

Summer 2001

Convention on the Rights of the Child: Has America Closed Its Eyes?

Michelle Z. Hall

Follow this and additional works at: https://digitalcommons.nyls.edu/journal_of_human_rights



Part of the [Law Commons](#)

Recommended Citation

Hall, Michelle Z. (2001) "Convention on the Rights of the Child: Has America Closed Its Eyes?," *NYLS Journal of Human Rights*: Vol. 17 : Iss. 3 , Article 10.

Available at: https://digitalcommons.nyls.edu/journal_of_human_rights/vol17/iss3/10

This Article is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Journal of Human Rights by an authorized editor of DigitalCommons@NYLS.

Convention on the Rights of the Child: Has America Closed Its Eyes?

"There is no trust more sacred than the one the world holds with children.

*There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in Peace."*¹

IS THERE ADEQUATE JUSTIFICATION FOR NON-RATIFICATION?

War, poverty, and exploitation of children may seem worlds away, but the reality is that tens of millions of children around the world are subject to such hardship everyday. Currently, 191 countries have formed a coalition in an effort to save the 5.1 billion children worldwide living — many of whom are dying destitute. As a result, a child protection protocol has emerged, but its status as customary international law remains elusive, in part because of the United States decision not to ratify.²

Nearly a decade ago, the United Nations adopted the Convention on the Rights of the Child, the most comprehensive statement of children's rights ever made and the first to give such rights the force of international law.³ Article 2 of the CRC provides that countries adhering to the convention shall "respect and ensure" the rights of each child within their jurisdiction regardless of the child's race, color, gender, religion, nationality, disability, birth or other

¹ Kofi Annan, *State of the World's Children 2000* at 4, available at <http://www.unicef.org/sowc00>.

² See United States Fund for UNICEF, *United Nations Convention on the Rights of the Child, Frequently Asked Questions*, available at <http://www.unicefusa.org/infoactiv/rights.html> [hereinafter *Frequently Asked Questions*].

³ See *Committee on Rights of the Child Gets Underway in Geneva* in *UN Newservice*, 8 January 2001, available at <http://www.un.org/News/dh/latest/page2.html>. See also *Frequently Asked Questions*, supra note 2 (stating that "[t]he CRC's internationally recognized norms include: protection from violence, abuse, and abduction; protection from hazardous employment and exploitation; adequate nutrition; free compulsory primary education' adequate health care; equal treatment regardless of gender, race, or cultural background").

status.⁴ The United States, like other UN State Parties (countries that consent to be bound by the treaty's provisions), willingly signed the treaty. However, it did so "subject to ratification." Signing subject to ratification means that the United States generally agrees with the treaty's objectives, but must examine all provisions thoroughly before submitting the treaty for ratification.⁵ In the United States, ratification requires the issue to be introduced before the Senate Foreign Relations Committee and agreed upon by a 2/3-majority.⁶ If and when the Senate advises and consents to ratification, the President may ratify. In international law, a State Party is legally obligated under a treaty only after both signing and ratification requirements are met.⁷

Although the United States signed the CRC in 1995, it has yet to ratify. Numerous reasons have been proposed to explain or justify the delay. One reason for delay may be the lengthy review process, which requires a thorough evaluation of the CRC's constitutionality and concern with the CRC's potential impact.⁸ Another reason may be that the issue is just too politically contro-

⁴ Convention on the Rights of the Child, *adopted* 20 Nov. 1989, *entered into force* 2 Sept. 1990, G.A. Res. 44/25, 44 U.N. GAOR, Supp. (No. 49), U.N. Doc. A/44/49, at 166 (1989), *reprinted in* 28 I.L.M. 1448 (1989) [hereinafter "CRC"], Article 2, para. 1.

⁵ See Catherine Langevin-Falcon, *Second Class Citizen?*, HUMANIST (November/December 1998), *available at* http://www.dalton.org/groups/human_rights/dalton_free..%20Second%20Class%20Citizens.htm [hereinafter "*Second Class Citizen*"].

⁶ See International Human Rights Instruments, Core Document Forming Part of the Reports of States Parties: United States of America¹, HRI/CORE/1/Add.49, 17 August 1994 (Core Document), *available at* <http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/b19e732af03f9b804125632400516860?Opendocument> [hereinafter "Core Document"]. Note 64 states, "the Senate has certain powers especially reserved to that body, including the authority to confirm presidential appointments of high officials and ambassadors of the federal government, as well as authority to give its advice and consent to the ratification of treaties by a two-thirds vote." *Id.*

⁷ See United Nations Treaty Collection: Treaty Reference Guide, *available at* <http://untreaty.un.org/English/guide.asp>.

⁸ See Core Document, *supra* note 6 at n. 137 (stating that "Congress must give careful consideration to the specific provisions of the treaty and to the question of consistency with existing State and federal law, both constitutional and statutory. When elements or clauses of a treaty conflict with the Constitution, it is necessary for the United States to take reservations to those elements or clauses, simply because neither the President nor Congress has the power to override the Constitution. In some cases, it has been considered necessary for the United States to state its understanding of a particular provision or undertaking in a

versial. The United States has historically taken extremely long periods to ratify proposed treaties that it deems too controversial. For example, the Convention on the Prevention and Punishment of the Crime of Genocide⁹ took 40 years for the United States to ratify.¹⁰ Another example is the Convention on the Elimination of All Forms of Discrimination Against Women,¹¹ which was signed by the United States over 19 years ago yet still has not been ratified.¹² Many fear that the CRC may be doomed to the same fate.¹³

TREATY OPPOSITION AND POLITICAL PERSUASION

The CRC's mission is to "promote the rights of Children, strengthen government efforts to serve families, and build upon the efforts of non-governmental organizations on behalf of children." So how can something so good-willed be so politically controversial? According to the United States Fund for UNICEF, the United Nations Children's Fund, the answer lies in "widespread misconceptions about [CRC's] intent, provisions and potential impact and political opposition."¹⁴

First, according to UNICEF, the treaty's opposition believes that the CRC would enable the UN to usurp United States sovereignty.¹⁵ UNICEF's response is that the CRC contains no language or mandates regarding how a country should implement the treaty. Furthermore, neither the UN nor the CRC would have "dominion, power, or enforcement authority over the United States and its citizens,"¹⁶ so should any conflict of laws arise between the CRC and

treaty, or to make a declaration of how it intends to apply that provision or undertaking.").

⁹ See Convention on the Prevention and Punishment of the Crime of Genocide, adopted 9 Dec. 1948, G.A. Res. 260(III), U.N. Doc. A/810, at 174 (1948), 78 U.N.T.S. 277 (entered into force 12 Jan. 1951).

¹⁰ See *Second Class Citizen*, *supra* note 6.

¹¹ See Convention on the Elimination of All Forms of Discrimination against Women, adopted 18 Dec. 1979, entered into force 3 Sept. 1981, G.A. Res. 34/180, 34 U.N. GAOR, Supp. (No. 46), U.N. Doc. A/34/46, at 193 (1979), reprinted in 19 I.L.M. 33 (1980).

¹² See Status of Ratifications of the Principal International Human Rights Treaties (as of 28 March 2001), available at <http://www.unhcr.ch/html/menu3/b/e1cedaw.htm>.

¹³ Frequently Asked Questions, *supra* note 3.

¹⁴ *Id.*

¹⁵ *See id.*

¹⁶ *See id.*

the United States Constitution, the Constitution would prevail.¹⁷ Additionally, the United States views all human rights treaties as “non-self-executing” meaning that treaties can only be enforced through domestic legislation.¹⁸ Finally, where the CRC is in force, compliance is strictly voluntary. “States Parties . . . can’t be prosecuted; the United Nations cannot impose sanctions.”¹⁹ Since *Reid v. Covert*,²⁰ the Supreme Court has held that under the Supremacy Clause of the United States Constitution, no treaty can “override” the federal Constitution.²¹

Second, the opposition believes that the CRC would undermine parental authority and threaten the parent-child relationship. UNICEF counters this argument by stating that one of the primary roles of this act is to show the importance of family.²² Ample language throughout the CRC, from its preamble to its articles, supports this statement. The CRC’s preamble states:

. . . the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community . . . 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.²³

Third, the opposition claims that the CRC would allow and encourage children to sue their parents and to have abortions. The issue of children suing their parents is not addressed by the Convention. Although each state is required to let children’s grievances be heard, the Convention does not require such hearing to be before a judicial body. Where and how the child is heard depends upon the specifics set forth by each individual nation.

The issue of children having abortions is kept neutral in order to “provide the needed flexibility to conform to the many cultures

¹⁷ *Second Class Citizen*, *supra* note 6.

¹⁸ *See id.*

¹⁹ *Id.*

²⁰ *See Reid v. Covert*, 354 U.S. 1 (1957).

²¹ Frequently Asked Questions, *supra* note 3.

²² *See id.*

²³ CRC, *supra* note 5, preamble.

and legal systems of the world.”²⁴ The CRC has not only been ratified by countries, such as Sweden and France, that recognize their citizens’ right to abortion, but also, Ireland and the Philippines have ratified the convention as well, despite strict abortion laws.²⁵

Fourth, the opposition claims that the CRC would enable the UN to dictate how citizens of the United States can raise and teach their children, including the allocation of corporal and capital punishment. Article 37 of the CRC explicitly prohibits capital punishment for minor children under the age of 18.²⁶ This standard differs from the United States’ “constitutional right of individual states to execute those who are convicted of committing capital crimes while under the age of 18.”²⁷ Currently, many state statutes allow for executions at the age of 16 or younger, posing a direct conflict with the CRC. However, as with the prior three concerns, this once can also be adequately addressed. In 1992, the same conflict arose when the United States ratified the International Covenant on Civil and Political Rights, another treaty dealing with the prohibition of the execution of minors.²⁸ The United States ratified the treaty but “took a reservation” on that specific issue. Essentially, the International Covenant on Civil and Political Rights was ratified, but not in its entirety.²⁹

UNICEF USA states that these four main “misconceptions” among the general public and elected officials have resulted in tremendous opposition to the treaty here in the United States.³⁰ Individual and organizational efforts to portray the CRC as a threat have succeeded in making the treaty an untouchable political issue. As a result, Jesse Helms, chairman of the Senate Foreign Relations Committee, has indicated that he will refuse to even consider the CRC, let alone ratify it.³¹

²⁴ Frequently Asked Questions, *supra* note 3.

²⁵ See U.N. Treaty Collection: Declarations and Reservations, available at http://www.unhchr.ch/html/menu3/b/treaty5_asp.htm.

²⁶ CRC, *supra* note 5, Article 37.

²⁷ Frequently Asked Questions, *supra* note 3.

²⁸ International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, G.A. Res. 2200A, 21 U.N. GAOR Supp. (No. 16) at 53, U.N. Doc. A/6316 (1966), opened for signature 19 Dec. 1966, 999 U.N.T.S. 171 (entered into force 12 Jan. 1951).

²⁹ See U.N. Treaty Collection: Declarations and Reservations, available at http://www.unhchr.ch/html/menu3/b/treaty5_asp.htm.

³⁰ Frequently Asked Questions, *supra* note 3.

³¹ *Id.*

IGNORANCE IS BLISS . . . BUT ONLY TO THE IGNARANT

Until United States citizens educate themselves about the benefits of the CRC, they will continue to fear the unknown. As a result, children will suffer needlessly while the United States vacillates in political rhetoric. Children growing up in the United States today face some of the "highest rates of poverty, hunger, and infant mortality in the industrialized world."³² All of these plights and more are addressed by the CRC. United Nations Children's Fund statistical data shows that: "three children die every day in the United States due to abuse and neglect, and nearly three quarters of all the murders of children in industrialized countries occur in the United States."³³

Other statistical findings are just as disturbing. House Resolution 3017, introduced in the House on 9 November 1997, by Independent Representative Bernard Sanders of Vermont, called for ratification of the CRC.³⁴ The Resolution announced, in part, that one-quarter of America's children lived in poverty during the 1990s — the worst child poverty rate among Western industrialized nations; that 2,600,000 children were reported abused and neglected in 1991; and that approximately 144,000 babies in the U.S. would die before turning one year old in between 1997 and 2001.³⁵ Despite these statistics, House Resolution 3017 has remained dormant. Renowned children's rights activist, Susan Kilbourne, was quoted in *THE HUMANIST* as saying, "the official line is that the Convention is under State Department review, but the political reality is that it's not going anywhere until the political climate changes." Kilbourne went on to state that, "for every letter received by the Senate in support of the convention, one hundred are received in opposition."³⁶

By ratifying the CRC, the United States would benefit its own children while helping to enhance the lives of children worldwide. As a signatory party, the United States could establish policies at all levels of government to address the specific needs of children. Because the CRC mandates reporting on the condition of children, the

³² *Id.*

³³ *Id.*

³⁴ See Rights of the Child Act of 1997, H.R. 3017, 105th Cong. (1997) (introduced in the House).

³⁵ *Id.*

³⁶ *Second Class Citizen*, *supra* note 6.

U.S. would have to consistently monitor children within its own borders to ensure compliance.

SPECIAL SESSION PLANNED FOR 2001 —
WILL AMERICA PARTAKE?

New York will host a United Nations General Assembly Special Session on Children this September focusing on violence against children. The main objectives of the Session include renewing worldwide commitments made to children on September 30, 1990 at the World Summit for Children as well as considering future action to benefit children. Other noteworthy items on the agenda include developing a “plan of action for the respect, fulfillment, promotion, and protection of children’s rights,”³⁷ and “[re-viewing] achievements in the implementation and results of the World Declaration and Plan of Action of the World Summit.”³⁸

In addition to the aforementioned agenda items, the adoption of two optional United Nations Protocols will be discussed. First is the adoption of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.³⁹ This agreement is aimed at preventing the forcible recruitment of children for use in armed conflict. Second is adoption of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.⁴⁰ Together, these “optional protocols” would provide unprecedented protection for children. More importantly, though, each protocol may be signed and adhered to by States Parties whether or not they agree to be bound by the CRC. President Clinton proudly touted in a presidential document written 27 July 2000, that he immediately signed and sent the UN optional protocols to the Senate and the House and that both have expressed their support for the Protocol on the Involvement of Children in Armed Conflict. However, there was no word on support for the optional protocol deal-

³⁷ See Introduction to the Special Session on Children, *available at* <http://www.unicef.org/specialsession>.

³⁸ *Id.*

³⁹ See Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, U.N. GAOR, 54th Sess., U.N. Doc. GA/RES/54/263 (25 May 2000).

⁴⁰ See Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N. GAOR, 54th Sess., U.N. Doc. GA/RES/54/263 (25 May 2000).

ing with child slavery, prostitution, and pornography. Even more disturbing was that there was no mention of ratifying the CRC.

Whether Clinton's failure to mention the CRC was a short-sighted blunder or an intentional political strategy, the CRC must not be pushed aside in 2001. Catherine Langevin-Falcon eloquently summarized the CRC, its profound purpose, and the result of America's lack of vision in her article *Second Class Citizen* when she wrote that, "the Convention on the Rights of the Child is an international statement of a child's fundamental human dignity. How can we as Americans accept that the affirmation of fundamental children's human rights is nearly universal with the exclusion of our own country?"⁴¹

Michelle Z. Hall

⁴¹ *Second Class Citizen*, *supra* note 6.