

Background

This document provides an overview and historical background on the UN Convention on the Rights of the Child and the status of its ratification in the United States.

What is the Convention on the Rights of the Child?

The UN Convention on the Right of the Child (CRC) is an international human rights treaty that promotes the rights of all children worldwide.¹ Broadly, the treaty guarantees children the right to survival, the right to develop to their fullest potential, the right to protection from abuse, neglect and exploitation and the right to participate in family, cultural and social life.²

The CRC was adopted by the United Nations on November 20, 1989 and went into effect in September of 1990. To date, 195 countries have ratified the convention. Most recently South Sudan ratified the CRC and Somalia has begun the process of ratification.³ The United States will soon stand alone as the only country to not have ratified the treaty.

What is the status of the United States with regards to the CRC?

The United States was a prominent drafter and advisor of the CRC in the 1980s under the Reagan and Bush Administrations.⁴ In February of 1995, Madeline Albright, Secretary of State during the Clinton Administration, officially signed the CRC on behalf of the United States. However, the treaty was never ratified and therefore, the United States is currently not a party to the treaty.⁵

What is the procedure to get the CRC ratified in the United States?

The process to ratify treaties in the United States includes the following steps:

1. Negotiation and Conclusion
2. Signature
3. Transmittal to the Senate by the President, which may include proposed reservations, understandings and/or declarations (RUDs)
4. Referral to the Senate Committee on Foreign Relations
5. Senate approval of advice and consent to ratification by a two-thirds majority
6. Ratification by the President ⁶

¹ CRC Information Packet, The Campaign for U.S. Ratification of the Convention on the Rights of the Child, pg. 2, 2009. <http://www.childrightscampaign.org/images/documents/Information%20Packet.pdf> (hereafter “CRS Report”)

² Id.

³ <http://www.un.org/apps/news/story.asp?NewsID=50759#.VdOPd3i8tLE>

⁴ CRS Report, pg. 1.

⁵ Id. Pg 4.

⁶ Id. Pg. 5

For the ratification of the CRC to move forward, the Administration must conduct its review of the treaty and submit it to the Senate. The State Department must also submit documents that articulate: policy benefits and potential risks to the United States, significant regulatory or environmental impact, and analysis of the issues surrounding the treaty's implementation. The State Department may also propose RUDs that would amend the treaty before the United States could fully ratify it.⁷

Why didn't the Clinton administration send the CRC to the Senate when it was signed?

Although the Clinton Administration made overtures that it would send the CRC to the Senate, it never did most likely because it faced significant opposition in the Senate when the treaty was signed. On June 14, 1995, Senator Jesse Helms (R-NC) submitted a resolution, which was referred to the Committee on Foreign Relations. The resolution argued that ratification of the CRC would constitute an infringement on U.S. sovereignty and would impede the rights of parents to raise their children as they saw fit. He went on to make a statement, which contended that ratification of the CRC would give “children rights and privileges that they are not mature enough to handle,” would hand over control of U.S. affairs to the United Nations and, that while he was Chairman, the treaty would not get a hearing in the Senate.⁸ It is likely due to this strong rhetoric that the Clinton Administration never submitted the treaty to the Senate.

What are some current objections to U.S. ratification?

Many of the arguments articulated by Senator Helms in 1995 remain significant to those who oppose the ratification of the CRC today.

U.S. Sovereignty. Opponents argue that ratification of the CRC would undermine U.S. laws, both at the federal and state level, because treaties are considered the “supreme law of the land.” The rationale for this argument is that the U.S. would be held accountable to the members of the UN Committee on the Rights of the Child, as they periodically review treaty compliance of State Parties to the convention. This, in turn, would diminish the power of state and federal lawmakers to make decisions regarding the treatment of children in their jurisdictions.⁹

Parental Rights. Parental rights groups have been particularly vocal in their opposition to the CRC. These groups argue that the CRC infringes on the right of parents to raise their children free from government interference and prevents parents from, in some cases, from imparting their morals and values on their children. They also oppose using the “best interest of the child” standard because it may contradict how a parent wants their child to act or behave.¹⁰ In recent years, parental rights groups have also tried to introduce a Parental Rights Amendment to the Constitution that specifically includes a provision against international law infringing on the rights of parents.¹¹

Abortion. Critics of the CRC have also interpreted the CRC to allow for abortions without parental consent due to the language in Article 16 that protects a child's right to privacy. The text of the CRC is intentionally vague, as the drafters did not want the issue of abortion to preclude countries from ratifying the convention.¹²

⁷ <http://www.childrightscampaign.org/why-ratify/how-does-the-united-states-ratify-treaties>

⁸ *Congressional Record*, Senate, Vol. 141, No 97, p. 8400-8401, June 14, 1995.

⁹ CRS Report, pg. 9.

¹⁰ *Id.* Pg. 9, 10.

¹¹ <http://www.parentalrights.org>

¹² CRS Report, pg. 9.

What are the Optional Protocols to the CRC and has the United States adopted them?

There are two Optional Protocols (OP) to the CRC. They are on the 1) involvement of children in armed conflict and 2) on the sale of children, child prostitution and child pornography. The United States ratified both of the Optional Protocols in 2002 and reports to the Committee on the Rights of the Child on them.

Why are federal child rights important?

Currently, the United States does not have a comprehensive framework that governs the rights of the child. As a result, the essential needs of thousands of children are not met, and standards relating to the health, safety, and well-being of children are applied unevenly across jurisdictions. In addition, the concept of child rights is not something that is discussed widely and, as a result, Congress and state governments do not prioritize the needs of children in their decision-making processes. As a result, children in the United States continue to face adversity that prevents them from becoming thriving adults.

In 2014, 1,640 children died due to abuse and neglect, 19.9% of children lived in poverty, 8.58 million children lived in households that were food insecure and more than 100,000 children were sexually exploited in the United States. These are just examples of how prioritizing and articulating the rights of children can help improve some of the unimaginable circumstances children in the United States face.

Other countries that have ratified the CRC have used it as a tool to improve conditions for children in their countries. For example:

- In Niger, which has the highest incidence of child marriage in the world, local organizations used Niger's ratification of the CRC to help convince tribal leaders to speak out against this harmful traditional practice – with the result that hundreds of communities have agreed to stop the practice.
- In Egypt, the CRC was a major tool in the campaign against female genital mutilation, leading to a ministerial decree and a statement by the country's top Muslim institution against the practice.
- India instituted universal, free elementary education as a response to its ratification of the CRC.¹³

How would the CRC affect state and local laws?

Many of the concerns associated with the ratification of the CRC is that the treaty would immediately supersede state and federal laws that address children's lives. This is unlikely, as the United States can make a declaration to the treaty that it is "non-self-executing," which would mean legislation would have to be passed by Congress to implement the treaty's provisions. In addition, the United States could make reservations that limit or modify U.S. obligations. Reservations, Understandings and Declarations (RUDs) can be made and recommended at several points during the ratification process. The President can include them when he sends the treaty to the Senate, the State Department can recommend RUDs and the Senate Committee on Foreign Relations can also include them.¹⁴ Moreover, many of the provisions in the CRC are already a part of state laws and adoption of treaty provisions would not significantly alter them.

¹³ <http://childrightscampaign.org/the-facts/questions-a-answers-about-the-crc>

¹⁴ CRS Report, pg. 8.

How does the Children's Bill of Rights (H.Res.476) differ from the CRC?

- *It is a declaration from Congress that it protects the rights of children in the United States.*
- *There is no international entity overseeing the enforcement of the treaty.*
- *It addresses issues that are currently relevant for children in the United States (i.e. lack of legal representation for children in court, child labor protections, childhood poverty, bullying in schools, and detainment of immigrant children and families.*