

UN Convention on the Rights of the Child: Unconstitutional, Unwise, Undermines Parents

by Thomas W. Jacobson (25 September 2012)

The United Nations' Convention on the Rights of the Child (CRC) has been ratified by 193 nations. The United States is one of only three Member Nations of the United Nations that have not ratified the CRC, but would be inestimably unwise to do so for the reasons stated in this brief. The U.S. signed the Convention on 16 February 1995, but has never ratified it. In the U.S. Senate, 38 Senators have cosponsored Senate Resolution 99 to stop ratification of the CRC. If they hold that position, they have enough votes to block ratification.

CRC Violates U.S. Constitution & U.N. Charter

The issue of authority must first be accurately determined before any legitimate deliberations regarding provisions of any government policy, agreement, or treaty.

The United States Constitution was drafted in 1787, and ratified in 1788, granting very limited but essential powers to the national government. No power was granted pertaining to family and children matters, but these “powers not delegated to the United States by the Constitution ... are reserved to the States respectively, or to the people” (10th Amendment). Consequently, President Bill Clinton, and Secretary of State Madeleine Albright who signed the CRC at his directive in 1995, violated their oaths of office.

The United Nations Charter was ratified in 1945. A founding Principle in Article 2 assured all Member Nations that it would not interfere or control domestic matters within nations: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter” (par. 7).

Matters pertaining to family and children are domestic matters! Thus, most provisions of the CRC violate the U.N. Charter, except for those pertaining to truly international matters, such as freedom of movement between countries or multi-national human trafficking.

Therefore, based on the U.S. Constitution and the U.N. Charter, the U.S. Senate and President have no lawful authority to ratify the CRC. If the President and Senate collaborate and ratify the CRC, parents along with local and state governments would lose control over extensive areas of domestic policy. The federal government – with oversight by the CRC Committee which monitors compliance – would force States to change their laws to conform to the CRC, taking control of policies related to children, adolescents, marriage, family, education, juvenile criminal justice, capital punishment, and more.

Mr. Jacobson wrote this paper in 2012 when serving as a Visiting Fellow for Freedom Alliance in their Center for Sovereignty & Security.

Positive Aspects of the CRC

Because 193 nations have ratified the CRC making it the most highly regarded UN treaty, it is important to be aware of positive aspects of the Convention which every nation would be wise to incorporate into their domestic law, such as those below.

1. Right to Life of Preborn Children. The Preamble declares that, “the child ... needs special safeguards and care, including appropriate legal protection, before as well as after birth.” Article 6 proclaims, “States Parties recognize that every child has the inherent right to life.” Article 24 requires these nations “To diminish infant and child mortality.” Of the UN Member Nations, 59 do have laws protecting pregnant mothers and their preborn children, but tragically 68 permit abortion for reasons beyond saving the life of the mother, and 66 permit abortion for any reason.

2. Affirms “the family as the fundamental group of society,” and that a child “should grow up in a family environment” (Preamble), and have “the right to know and be cared for by his or her parents” (Art. 7.1). The CRC calls on Party Nations to “ensure 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” (Art. 9.1). In the United States, some social workers, governmental authorities, and courts have increasingly abused this power, wrongfully accusing parents of harming their children, and sometimes taking their children from them. This is precisely why two attorneys, Michael Farris and Michael Smith, created the Home School Legal Defense Association in 1983 to defend the rights of parents to home school their children, and to protect their children from being unlawfully taken from them. Farris also created ParentalRights.Org to educate Americans about the CRC, build opposition to CRC ratification, and lead the effort for a Parental Rights Amendment to the U.S. Constitution.

3. Affirms that “Parents ... have the primary responsibility for the upbringing and development of the child” (Art. 18), but asserts government oversight of those responsibilities.

4. Promotes Family Reunification Across Borders. National Parties must allow parents or children to enter or leave the nation “for the purpose of family reunification” (Art. 10).

5. Affirms Children should be Protected From All Harm and Exploitation.

Governments and schools must “take all appropriate ... measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person” (Art. 19.1; see Arts. 32, 36, 37). The wording makes it appear that parents are the most likely abusers, but the children least likely to suffer abuse are those living with both their biological father and mother. The vast majority of Dads and Moms are fiercely protective of their own children.

6. Calls for Protection of Children from Sexual Exploitation and Abuse. Articles 34 and 35 require National Parties to “protect the child from all forms of sexual exploitation and sexual abuse,” and “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.” Ironically, the *Trafficking in Persons Report 2012*, produced by the U.S. Department of State,

lists 42 of these CRC Party Nations on its Tier 2 Watch List, and 17 more on Tier 3 (worst nations), because of high numbers of victims, insufficient legal protections, failure to protect, and unwillingness to enforce existing laws.¹

7. Provides a few Wise Guidelines for Child Adoption. Article 21 requires countries permitting adoption to “ensure that the best interests of the child shall be a paramount consideration.” Other provisions of the same article require cautious procedures to be sure the adoption is “permissible in view of the child’s status concerning parents, relatives and legal guardians,” and also encourage “inter-country adoption.” The United States doesn’t need additional regulations for adoption. Unlike most nations, the U.S. has numerous local, state, and federal laws that have made the adoption process unduly burdensome and costly for married couples wanting to adopt.

In addition, the CRC does provide many protections, if implemented, for children in countries or regions where families are separated or destroyed by conflict, or where they are not protected. Article 8 requires “respect of the child to preserve his or her identity, including nationality, name and family relations.”

Serious Flaws of the CRC

1. The CRC Posits Children as Belonging to the State Instead of to Their Parents. In every provision pertaining to family, the CRC posits the National Government – with oversight by the Committee on the Rights of the Child and other United Nations entities – as primarily responsible for all children within their jurisdiction, and all parents as subject to their oversight. For example, Article 2 declares: “States Parties shall respect and ensure the rights set forth in this present Convention to each child within their jurisdiction ... irrespective of the child’s ... parent’s ... religion, political or other opinion”

2. The CRC Negates Parental Authority by Positing Children as Equal to Parents. The CRC seeks to position children as equal to, largely autonomous from, and even above their parents.

3. The CRC places “the best interests of the child” as “primary” over all other considerations (Arts. 3, 9, 18, 20, 21, 37, 40). This principle appears to be good, but devalues or even disregards the inherent primary authority, responsibility, love, and best judgment of parents for their own children. Who decides “best interest” is the big question. It positions those with limited knowledge and sometimes questionable motives – social service, court, or other government representatives – above parents in determining what is best for children. Also, when listening to children, government representatives may presume children know what is best for themselves, even though most lack the maturity to make a wise determination.

4. The CRC Undermines the Legitimate Role of Parents by failing to recognize their pre-existing, God-given authority and responsibility to direct the care, upbringing, and education of their children in all areas. While it requires National Parties to “respect the responsibilities, rights and duties of parents,” the CRC says this is so parents can provide “appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention” (Art. 5; see also Art. 27.3). Parents are viewed as pawns to implement the CRC.

5. The CRC Makes the Government Overseer of the Division of Parental Responsibilities. “States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child” (Art. 18). This provision could be misused to force fathers to work less than full time so their wives can work an equal number of hours, enabling both to be home with the children the same amount of time – as if fathers can replace mothers and are gifted with the same innate mothering nature.

6. The CRC Requires Governments to Help Parents Raise Their Children, which is Not a Civil Government Duty. National Parties “shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children” (Art. 18.2). This would make the Government the illegitimate Parent of all Parents and Children.

7. The CRC Requires Governments to Guarantee Child-Care Services. National Parties “shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible” (Art. 18.3). This provision could require governments to tax the people to provide child-care services for some families.

8. The CRC Committee Interprets Spanking as Child Abuse and pressures nations to enact laws prohibiting corporal punishment. The Committee will be covered in the next brief, but they take their justification for this position from Article 37: “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” The Committee inappropriately confuses discipline and abuse, and lacks the wisdom of Solomon, who said: “He who spares his rod hates his son, but he who loves him disciplines him diligently” (Proverbs 13:24).

9. The CRC Requires Compulsory Free Public Education, with Government Standards and Pro-UN and CRC Perspectives. “State Parties ... shall ... Make primary education compulsory and available free to all,” and ensure that all “educational institutions” are “subject always to the observance of the principles set forth” in the CRC, and “conform to such minimum standards as may be laid down by the State” (Art. 28). In addition, “education of the child shall be directed to ... The development of respect ... for the principles enshrined in the Charter of the United Nations” (Art. 29). This is another socialist ideal requiring governments to fund, control, and direct all education; and like communistic methods, to shape the minds of children favorable toward the UN and CRC, rather than to be honest critical thinkers. These strategies do not honor children or the prior God-given directive to parents to train their children, and are likely hostile to home and private education.

10. The CRC has a Low Age Threshold of 15 for Military Service. Because some nations allow children to be recruited for military service and participate directly in hostilities, the CRC sets the threshold at age 15 (Art. 38), but that is three years younger than the U.S. threshold of 18.

11. The CRC Prohibits “capital punishment” or “life imprisonment without the possibility of release ... for offenses committed by persons below 18 years of age” (Art. 34.a), even for murder. But these decisions are within the domestic jurisdiction of local, state, and national governments.

12. The CRC Committee of 18 Foreign Experts Would Oversee U.S. Domestic Policy. The Committee on the Rights of the Child is comprised of 18 “experts” from 18 foreign nations,

which currently includes Egypt, Saudi Arabia, Syria, Thailand, Tunisia, and Norway² (where most children are born out of wedlock).

13. The CRC Attempts to Arbitrarily Grant Adult Rights to Children:

- **Unlimited (nearly) right to any information without parental consent:** “The child shall have the right to ... freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice,” with only two restrictions allowed: (a) “respect of the rights or reputations of others” or (b) “protection of national security or of public order, or of public health or morals” (Art. 13). Further, Article 17 claims children have the right of “access to information and material from a diversity of national and international sources,” without reference to parental oversight. That means, apart from these limitations, a child can say, write or communicate anything, and read, hear or view anything from any source, regardless of parental concerns, rules or guidance. This would allow people other than parents to shape a child’s mind, even contrary to parental desires. This also seems to guarantee to children a right to watch whatever they want on TV, and read or view whatever they want on their computers, etc.
- **“(T)he right of the child to freedom of thought, conscience and religion,”** including the right to “manifest one’s religion or beliefs,” with parents providing “direction to the child in the exercise of his or her right” (Art. 14). This is another provision that looks innocent, but can be misused by a rebellious child who rejects the beliefs of his parents, or claims a “right” not to go to church or synagogue. It can also make it difficult or impossible for parents to fulfill their duty to train up their children “in the discipline and instruction of the Lord” (Ephesians 6:4).
- **“(T)he right to express (their) views freely in all matters affecting the child”** (Art. 12.1), once “capable of forming his or her own views,” even in court. Parents are not mentioned, including the vital importance of their views, or the child’s obligation to honor them.
- **Unlimited “right to freedom of expression”** (Arts. 13), with minimal restrictions.
- **“(T)he rights of the child to freedom of association and to freedom of peaceful assembly”** (Art. 15), meaning a child can choose bad friends or groups and ignore his parents wise counsel. But, “Bad company corrupts good morals” (I Corinthians 15:33).
- **Unlimited right to privacy.** “No child shall be subjected to arbitrary or unlawful interference with his or her privacy ... (and) has the right to the protection of the law against such interference” (Art. 16). There is no mention of parents. Already in the U.S., right to “privacy” is used wrongly; under the CRC, expect it to be used much more to provide children with immoral information, contraception, abortifacients, abortions, or other medical procedures without parental knowledge or consent.
- **Access to contraception and “services” without parental consent.** “State Parties shall strive to ensure that no child is deprived of his or her right of access to health care services,” including “family planning education and services” (Art. 24). The UN now interprets such language as guaranteeing access to contraception, and even abortifacients and abortions.
- **“(T)he right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”** (Art. 27.1), which is precisely what the vast majority of parents strive to achieve at great sacrifice, but this is a socialist ideal which cannot, and should not, be guaranteed by civil government.

- **“(T)he right of the child to rest and leisure”** (Art. 31). Putting that in law can certainly encourage laziness and slothfulness in children.
- **“(T)he right to benefit from social security”** (Art. 26) presupposes socialized government, with no reference to parents, or parents or children working and paying into a system.

Current Status of the CRC Within the U.S. Government

The Office of the President has never sent the CRC to the United States Senate for its “advice and consent” (U.S. Constitution, Art. 2, par. 2), though that could be done any day. Once sent, it would be forwarded to the Senate Foreign Relations Committee, and if approved by a majority, then would go to the full Senate. If it is brought up for consideration in the Senate, and “two-thirds of the Senators present concur” – which would be 67 if all 100 Senators were present and voting, but potentially far less if they were not all present – then the Senate would return the treaty to the President with its advice and consent. However, if 38 Senators hold their position against the CRC and are present, it could not be approved for ratification.

For any UN treaty approved by the Senate, they may include recommended reservations, understandings and declarations (“RUDs”), though these may be challenging to sustain due to international pressure to withdraw any RUDs. The last step is up to the President. If he chooses to finalize ratification, he would send a written notice to the Secretary-General of the United Nations.

¹ “Tier Placements,” *Trafficking in Persons Report 2012*, U.S. Department of State. <http://www.state.gov/j/tip/rls/tiprpt/2012/192363.htm>

² “Committee on the Rights of the Child – Members,” Office of the United Nations High Commissioner for Human Rights. <http://www2.ohchr.org/english/bodies/crc/members.htm>