup>58</sup>

To alleviate concerns regarding parental rights, some have suggested that if the United States were to ratify CRC, it may wish to include RUDs addressing the issue. When considering ratification of the U.N. Convention on the Elimination on All Forms of Discrimination Against Women (CEDAW), for instance, the Clinton Administration proposed a "private conduct" reservation which stated that the United States "does not accept any obligation under the Convention to regulate private conduct except as mandated by the Constitution and U.S. law."<sup>59</sup>

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*The U.N. Convention on the Rights of the Child*, by Jonathan Todres et al., Transnational Publishers, Inc., 2006, p. 45.

<sup>56</sup> Some argue, for example, that CRC Article 17 is meant to encourage, and not discourage, states from providing children with access to information that may be beneficial to their well being. They emphasize, however, that parents must determine how much or what types of information to which their children are exposed.

<sup>57</sup> The parent-child role is referenced in the following CRC Articles: 2, 3, 5, 7, 8, 9, 10, 11, 14, 16, 18, 20, 21, 22, 23, 24, 27, 37, and 40. See "The United Nations Convention on the Rights of the Child: Answers to 30 Questions," by Cynthia Price Cohen and Susan H. Bitensky, *Child Rights International Research Institute*, 1994.

<sup>58</sup> *Myths and Facts on the Convention on the Rights of the Child (CRC)*, The Campaign for U.S. Ratification of the Convention on the Rights of the Child, 2009.

<sup>59</sup> U.S. Congress. Senate. Committee on Foreign Relations, "Convention on the Elimination of All Forms of Discrimination Against Women," Report, September 12, 1994. Washington, D.C., Government Printing Office (Senate Exec. Rept. 103-38, 103d Congress, 2d Session), pp. 6-8. For more information, see CRS Report R40750, *The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Issues in the U.S.* (continued...)

Some have also suggested including RUDs that specifically address parental rights. One proposed understanding, for example, states that parents are primarily responsible for their children's upbringing and development and for making decisions related to the best interest of the child.<sup>60</sup>

## **Abortion**

There is significant debate regarding what impact, if any, U.S. ratification of CRC might have on domestic abortion policy. The ambiguous nature of some CRC provisions relating to these issues has left the door open for broad interpretation by both opponents and supporters of the Convention.

Critics of U.S. ratification have raised questions regarding the Convention's possible impact on state parental notification laws for children undergoing abortion. In particular, they are concerned about Article 16(1), which states, "no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence." Some fear that this "right to privacy" could ultimately allow children to choose to have abortions without notifying or receiving guidance from their parents.<sup>61</sup> Opponents of the Convention express concern with CRC Committee decisions that appear to criticize countries that restrict abortion.<sup>62</sup> Additionally, some have argued that Article (24)(2)(d) of CRC, which states that States Parties "shall ... take appropriate measures ... to ensure appropriate pre-natal and post-natal health care for mothers," could be interpreted to mean that children may undergo abortions without parental notification.

Supporters of the Convention contend that the treaty does not take a position on abortion or when a child's life begins. They maintain that CRC text allows individual countries to interpret the treaty in a way that aligns with their national abortion policies. They note that countries with strict anti-abortion laws, such as the Holy See (Vatican), the Philippines, and Ireland, have ratified the Convention.<sup>63</sup> Proponents counter claims that the Convention encourages abortion by citing CRC Committee statements that appear to criticize countries for their high rates of abortion and teen pregnancy. In its report on Russia in 1993, for instance, the Committee expressed concern with "frequent recourse to abortion as what appears to be a method of family planning."<sup>64</sup>

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*Ratification Debate*, by Luisa Blanchfield.

<sup>60</sup> David M. Smolin, "Overcoming Religious Objections to the Convention on the Rights of the Child," *Emory Law Journal*, Vol. 20, Spring 2006, pp. 81-110.

<sup>61</sup> Patrick F. Fagan, "How U.N. Convention on Women's and Children's Rights Undermine Family, Religion, and Sovereignty," *Heritage Foundation*, Backgrounder #1407, February 5, 2001.

<sup>62</sup> In a 1994 report on Chad, for example, the CRC Committee expressed its concern "at the impact that punitive legislation regarding abortion can have on maternal mortality rates for adolescent girls. The Committee suggests that a comprehensive and multi-disciplinary study be undertaken to understand the scope of adolescent health problems, including the negative impact of early pregnancy and illegal abortion." Some contend that the Committee was not criticizing Chad's abortion laws, but focusing on the plight of girls who fall ill or die because of illegal abortions. (U.N. document, CRC/C/15/Add.107, August 24, 1999.)

<sup>63</sup> "Myths and Facts on the Convention on the Rights of the Child (CRC)," *The Campaign for U.S. Ratification of the Convention on the Rights of the Child*, 2009.

<sup>64</sup> U.N. document, CRC/C/15/Add.4, February 18, 1993. In the report, the Committee also noted with particular concern "the tendency towards the breakdown of family culture as regards abandoned children, abortion, the divorce rate ..."



## Negotiating History of the Convention Addressing Abortion

The negotiating history of CRC's drafting leads many to conclude that the Convention is "abortion neutral."<sup>65</sup> During negotiations on the treaty text, the issue of abortion and where life begins was debated among U.N. member states.<sup>66</sup> Ultimately, in the interest of compromise and to allow for the maximum number of ratifications, CRC drafters agreed to not address the issue in the main articles of the Convention. The intent was to leave the text purposefully vague so that ratifying countries could interpret the provisions to align with their own domestic law and policies on abortion.<sup>67</sup> For example, the Convention's definition of a child as "every human being below the age of eighteen years" intentionally does not set a lower age limit, leaving the States Parties to determine where life begins. This intentional ambiguity allows countries to apply their own interpretations to other provisions that address children's rights, particularly Article 6, which recognizes that "every child has the inherent right to life," and states that States Parties shall ensure "to the maximum extent possible the survival and development of the child." Nevertheless, some States Parties to CRC, including China, France, Luxembourg, and Tunisia, attached reservations to CRC stating that Article 6 should not interfere with national legislation and policies regarding abortion.

The preamble of CRC has also raised some questions regarding the Convention's position on abortion.<sup>68</sup> It specifically mentions the needs of the child before birth, stating "the child ... needs special safeguards and care, including appropriate legal protection, before as well as after birth." Some maintain that this statement implies that CRC protects the rights of the so-called "unborn," which could require States Parties to outlaw abortion.<sup>69</sup> Though the preamble is not an operational paragraph of the Convention, some experts emphasize that under international law the preamble to a treaty could be relevant to its interpretation.<sup>70</sup> Others contend, however, that preambular statements do not carry the same force as articles of the Convention.<sup>71</sup> The legislative history of

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<sup>65</sup> According to international law, a treaty may be interpreted by taking into account the preparatory work and negotiations related to the treaty text. Specifically, Article 32 of the 1969 Vienna Convention on the Law of Treaties states, "Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to Article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable." The United States signed the Vienna Convention on April 24, 1970, but the Senate has not given its advice and consent to ratification. According to the State Department, the United States "considers many of the provisions of the Vienna Convention on the Law of Treaties to constitute customary international law on the law of treaties."

<sup>66</sup> For information on the history of CRC negotiations, see (1) Sharon Detrick, ed., *The United Nations Convention on the Rights of the Child: A Guide to the 'Travaux Préparatoires'*; Martinus Nijhoff Publishers, London, 1992; (2) Jonathan Todres and Louise N. Howe, "What the Convention on the Rights of the Child Says (and Doesn't Say) About Abortion and Family Planning," in *The U.N. Convention on the Rights of the Child*, by Jonathan Todres et al., Transnational Publishers, Inc., 2006, pp. 163-175; and (3) Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child*, Martinus Nijhoff Publishers, The Hague, 1999, pp. 133-136.

<sup>67</sup> Philip Alston, "The Unborn Child and Abortion Under the Draft Convention on the Rights of the Child," *Human Rights Quarterly*, Vol. 12, 1990, p. 163.

<sup>68</sup> For further discussion of the role of the preamble in the abortion debate, see "The Unborn Child and Abortion Under the Draft Convention on the Rights of the Child," *Human Rights Quarterly*, Vol. 12, 1990, pp. 165-172.

<sup>69</sup> William L. Saunders, *The Convention on the Rights of the Child and the U.N. Special Session on Children*, Family Research Council, 2001, available at <http://www.worldfamilypolicy.org/New%20Page/forum/2001/saunders.pdf>.

<sup>70</sup> Article 31(2) of the 1969 Vienna Convention on the Law of Treaties states, "The context for the purpose of the interpretation of a treaty shall comprise.... its preamble and annexes ..."

<sup>71</sup> Jonathan Todres and Louise N. Howe, "What the Convention on the Rights of the Child Says (and Doesn't Say) About Abortion and Family Planning," in *The U.N. Convention on the Rights of the Child*, Jonathan Todres et al., (continued...)

CRC indicates that the drafters did not intend for the preambular sentence to protect the rights of children before birth. That sentence, which was originally included in the Declaration on the Rights of the Child, was reportedly included as a compromise during negotiations on Article 1 that sought to define a “child.”<sup>72</sup> CRC drafters were concerned that it could be interpreted as protecting the rights of the “unborn,” and in the official record of the negotiation included a statement clarifying that the preambular paragraph did not intend to prejudice States Parties’ interpretation of Article 1 on the definition of a child or any other CRC provisions.<sup>73</sup>

The United States generally agreed that the draft Convention should not aim to “institutionalize” a particular point of view on abortion because doing so would make the Convention “unacceptable from the outset to countries espousing a different point of view.” During negotiations on the Convention text, the U.S. delegation insisted that CRC must be worded in such a way “that neither proponents nor opponents of abortion can find legal support for their respective positions in the draft Convention.”<sup>74</sup>

## **Family Planning**

Some CRC opponents are concerned that Article 24, which focuses on the right of the child to enjoy the highest attainable standard of health, could require parents to make or expose their children to family planning choices that contradict their values. Specifically, Article 24(2)(f) states that States Parties “shall ... take appropriate measures ... to develop preventive health care, guidance for parents and family planning education and services.” Some worry that this provision could require contraceptive distribution or “pornographic sex education” in schools.<sup>75</sup> Similarly, some argue that it could allow children access to contraceptives without the knowledge of, or permission from, their parents.

Supporters of U.S. ratification argue that CRC provides for States Parties to make their own interpretations and decisions regarding family planning education and services. They emphasize that Article 24(2)(f) allows for States Parties to take “*appropriate* [emphasis added] measures ... to develop family planning education and services” thereby leaving it to individual countries to interpret what is appropriate in the context of their national policies and laws. Supporters also contend that concerns regarding the Convention’s position on family planning should be balanced with the Convention’s recognition of the role of parents in raising children.<sup>76</sup> They point out that countries with a wide range of family planning policies have ratified the Convention—including China, the Holy See (Vatican), Canada, Ireland, and the Philippines.<sup>77</sup>

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Transnational Publishers, Inc., 2006, p. 166.

<sup>72</sup> Cynthia Price Cohen, “A Guide to Linguistic Interpretation of the Convention on the Rights of the Child” in *Children’s Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law*, Cynthia Price Cohen and Howard A. Davidson, ed., American Bar Association, 1990, p. 42.

<sup>73</sup> See U.N. document, E/CN.4/1989/48, March 2, 1989, paragraph 43. The record states, “In adopting this preambular paragraph, the Working Group does not intend to prejudice the interpretation of Article 1 or any other provision of the Convention by States Parties.”

<sup>74</sup> U.N. document, E/CN.4/L.1542, March 10, 1980.

<sup>75</sup> William L. Saunders, *The Convention on the Rights of the Child and the U.N. Special Session on Children*, Family Research Council, World Family Policy Forum, 2001.

<sup>76</sup> Article 3(2), CRC.

<sup>77</sup> The Holy See included a reservation stating that it “interprets the phrase ‘family planning education and services’ in (continued...)”

## The Effectiveness of the Convention

A significant area of debate among CRC supporters and opponents is the effectiveness of the Convention, particularly in countries that have already ratified it. Some critics agree with CRC's overall goal of protecting children's rights internationally, but they do not believe that the treaty is an effective mechanism for achieving this goal. As evidence of this, they emphasize that countries that many regard as abusers of children's rights—including Sudan, Democratic Republic of the Congo, and China—are party to the Convention. Similarly, some argue that instead of helping children, ratification of CRC may serve as a facade for governments that abuse children's rights.

Critics have also asserted that reservations and declarations that some countries attached to the Convention are at odds with the purpose of the treaty, possibly undermining its intent and effectiveness.<sup>78</sup> A number of Islamic countries, for example, attached reservations stating that the Convention would not apply to provisions that they deem incompatible with Islamic Shari'a law or values.<sup>79</sup> Some are concerned that the ambiguity of such reservations could allow for broad interpretations of the Convention's provisions, particularly in the area of child marriage and education for girls. Other States Parties also included reservations that aim to apply CRC only when it is compatible with domestic laws. Holy See (the Vatican), for example, included a reservation stating that the application of the Convention [should] be "compatible in practice with the particular nature of the Vatican City State and of the sources of its objective law." Other countries, such as Sweden and Norway, have objected to the inclusion of these reservations. When filing their own reservations and declarations, they state that the reservations of some countries "may cast doubts on the commitments of the reserving state [to the Convention]."<sup>80</sup>

Supporters of CRC contend that it has enhanced children's rights in a number of countries that have ratified the Convention. Human Rights Watch, for example, reports that many countries have used CRC as a basis for enhancing existing legislation and improving children's rights.<sup>81</sup> Similarly, a 2004 U.N. Children's Fund (UNICEF) review of 62 States Parties to CRC found that more than half of the countries studied had incorporated Convention provisions into their domestic laws, and nearly one-third of the countries had incorporated provisions into their national constitutions.<sup>82</sup> UNICEF also reports that CRC played a role in establishing over 60

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Article 24(2), to mean only those methods of family planning which it considers morally acceptable, that is, the natural methods of family planning."

<sup>78</sup> For more information, see William A. Schabas, "Reservations to the Convention on the Rights of the Child," *Human Rights Quarterly*, Vol. 18.2, May 1996, pp. 472-491.

<sup>79</sup> States Parties that included similar reservations include Afghanistan, Algeria, Egypt, Iran, Iraq, Kuwait, Morocco, Saudi Arabia, and Syria. The full list of reservations and declarations by States Parties is at [http://www.unhcr.ch/html/menu3/b/treaty15\\_asp.htm](http://www.unhcr.ch/html/menu3/b/treaty15_asp.htm).

<sup>80</sup> The reservations of Sweden and Norway specifically state: "A reservation by which a state party limits its responsibilities under the Convention by invoking general principles of national law may cast doubts on the commitments of the reserving state to the object and purpose of the Convention and, moreover, contribute to undermining the basis of international treaty law." Ireland, Portugal, and Finland have also included reservations with similar wording.

<sup>81</sup> Human Rights Watch also reports that under CRC some countries have appointed special ombudspersons or envoys for children. It also reports that the CRC Committee has "developed new standards of protection and pressed governments for specific reforms." See *Promises Broken: An Assessment of Children's Rights on the 10<sup>th</sup> Anniversary of the Convention on the Rights of the Child*, Human Rights Watch, November 1999.

<sup>82</sup> UNICEF press release, "Despite Progress, Children's Rights Far from Universal," November 20, 2004.

independent human rights institutions for children in 38 countries.<sup>83</sup> Ultimately, however, supporters generally acknowledge that while progress has been made, many countries still have a long way to go in implementing the Convention. The 2004 UNICEF review, for instance, found that while high-level political commitment to CRC is essential to developing new laws to protect children's rights, social change will occur only when high-level commitment is matched by "effective law enforcement, allocation of adequate resources and the engagement of all levels of society."<sup>84</sup>

## **The Convention as an Instrument of U.S. Foreign Policy**

Many CRC supporters hold that ratification of the Convention would strengthen U.S. credibility abroad and give the United States additional fora in which to pursue the advancement of children's rights.<sup>85</sup> Specifically, they argue that U.S. non-ratification leads foreign governments to question the sincerity of the United States in addressing children's rights, thereby hindering the ability of U.S. diplomats to advocate child rights in countries with poor human rights records.<sup>86</sup> They contend that many countries view the United States as hypocritical because it expects other countries to comply with international standards that it does not itself follow.<sup>87</sup> Some, for example, point to U.S. statutes that require U.S. foreign assistance to be subject to a country's compliance with "internationally recognized human rights."<sup>88</sup> Further, some argue that U.S. ratification would provide the United States with an opportunity to influence international laws and standards in the area of children's rights. They maintain that the United States, with its history of democracy and policies that respect children, could share its experience and expertise with other countries that aim to protect children's rights.<sup>89</sup>

Opponents of CRC argue that the United States is the international leader in advancing children's rights and that U.S. non-ratification does not impact its ability to advocate children's rights to foreign governments. They maintain that the United States has demonstrated its commitment to children by ratifying the Optional Protocols to the Convention and by implementing laws and

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<sup>83</sup> Ibid.

<sup>84</sup> Ibid. Also see, UNICEF press release, "Experts Discuss the Impact of CRC," November 20, 2007.

<sup>85</sup> *International Implications of the United States Ratifying the CRC*, presentation by Carl Triplehorn, Save the Children, May 20, 2005.

<sup>86</sup> In 1979, then-Secretary of State Christopher Warren stated that U.S. "... nonadherence to the [human rights] treaties prejudices our [the United States'] participation in the development of international law with respect to human rights." See, U.S. Congress. Senate. Committee on Foreign Relations. *International Human Rights Treaties. Hearings*, 96<sup>th</sup> Congress, 1<sup>st</sup> session. November 14-16, 19, 1979. Washington, U.S. Government Printing Office, 1979, pp. 19-20.

<sup>87</sup> The United States has called for countries to comply with CRC in U.N. fora even though it is not itself a party to the treaty. For example, in a November 2006 statement to the U.N. General Assembly, a U.S. representative stated, "The Government of Sudan, which is a party to the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, must accept responsibility for the widespread problem of recruitment and use of child soldiers and take immediate steps to halt these practices." U.S. Mission to the United Nations Press Release #368(06), November 28, 2006.

<sup>88</sup> For example, Sec. 116(a) of the Foreign Assistance Act of 1961, as amended (P.L. 87-195) states, "No assistance may be provided ... to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights...." Similarly, Sec. 502B(a)(1) of that Act states, "a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries." Further, Sec. 502B(a)(2) states, "... no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights."

<sup>89</sup> *Opposition to the Convention on the Rights of the Child: Counterarguments and Seeking Clarification*, presentation by U.S. Fund for UNICEF, Voices for America's Children, Homeschooler's U.N. Club.

policies that protect and preserve the rights of children in the United States. Some critics of ratification also contend that CRC and, more broadly, other international human rights treaties, are designed for countries with lesser human rights traditions.<sup>90</sup> They argue that U.S. laws far exceed the standards established in such agreements, and that ratifying the treaties would not benefit U.S. citizens. Moreover, some are reluctant to leave the question of U.S. obligations under international treaties to other countries—particularly those with low human rights standards. Critics have also expressed concern that U.S. ratification of CRC and other human rights treaties could be used as a basis for unfounded political criticisms of the United States in international fora.<sup>91</sup>

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<sup>90</sup> Christopher J. Klicka, Esq. And William A. Estrada, *Special Report: The U.N. Convention on the Rights of the Child, The Most Dangerous Attack on Parent's Rights in the History of the United States*, Home School Legal Defense Association, November 1, 1999, updated March 2007.

<sup>91</sup> See (1) Belinda Clark, "The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women" *American Journal of International Law*, Vol. 85, April 1991, pp. 281-321; and (2) Rebecca J. Cook, "Reservations to the Convention on the Elimination of Discrimination against Women," *Virginia Journal of International Law*, Vol. 30, 1990, p. 643.