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PROSPECTS FOR RATIFICATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD

*David Weissbrodt**

Since early in the development of international human rights law, the particular need to care for children has been acknowledged. Beginning with the Geneva Declaration on the Rights of the Child in 1924¹ and the Declaration of the Rights of the Child, adopted by the U.N. General Assembly in 1959,² children's rights have been recognized by human rights organizations and instruments alike. Rights of the child were included in the Universal Declaration of Human Rights;³ the Geneva Convention for the Protection of Civilian Persons in Time of War;⁴ the International Covenant on Economic, Social and Cultural Rights;⁵ and other instruments of specialized agencies and organizations.⁶

The General Assembly unanimously adopted the Convention on the Rights of the Child⁷ in 1989, and it has since become the most quickly ratified human rights treaty in history. It is also the most widely ratified of all human rights treaties, with 192 States Parties.⁸ The Convention calls upon governments to promote the rights of children, with special emphasis on the authority of parents and family, while giving consideration to a child's age and maturity.⁹ The Convention also established the Committee on the Rights of the Child, the body that monitors the implementation of the treaty.¹⁰ Since the adoption of the Convention, children's rights have come to the forefront of human rights

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¹ Geneva Declaration of the Rights of the Child, *adopted* Sept. 26, 1924, League of Nations O.J. Spec. Supp. 21, at 43 (1924).

² Declaration of the Rights of the Child, G.A. Res. 1386, at 19, U.N. GAOR, 14th Sess., Supp. No. 16, 841st plen. mtg., U.N. Doc. A/4354 (1959).

³ Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

⁴ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

⁵ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

⁶ *E.g.*, UNICEF, <http://www.unicef.org>.

⁷ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter Convention].

⁸ *See id.*

⁹ *Id.* pmb1.

¹⁰ *Id.* art. 43.

efforts, and some improvements have been made for children.¹¹ Despite its demonstrated success and near-universal approval, the United States has not ratified the Convention. The United States remains one of only two countries, along with Somalia, that has failed to become a party to the Convention.¹²

One reason for the U.S. failure to ratify the Convention is its traditional reluctance to submit to international legal obligations. A treaty such as the Convention requires “advice and consent” of two-thirds of the U.S. Senate. A two-thirds majority is a more stringent requirement than that of any other nation for ratifying treaties. Once the Senate has given its consent, the treaty is sent to the President for ratification. Getting the near-consensus required in the Senate is difficult, and such consensus is especially difficult to attain for the Convention, which has been met with vehement opposition.

Politically conservative organizations, particularly religious groups, have publicly demonized the Convention, claiming that its adoption would usurp state and national authority and destroy the American family. Groups including Focus on the Family,¹³ Family Research Council,¹⁴ Eagle Forum,¹⁵ Christian Coalition,¹⁶ the John Birch Society,¹⁷ and Concerned Women for America¹⁸ have voiced concerns that granting rights to children will erode parental rights and “traditional” family values. They also assert that affording rights to children will undermine the authority of parents and even provide children with a forum to sue parents.¹⁹ The Eagle Forum has asserted that “[t]his treaty will gravely interfere with parents’ rights to raise and educate their children. The treaty assumes that the UN rights of the child would be enforced against parents, probably by government attorneys.”²⁰

¹¹ See *infra* notes 51 and 52 and accompanying text.

¹² See Office of the United Nations High Comm’r for Human Rights, Ratifications and Reservations: Convention on the Rights of the Child, <http://www.ohchr.org/english/countries/ratification/11.htm> (last updated May 8, 2006).

¹³ Focus on the Family, <http://www.family.org>.

¹⁴ Family Research Council, <http://www.frc.org>.

¹⁵ Eagle Forum, <http://www.eagleforum.org>.

¹⁶ Christian Coalition of America, <http://www.cc.org>.

¹⁷ The John Birch Society, <http://www.jbs.org>.

¹⁸ Concerned Women for America, <http://www.cwfa.org>.

¹⁹ William Saunders, *The UN Threat to the Family: Bad Treaties Make Bad Law*, Oct. 26–27, 2001, www.frc.org/get.cfm?i=PD02G1; Patrick F. Fagan, *How U.N. Conventions on Women’s and Children’s Rights Undermine Family, Religion, and Sovereignty*, Feb. 5, 2001, <http://www.heritage.org/Research/InternationalOrganizations/BG1407.cfm>.

²⁰ *Allegiance: A Briefing on Issues of Independence and Sovereignty*, PHYLLIS SCHLAFLY REP., Nov. 2000, <http://www.eagleforum.org/psr/2000/nov00/psmov00.shtml>.

In this view, “child rights” is translated to mean that “the state will become the final authority over a child. The parent is relegated to the role of caretaker.”²¹ The Heritage Foundation claims that the Convention “urges states to give minor children a ‘right to privacy,’ even in the household”²² and the right to full freedom of expression at home and in school.²³ The Family Research Council has also focused criticism on the provisions regarding privacy. For example, it is argued that because Article 13, regarding a child’s freedom of expression, contains no provision for parental supervision,²⁴ children will be made the “prey of satanic cults, pornographers and Internet pedophiles among other dangers.”²⁵ Article 15 regarding a child’s freedom of association²⁶ has been similarly criticized, posing the risk of “terrible things that happen to children when they frequent Internet chat rooms There is no parental supervision of the freedom of association of a child?”²⁷

The provisions of the Convention pertaining to health care have been of particular concern among opposition groups, who have interpreted them as guaranteeing children access to abortion. Article 24, which recognizes the right of the child to the highest attainable standard of health, has been the focus of much of this criticism.²⁸ “Nearly all the evils we face can be hidden in this language: Abortion, contraception as health care, pornographic sex education, abortion as a method of family planning, [and] stigmatization of traditional religious beliefs and educational practices.”²⁹ The Family Research Council has similarly interpreted the language of the Convention as allowing abortions. “In UN parlance, the ‘evolving capacities’ of children as young as ten years old mean they should have reproductive rights, which means access to abortion.”³⁰

²¹ Rev. Louis P. Sheldon, *United Nations Children’s Fund Seeks to Usurp Parental Rights*, Jan. 8, 2001, http://www.theForbiddenKnowledge.com/hardtruth/un_childrens_rights.htm.

²² Press Release, Heritage Foundation, UN Committees Take Aim at Family Structure and Morality, Analyst Says (Feb. 5, 2001), <http://www.heritage.org/Press/NewsReleases/NR020501.cfm>.

²³ See Fagan, *supra* note 19.

²⁴ Convention, *supra* note 7, art. 13.

²⁵ Mary Jo Anderson, *The New World Disorder*, WORLDNETDAILY, June 9, 2001, http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=23182; see Saunders, *supra* note 19.

²⁶ Convention, *supra* note 7, art. 15.

²⁷ Saunders, *supra* note 19.

²⁸ Convention, *supra* note 7, art. 24.

²⁹ Saunders, *supra* note 19.

³⁰ Lt. Col. Robert L. Maginnis, *Promoting a Positive Vision of the Family*, Sept. 1, 2002, <http://www.frc.org/get.cfm?i=PD0211> (Sept. 1, 2002).

Another concern raised by critics is that ratification will usurp U.S. state and national sovereignty. In 1995, Senator Jesse Helms, for many years the leading Senate opponent of U.S. ratification and then-chair of the Senate Foreign Relations Committee, introduced a resolution urging the President not to transmit the Convention to the Senate for its advice and consent.³¹ The resolution declared that the “Convention has the potential to severely restrict States and the Federal Government in their efforts to protect children and to enhance family life,” by “inhibiting the rights of the States and the Federal Government to enact child protection and support laws inconsistent with that standard.”³² Focus on the Family has also cautioned against the threat to national sovereignty, claiming that other parties to the Convention have been forced to make changes in domestic law.³³

Under the exacting requirement of two-thirds majority in the Senate for advice and consent, ratification of the Convention would be very difficult to achieve. Coupled with the current political climate it is unlikely that the Convention could obtain the support necessary for Senate consent. In the present context, with Christian and other conservatives playing a dominant political role, the Convention would face tremendous difficulty garnering support from the public and Senate sufficient to move through the ratification process. Until the Convention finds a more receptive environment, ratification is doubtful.

Though the opposition is based largely on misconceptions and misinterpretations, it has led to increasing public opinion against the Convention. Contrary to claims that ratification would harm the United States, the Convention would be beneficial for several reasons. In addition to improving the rights of the child in this country, U.S. ratification would send a powerful message to other States Parties regarding our commitment to children’s rights.

Claims that the Convention undermines parental authority are unfounded. The text of the Convention repeatedly emphasizes the fundamental role of the family unit and the authority of parents as means of enforcing the ideals set forth by the Convention. The Preamble asserts that

the family, as the fundamental group of society . . . should be afforded the necessary protection and assistance so that it can fully

³¹ S. Res. 133, 104th Cong. (1995).

³² *Id.*

³³ See Anderson, *supra* note 25.

assume its responsibilities within the community[, and] the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.³⁴

Article 5 affirms this respect, calling upon States Parties to “respect the responsibilities, rights and duties of parents . . . to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”³⁵

This principle is reaffirmed throughout the Convention. Article 7 assures children the right to a name as well as “the right to know and be cared for by his or her parents.”³⁶ Article 8 calls upon nations “to respect the right of the child to preserve his or her identity, including . . . family relations as recognized by law without unlawful interference.”³⁷ In General Comment 1, pertaining to the education of children, the Committee on the Rights of the Child reiterates that “[c]hildren’s rights are not detached or isolated values devoid of context [T]his article underlines the importance of respect for parents.”³⁸ Article 9 ensures “that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”³⁹ Article 18 calls upon countries to put forth “best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.”⁴⁰ This article calls for assistance for parents in performance of their duties. Article 27 calls upon states to take appropriate measures to assist parents and others responsible for the child to provide an adequate standard of living.⁴¹

The experiences of the 192 nations that have already ratified the treaty belie political claims that the Convention would undermine the family. If the

³⁴ Convention, *supra* note 7, pmb1.

³⁵ *Id.* art. 5.

³⁶ *Id.* art. 7.

³⁷ *Id.* art. 8.

³⁸ Comm. on the Rights of the Child, General Comment No. 1, art. 29(1), *The Aims of Education*, ¶ 7, U.N. Doc. CR/GC/2001/1 (2001).

³⁹ Convention, *supra* note 7, art. 9.

⁴⁰ *Id.* art. 18.

⁴¹ *Id.* art. 27.

Convention has not harmed families in Australia, Britain, Canada, Japan, Mexico, Nigeria, or Poland, why would the American family be undermined by the Convention?

Similarly, claims that the Convention advocates abortion for children are erroneous. Specific language regarding abortion is absent from the Convention. Determining the point at which life begins is left to individual countries, a fact which is evidenced by the Convention's near-universal ratification, in spite of widely varying national policies regarding abortion. General Comment 4 reaffirms the "responsibilities, rights and duties of parents" stated in Article 5⁴² in the context of adolescent health and calls upon countries to provide "parents (or legal guardians) with appropriate assistance through the development of institutions, facilities and services that adequately support the well-being of adolescents."⁴³

The assertion that the Convention encourages children to take legal action against parents is also incorrect. There is no mention of legal action against parents in the language of the Convention. While the Convention requires countries to provide some mechanism for hearing grievances, it does not specify whether the child alone may bring actions or to whom such actions should be brought.⁴⁴ Instead, these details are left to the implementing country to determine.

Until recently, many opponents of the Convention have cited the inconsistency between the Convention and U.S. law regarding the death penalty for juveniles as an insurmountable hurdle to its ratification. Article 37 of the Convention explicitly prohibits execution of offenders under the age of eighteen.⁴⁵ It should be noted that in 2005, the Supreme Court eliminated this hurdle by declaring the execution of juveniles to be in violation of the Constitution.⁴⁶

Although the United States has not yet ratified the Convention, any claims that the United States is not committed to international protection of the rights of the child are mistaken. In fact, the United States has already become party to both Optional Protocols to the Convention regarding children in armed

⁴² Convention, *supra* note 7, art. 5.

⁴³ Comm. on the Rights of the Child, General Comment No. 4, *Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, ¶ 16, U.N. Doc. CRC/GC/2003/4 (2003).

⁴⁴ See Convention, *supra* note 7, art. 20.

⁴⁵ *Id.* art. 37.

⁴⁶ *Roper v. Simmons*, 543 U.S. 551 (2005).

conflict⁴⁷ and child trafficking, prostitution, and pornography.⁴⁸ Both of the Optional Protocols entered into force in 2002. Additionally, the United States is party to the International Covenant on Civil and Political Rights, which contains provisions for the protection of children's rights.⁴⁹ Ratification of the Convention would simply reaffirm the principles in these treaties, which the United States has already pledged to uphold. Additionally, the United States would be saved the international embarrassment of being the only able government that is not a State Party. (Although Somalia has also failed to ratify the Convention, it is currently unable to pursue ratification because it does not have a recognizable government.)

Any argument that the Convention would undermine the authority of state and local governments is misplaced. Such human rights treaties as the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination⁵⁰ call on States Parties to enforce their provisions regardless of their federal structures. The United States has ratified both these treaties with understandings that assure that the authority of states has not been undermined. There is no reason to believe that the ratification of the Convention would have a different result.

Ratification of the Convention would also protect the rights of the child in the United States. In Canada, where the laws regarding child protection are similar to those in the United States, the government implemented a National Council for Crime Prevention, designed specifically to implement the Convention provisions regarding juvenile justice.⁵¹ Similarly, the United Kingdom has used Convention measures as a guideline in making improvements on early childhood health, particularly in the areas of preventable disease and child mortality.⁵² The Convention would enhance children's rights in U.S. law, as well as signaling the United States' commitments to the global community.

⁴⁷ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, G.A. Res. 54/263, Annex I, U.N. Doc. A/RES/54/263 (May 25, 2000).

⁴⁸ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, Annex II, U.N. Doc. A/RES/54/263 (May 25, 2000).

⁴⁹ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368.

⁵⁰ International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195, 5 I.L.M. 352.

⁵¹ Comm. on Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Canada*, ¶ 4, U.N. Doc. CRC/C/15/Add.37 (June 20, 1995).

⁵² Comm. on Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland*, ¶ 3, U.N. Doc. CRC/C/15/Add.135 (Oct. 16, 2000).

Ratification of the Convention on the Rights of the Child will enable a U.S. citizen to be eligible for service on the Committee on the Rights of the Child. When the United States has ratified other human rights conventions, the United States has been quite successful in persuading other States Parties to elect U.S. citizens to the relevant monitoring bodies. A U.S. member on the Committee on the Rights of the Child would be able to participate in the interpretation of this important treaty.

Although there are good reasons for ratifying the Convention, there is also a vehement and politically powerful opposition. Accordingly, human rights groups need to reconsider whether to advocate U.S. ratification of this treaty above all others. If human rights advocates focus too much on the Convention, they may galvanize the opposition and may make it more difficult to seek ratification of other human rights treaties.