

The UN Convention on the Rights of the Child

The purpose of this paper is to educate the public about the Convention on the Rights of the Child—the most quickly ratified international treaty in the history of the United Nations. Among the UN member nations, only the United States and Somalia have not ratified the treaty. Originally published by Youth Advocate Program International (YAP International) in 1998, this paper was last updated in October 2001. For more information, see “Unofficial Summary of the Main Provisions of the Convention on the Rights of the Child” from UNICEF, available via this website.

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International Treaty Advances the Rights of Children

by
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The United Nations Convention on the Rights of the Child (CRC) is a precedent-setting human rights treaty that heralds a new spirit of international cooperation as humankind enters the new century. The CRC is the most quickly and widely ratified convention in the history of UN human rights treaties. The 191 nations that have ratified the convention to date can say, with justifiable pride, that the needs of the world’s children were the impetus for this important document. The preamble of the CRC stipulates that its purpose is to “promote social progress and better standards of life in larger freedom” for all children.

Drafting of the CRC began in 1979 as part of the activities undertaken in the International Year of the Child. That event marked the beginning of ten years of work writing the CRC. Over 40 countries, including the United States, contributed to the effort.

The UN General Assembly adopted the convention in 1989, and it came into force just nine months later. Currently, all members of the United Nations have ratified the CRC except the United States and Somalia. In 1995, former President Bill Clinton signed the treaty, but the Senate has yet to vote its advice and consent, which is necessary for ratification according to U.S. law.

The CRC establishes a set of global standards that will impact both industrialized and developing nations. Its orientation is future-focused. Indeed, the CRC provides a remarkably comprehensive expression of what the world wants for its children. It was crafted not only by national governments, but by nongovernmental organizations, social and religious organizations, and child specialists from around the world.

In addition to improving the overall status of children in the world, the drafters of the CRC agreed on the necessity of the treaty because, despite overall global gains in several indicators of children's wellbeing, data particular to several regions of the world indicated that the quality of life of many children was static or deteriorating.

These concerns are still valid today. For example, UNICEF reports that the number of malnourished children in Africa has increased since 1990 and 11 million babies in South Asia are born each year with low birthweight. The HIV/AIDS epidemic continues to rage throughout sub-Saharan Africa, leaving millions of children orphans. Primary school enrollment has increased in all regions, but 100 million children of primary school age remain out of school. Increasing numbers of children suffer abuse, abandonment and exploitation related to poverty, armed conflict and societal destruction.

Rights

The term *rights* is one freely used and often ill-used to describe many different kinds of statements about the treatment of human beings. Some clarification of what rights are may provide guidance in understanding the implications of the CRC.

Rights are usually written as either descriptive or prescriptive statements. Descriptive statements specify those enforceable claims or legal safeguards an individual is currently entitled to in a particular legal system. Prescriptive statements are what rights, responsibilities and duties should apply to a defined group of people. UN declarations are

prescriptive statements referring to what *ought* to be the case for human beings, and the CRC is a prescriptive statement specifically aimed at children.

The rights of the child include both participation rights and protection rights. Participation rights are the rights to something. They are primarily social and political in nature and include, for example, the right to freedom of religion, association, education, and expression. Protective rights are rights to be protected *from* something. These rights include protection from abusive or degrading treatment, protection from capital punishment, and protection from the denial of education or health care.

Children have had precarious and often conflicting rights provided through national governments as each nation has struggled with an evolving definition of childhood and the individual human status of the child. In the early history of the United States, children were the property of their fathers and, for the most part, had no individual status in the eyes of the law.¹ Later, as the United States underwent rapid industrialization and experienced an increased birth rate, laws were established that directly intervened in the role of the family by limiting child labor, mandating immunizations, and establishing public education for children. Current legislation still starts

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from a premise of parental rights even though there is a trend toward recognizing the individual status of the child.

Ratification

Researcher Ruth Lawrence-Karski explains the role of the CRC this way—“The Convention represents a set of internationally agreed common values that was drafted through agreement in the international community. In the conception of rights adopted here, the Convention remains a set of aims until it is connected to a specific rule system, i.e. conversion into an enforceable legal code in a particular setting.”² In other words, no international treaty is binding on a particular nation until that nation’s governing authority ratifies the treaty. And the provisions cannot be implemented until the nation’s government passes the necessary laws to do so.

Throughout history, the United States has taken time—sometimes decades—to review human rights conventions and complete the ratification process (see “Steps in the Ratification Process”). It is possible for a country to agree with a human rights convention in principle and take exception to particular articles. In fact, most countries have ratified the CRC with their own package of reservations, understandings and declarations. A reservation indicates that a particular portion of the treaty will not be observed. Understandings and declarations clarify how the language of the treaty will be interpreted by the ratifying country.

Implementation

The implementation of the CRC can be achieved only through the national and state-level legislative process. What is truly exceptional and also controversial about the CRC is that it does not confine itself to addressing only the obligations of governments. The CRC includes prescriptive statements relevant to every adult and every child. Implementation of the CRC is based on the concept that the “best interests of the child” shall be primary over competing interests and provide guidance to policy makers.³

The CRC intends to insure that families and governments meet their responsibilities toward protecting and promoting children’s rights. Although the CRC stipulates that “the best interests” of children will be the basic concern of families, the CRC has no mechanism for individual redress, and the UN cannot hold parents responsible for the treatment of their children. Only national or local governments—through various legal instruments—can hold parents or guardians responsible.

The CRC stipulates that nations must provide the resources necessary for all families to meet children’s needs. It lists concrete obligations of national governments in articles 18, 26 and 27 to help families raise children. Advocates for families will find much in the CRC to strengthen the case for public support of basic services for children.

Monitoring

No nation can meet the standards of the CRC overnight. Instead, the drafters integrated a process

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for measuring progress to insure that the implementation of the CRC was not left in the realm of wishful thinking. All parties ratifying the CRC are responsible for making the principles and provisions known to adults and children alike. They also must submit reports to the United Nations on the measures taken to give effect to the rights in the CRC. Reports are required within the first two years of ratification and every subsequent five years.

The Committee on the Rights of the Child was established as a formal monitoring mechanism within the CRC. The Committee consists of 10 experts with recognized competence in this field nominated and elected by the governments that have ratified the treaty. Members serve four-year terms. The Committee meets to review national reports and may request more information on issues and recommend special investigations.

Concerns About the CRC

Groups of American citizens have focused their opposition to the U.S. ratification of the CRC

around two primary sources of concern— an aversion to internationalism and the comprehensive nature of the CRC. Those citizens opposed to internationalism believe that ratifying the CRC would lead to ceding U.S. constitutional authority to the United Nations. There is no legal basis for this concern because the U.S. Constitution is recognized as the supreme law of the country.

Those objecting to the comprehensive nature of the document disagree on a number of issues, including limitations on child labor, interpretation of the child’s freedom of association, and corporal punishment. There are, however, three controversial issues in current American society where broad organized, political opposition has been mobilized.⁴

- 1) Education and religious instruction. Opponents fear that the CRC will deny parental authority to educate children at home and provide special religious guidance. One of the CRC provisions

Steps in the U.S. Ratification Process for International Treaties

	Completed for the CRC	Not Completed
● Signature of the U.S. President	X	
● Hearing by the U.S. Senate Foreign Relations Committee		X
● Brought to the whole U.S. Senate and scheduled for a vote		X
● Approved by a two-thirds majority in the U.S. Senate		X
● Final document (including reservations, declarations and understandings) sent to the UN General Assembly		X

specifically cited as objectionable is the statement in Article 29 that education should incorporate respect for the values of cultures, other than the child's own, in "the spirit of understanding, peace, tolerance, equity of sexes, and friendship among all peoples, ethnic, national, and religious groups, and persons of indigenous origin."

2) Privacy. Article 16 of the CRC states "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation." This guarantee of privacy is interpreted by opponents to include the right to have an abortion without parental consent and the right to obtain and use birth control.

3) Capital Punishment. Clearly in conflict with the laws of some states, Article 37 of the CRC states that "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below 18 years of age." Some states allow for the application of the death penalty in cases where the prosecuted individual may be as young as age 14.

Parental authority in general is supported within the CRC. The central role of parents as the primary caregivers of children is given deference in at least nine different articles. Article 5, in particular, requires national governments 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."

Conclusion

The drafters of the CRC intended for this document to live in the hearts and minds of individual human beings—adult and child alike. It sets a clear and comprehensive standard for how children should be treated and valued that has been accepted by the vast majority of the world's national governments. With the treaty already in effect, it now remains to be seen how governments will meet that standard in the context of the conditions, needs and values of their individual societies. ●

Endnotes

1. Ruth Lawrence-Karski, "Legal rights of the child: the United States and the United Nations Convention on the Rights of the Child," *The International Journal of Children's Rights* 4:19-44, 1996.
2. *Ibid.*, p. 21.
3. See *United Nations Convention on the Rights of the Child: Answers to 30 Questions*, a handbook prepared by Childrights International Research Institute. 1996. Authors Cynthia Price Cohen and Susan H. Bitensky discuss many concepts, including "the best interests of the child" on p. 2.
4. For an overall summary of arguments against the CRC, see Susan Kilbourne, "Political Opposition to the Convention on the Rights of the Child." *ICCB News*; a newsletter of the International Catholic Child Bureau's North American Regional Office. Winter 1996-1997. pp. 12-14.

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