

THE ROLE OF THE UNITED STATES IN THE DRAFTING OF THE CONVENTION ON THE RIGHTS OF THE CHILD

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INTRODUCTION

Adopted by the United Nations General Assembly on November 20, 1989,¹ the Convention on the Rights of the Child (Convention) has received precedent-setting global support. On the day that it was opened for signature, more nations participated in the signing ceremony than any previous U.N. human rights treaty.² It went into force more quickly and received more ratifying votes than any other U.N. human rights treaty.³ In addition, the Convention, more than any other treaty, nearly replicates the wide range of rights envisioned in the 1948 Universal Declaration of Human Rights.⁴

It is indisputable that the United States played a pivotal role in the drafting of the Convention and, thus, in changing the world for children.⁵ Sadly, however, U.S. leadership in developing children's rights ended in 1989. Because the United States has never ratified the Convention it cannot become a

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¹ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

² For an early account of international response to the Convention, see Cynthia Price Cohen & Per Miljeteig-Olssen, *Status Report: United Nations Convention on the Rights of the Child*, 8 N.Y.L. SCH. J. HUM. RTS. 367 (1991).

³ UNICEF, Convention on the Rights of the Child: Frequently Asked Questions, http://www.unicef.org/crc/index_30229.html (last visited Apr. 2, 2006). To date, 192 countries have ratified the Convention. *Id.*

⁴ The Universal Declaration of Human Rights was the earliest U.N. effort to define human rights. *See* 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). When the Universal Declaration was subsequently put into legally binding language, it emerged as two separate human rights instruments: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. *See* International Covenant on Civil and Political Rights, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter ICESCR]. The CRC embodies the Universal Declaration's premise of combining both of these types of rights in a single instrument. The CRC incorporates humanitarian law as well.

⁵ For further perspective on the role of the United States in the drafting process, see Cynthia Price Cohen, *Role of the United States in Drafting the Convention on the Rights of the Child: Creating a New World for Children*, 4 LOY. POVERTY L.J. 9 (1998).

member of the Committee on the Rights of the Child, the Convention's monitoring body.⁶ Therefore, the United States can no longer materially influence the interpretation of this instrument that it fervently labored to create.

By looking, first, to the divisive world political environment of the time, and, second, to the origins of the Convention, the expansion of its provisions, and the accompanying procedures for adoption of these provisions, this Essay examines the United States' prominent and influential participation in the drafting of the Convention. This Essay then turns to an evaluation of the substantial role played by NGOs and the implementation mechanisms that support the Convention today. In conclusion, this Essay asks, "What is next for the United States?" now that nearly the entire world community stands opposite its continued refusal to ratify the Convention.

I. DRAFTING ENVIRONMENT

True appreciation of the United States' influence on the drafting of the Convention requires an understanding of the international political environment of the time. The Convention was developed during the final stages of the Cold War, when Belarus⁷ and Ukraine⁸ remained part of the Soviet Union and Germany was divided into East (GDR) and West (FRG).⁹ Indeed, the world was essentially drawn on opposing sides. The Soviet sphere of influence (the Eastern Bloc) included East Germany, Czechoslovakia, Hungary, Bulgaria, Romania, Yugoslavia, Albania, the Baltic States (Latvia, Estonia and Lithuania), and Poland. The Western group included, among others, the United Kingdom, Ireland, the Netherlands, Belgium, France, Spain, Portugal, Italy, West Germany, Australia, Canada, Austria, and the United States.

Drafting of the Convention was the product of a Polish proposal to create a treaty protecting children's human rights in celebration of the 1979 International Year of the Child (IYC)—an event that was undertaken to spotlight and evaluate the situation of children around the world.¹⁰ As might

⁶ See CRC, *supra* note 1, art. 43.

⁷ Then referred to as Byelorussia.

⁸ Then referred to as the Ukrainian SSR.

⁹ The full names of East and West Germany were the German Democratic Republic (GDR) and the Federal Republic of Germany (FRG), respectively.

¹⁰ For a record of the Polish proposal to the Commission on Human Rights, see U.N. ESCOR, 34th Sess., Supp. No. 4, U.N. Doc. E/1978/34 (1978).

be expected, the divisive political environment significantly influenced the drafting of the Convention. Because Poland proposed the Convention, the international community largely viewed this effort as an Eastern Bloc initiative.

Poland, however, had independent reasons for pressing for a children's rights treaty. It had a long history of supporting the idea of a children's rights treaty.¹¹ In 1959, when the United Nations General Assembly was drafting the Declaration of the Rights of the Child,¹² the Polish delegation had advocated for the protection of children's rights through an enforceable treaty rather than an unenforceable declaration. According to Adam Lopatka, Polish law professor and chairman of the Working Group that drafted the Convention, by 1979 the Polish government felt that the situation of its children was sufficiently beyond reproach to allow it to once again propose drafting a treaty on the rights of children. This effort would also set Poland apart from other Eastern Bloc members as the only country to undertake the drafting of a human rights instrument—a significant achievement for a nation on the verge of emerging from the Soviet shadow.

Over the ten years that followed, an Open-Ended Working Group of the Commission on Human Rights drafted the Convention. Although the Working Group was convened under the auspices of the Commission, all Member States of the United Nations were free to participate. Therefore, frequent changes in Commission membership did not affect participation in the drafting process. Additionally, non-Member States such as the Holy See and Switzerland, a group of nongovernmental organizations, and a number of intergovernmental bodies participated in the process as observers.

The Working Group typically met for one week each year during the last week of January, just prior to the Annual Session of the Commission. The first few years of meetings, however, were not accompanied by much international enthusiasm for the Convention. It was not until 1983 that the international community's general interest in the Convention began to grow and,

¹¹ Poland had been especially interested in the rights of children in part because it lost so many children during World War II. When the General Assembly began to dismantle various Post-World War II offices, such as the United Nations Relief Works Agency (UNRWA), which was set up to deal with the aftermath and human dislocations from the War, it was a Polish diplomat whose actions were central to the decision to maintain the United Nations Children Fund (UNICEF). UNICEF has become a major vehicle for promoting children's rights.

¹² Declaration of the Rights of the Child, G.A. Res. 1386, U.N. GAOR, 14th Sess., Supp. No. 16, U.N. Doc. A/4354 (Nov. 20, 1959) [hereinafter 1959 Declaration].

accordingly, participation in the Working Group gradually increased to include additional States and nongovernmental organizations.

Over time, this growing interest led approximately eighty nations to participate in the Working Group. These nations sent delegates from a variety of governmental offices: departments of education, departments of consumer affairs, departments of health, and departments of justice, to name a few. Whereas some countries annually returned seasoned representatives to the Working Group, others adhered to an ad hoc process, each year sending different representatives to serve on these States' delegations. Beginning in 1983, Finland, Norway, the Netherlands, Austria, and the United Kingdom all maintained continuity in their representation throughout the life of the Working Group. While the United States sent a representative from the Department of State Office of the Legal Advisor to participate in every session, it experienced regular turnover in representation, with only two representatives attending more than one session.¹³ The United States tended to send younger lawyers as its representatives. In fact, of the five U.S. representatives from 1983 to 1989, only one of them was married, none of them had children, and only one had any relevant background in a field related to children's rights.

It should also be remembered that the Working Group drafted the Convention during the conservative Reagan administration, which had adopted a generally negative attitude toward this perceived Eastern Bloc treaty. In 1983, for example, the U.S. delegate essentially stated that the United States would never ratify the Convention but was participating in the drafting process primarily so that these other countries would have a better treaty.¹⁴ This statement aptly foreshadowed subsequent developments. The United States remains one of only two nations in the world that have not ratified the Convention; Somalia, which currently does not have a functioning government, is the other. Even the U.S. trust territories of the Marshall Islands and Solomon Islands are States Parties to the Convention. Yet, despite the United States' failure to ratify the convention, any strong proponent of individual rights is likely to agree that U.S. participation in the drafting of the Convention radically improved the status of children.

¹³ These representatives were Jamison Selby, who attended the 1985 and 1986 sessions, and David Balton, who attended the two final sessions of the Working Group in 1988.

¹⁴ The delegate was Thomas Johnson from the U.S. Department of State Office of the Legal Advisor. The statement is not verbatim but contains the essence of what he said in a personal interview.

II. DRAFTING PROCESS

The Working Group began its efforts by using a draft model convention that the Polish government had submitted to the Commission. This first Polish model convention was essentially a replica of the 1959 Declaration, merely tacking on a brief implementation mechanism at the end.¹⁵ After the Commission rejected this first model, Poland submitted a second, slightly longer, and more legally enforceable model.¹⁶ This second model convention provided the first indicators of the emergence of children as rights-bearing individuals. Article 7 of the second model gave the child “who is capable of forming his own views the right to express his opinion in matters concerning his own person.”¹⁷ This provision was a significant development because it provided the basis for a turning point in the rights of children. Indeed, it would soon centrally contribute to changing the status of children worldwide.¹⁸

Prior to the Convention, children’s rights were enunciated solely in terms of “care” and “protection.” The 1923 Declaration of Geneva¹⁹ and the subsequent U.N. Declaration of the Rights of the Child²⁰ both emphasized what should be done “to” and “for” the child. For example, the Declaration of Geneva stated that the child “must be given the means requisite for its normal development” and was to be “helped,” “fed,” “sheltered,” “reclaimed,” and “protected against every form of exploitation.”²¹ The Declaration of the Rights of the Child also spoke of “protection” and “care” in seven of its ten principles. By contrast, the Convention gives directly to children the power to exercise rights, albeit with parental guidance.²² No longer are children to be treated as objects to whom rights will be applied. Instead, the Convention has fundamentally reclassified children as rights-bearing individuals. This

¹⁵ Cynthia Price Cohen, *The Human Rights of Children*, 12 *CAP. U. L. REV.* 369, 373 (1983).

¹⁶ U.N. Commission on Human Rights, Question of a Convention on the Rights of the Child: Note to the Division of Human Rights by the Polish People’s Republic, 36th Sess., Agenda Item 13, U.N. Doc. E/CN.4/1349 (1979).

¹⁷ THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: A GUIDE TO THE “TRAVAUX PREPARATOIRES” 224 (Sharon Detrick ed., 1992) [hereinafter TRAVAUX PREPARATOIRES] (reprinting Article 7 of the basic working text as adopted by the 1980 Working Group in U.N. Doc. E/CN.4/1349).

¹⁸ In the final text of the Convention, this article appears as Article 12 in a somewhat revised version. See CRC, *supra* note 1, art. 12, ¶ 1.

¹⁹ Declaration of the Rights of the Child, League of Nations, O.J. Spec. Supp. No. 23 (1924) [hereinafter Declaration of Geneva].

²⁰ 1959 Declaration, *supra* note 12.

²¹ Declaration of Geneva, *supra* note 19.

²² See CRC, *supra* note 1, art. 5.

transformation came about largely due to efforts of the U.S. delegation and the articles it proposed.

The text of most U.N. human rights treaties reflects a clear similarity to the provisions of their respective preceding declarations. This is in contrast with the development of the Convention on the Rights of the Child. The Convention has approximately four times as many substantive articles as the preceding Declaration of the Rights of the Child. In fact, the Convention is roughly twice the length of the second Polish model convention, which comprised only twenty substantive articles compared to the Convention's forty-one. This expansion resulted from the addition of new rights and the division or enlargement of some of the rights that appeared in the original working model.

The process through which this expansion took place is quite noteworthy, as new articles were generally born out of existing articles. For example, by examining the *Travaux Préparatoires*,²³ one can see that Article 7 gave birth to four new articles: Article 13 (freedom of expression), Article 14 (freedom of religion), Article 15 (freedom of association and assembly), and Article 16 (the right to privacy), all of which were U.S. proposals.²⁴

The United States was the most active in the expansion process, proposing more articles than any other nation in the Working Group. In total, the United States initiated seven articles, including Article 10 (family reunification), Article 19 (protection from abuse), and Article 25 (review of placement).²⁵ In addition, the United States influenced the textual editing of almost every article. Only five other States proposed entirely new articles for the Convention: Denmark (Article 5, parental guidance), India (Article 6, survival and development), Argentina (Article 8, identity), Norway (Article 29, recovery and reintegration), and China (Article 33, narcotics).²⁶ U.S. influence was so strong that some people referred to the Convention as the "U.S. child rights treaty."

The entire Convention was drafted based on consensus, meaning that if so much as one delegation objected to a text, that text could not be adopted. The consensus process was especially significant during the Convention's "second

²³ TRAVAUX PRÉPARATOIRES, *supra* note 17. This book contains a complete record of the Convention's drafting process.

²⁴ See CRC, *supra* note 1, arts. 7, 13, 14, 15, 16.

²⁵ See *id.*, arts. 10, 19, 25.

²⁶ See *id.*, arts. 5, 6, 8, 29, 33.

reading,” a procedure during which the basic text adopted during the “first reading” was scrutinized, revised, and finalized.

The debate over the text of Article 38, dealing with children and armed conflict, illustrates how the consensus process operated.²⁷ During the second reading, the Swedish delegation pressed for language raising the minimum age for participation in combat to eighteen years. However, because the United States wanted to retain the age of fifteen adopted during the first reading, the chairman of the Working Group asked the small number of disagreeing delegations to provide an alternative text. The delegations deliberated for a number of days and, although a majority of the members reached an agreement to raise the minimum age to eighteen, they could not reach a consensus due to the U.S. delegation’s persistent refusal. Therefore, the article was returned to the plenary with alternative paragraphs in square brackets: one with age eighteen and one with age fifteen. Sustained U.S. opposition to this deviation from the first reading ultimately resulted in the adoption of fifteen as the minimum age for participation in combat.²⁸ A single delegation had prevented this text from being adopted, even though all other delegations were in complete agreement.

As this example shows, the U.S. delegation was so influential that it not only added a number of new rights to the Convention, but it also wielded the power through the consensus process to prevent other rights from being included. It may be true that U.S. proposals for articles protecting children’s civil rights were inspired more by the desire to irritate the Soviet Union than from any grand philosophy regarding children’s rights. Nevertheless, the United States could not have been successful in its proposals of substantive provisions without the support of other delegations. The delegations that in one way or another supported the United States’ proposals were Norway, the Netherlands, the United Kingdom, Finland, Portugal, Argentina, Canada, Australia, and Sweden.

The articles introduced by the United States were tabled over a period of several years: Article 10 (family reunification) in 1981; Articles 14 (freedom of religion), 16 (right to privacy), 19 (protection from abuse), and 25 (review of placement) in 1983; and Articles 13 (freedom of expression) and 15

²⁷ Adoption of a Convention on the Rights of the Child, U.N. GAOR 3d Comm., 44th Sess., Annex, Agenda Item 108, U.N. Doc. A/44/736 (Nov. 17, 1989); *see also* TRAVAUX PRÉPARATOIRES, *supra* note 17.

²⁸ *See* CRC, *supra* note 1, art. 38.

(freedom of association and assembly) in 1985.²⁹ None of these articles were even discussed in the same year they were introduced, and the discussions usually were not completed in a single session. For example, Article 10 was tabled in 1981, was first discussed in 1983, was discussed again in 1986, and the first reading of this text was not adopted until 1987.

Of those proposed by the United States, Articles 14, 15, 19, and 25 received the least resistance and discussion during the first reading.³⁰ That Article 14 is included in this group is especially ironic because it was this article on freedom of religion that nearly brought deliberations on the second reading to a standstill. The problem with this article arose from the Islamic delegations' position that the child must follow the father's religion and that, according to the Qur'an, the child could not make a choice of his or her own. Ultimately, the addition of paragraph 2 on parental guidance made Article 14 palatable for the disagreeing parties.³¹ Unfortunately, however, this addition during the second reading seriously weakened the final text.

III. ROLE OF NONGOVERNMENTAL ORGANIZATIONS

No analysis of the Convention's drafting process would be complete without a description of the important role played by NGOs. These organizations provided a crucial buffer between the East and the West. When deliberations would bog down over differing East-West texts, the non-politicized NGO text often served as a starting point for deliberations. Although NGOs could not make a proposal directly, they were always able to find a sympathetic delegation to table it on their behalf. The active role of NGOs in the Convention's drafting was unique in comparison to the ordinary U.N. treaty drafting process. Never before had NGOs worked together in such an organized fashion, and never before had their work been so widely recognized and respected.³²

Just before the Working Group's 1983 session, a group of almost thirty NGOs formed what they called the NGO Ad Hoc Group on the Drafting of the Convention on the Rights of the Child ("NGO Group"). The NGO Group's mandate was to monitor the processes of the Working Group and to make

²⁹ See *id.*, arts. 10, 13, 14, 15, 16, 19, 25.

³⁰ See *id.*, arts. 14, 15, 19, 25.

³¹ See *id.*, art. 14, ¶ 2.

³² Of particular significance is the fact that the Working Group Chairman always appointed an NGO to participate in the small group deliberations regarding textual modifications.

recommendations as appropriate. The NGO Group included a wide range of organizations interested in the rights of the child and international law. Among the active members were Defence for Children International, International Catholic Child Bureau, Radda Barnen (Swedish Save the Children) International, Amnesty International, Human Rights Internet, Friends World Committee, Save the Children Fund (UK), International Commission of Jurists, International Social Service, Baha'i International, World Jewish Congress, International Committee of the Red Cross, and Zonta International.

The NGO Group met twice a year³³ at UNICEF headquarters in Geneva to examine the texts adopted at the previous Working Group session and to critique the texts proposed for the next session. They would draft their own textual recommendations for the next Working Group session, often weaving together sections from competing drafts to create an entirely new text. The NGO Group's recommendations were printed and distributed to all delegations in advance of the upcoming session. In addition, they would host an open house during the winter holidays to introduce their latest recommendations to government delegations with offices in Geneva so that these delegations would be familiar with the materials ahead of the next session of the Working Group. Even while being so active, the NGO Group made a concerted effort to remain politically neutral by, for example, carefully refraining from naming the proponents of the proposals they supported.

In large part, the success of the NGO Group lay in the fact that members strove to collaborate with governments instead of acting antagonistically as some NGOs had done in the past.³⁴ This atmosphere of collaboration was enhanced by the now famous Thursday night, NGO-sponsored "pea soup" parties hosted by Radda Barnen International and attended by all participants in the Working Group, governmental delegations, and nongovernmental entities.³⁵

³³ The NGO Group met once in the spring and again in the fall.

³⁴ For example, some NGOs see the Commission on Human Rights as an arena for publicly bashing government policies. In the early days of the drafting process, the U.S. delegate made it clear that NGO input was not welcome. Yet, by the end of the drafting process, the United States complimented the NGOs in its closing remarks to the Commission on Human Rights.

³⁵ The atmosphere was casual and inviting, with diplomats changing into jeans and sneakers to sit, often on the floor, in the apartment of Simone Ek, head of Radda Barnen International.

The NGOs were ultimately rewarded for their work and cooperation. In drafting Article 45, the Working Group included special roles for NGOs, called “other competent bodies,” to monitor and implement the Convention.³⁶

IV. IMPLEMENTATION PROCESSES

Implementation of the Convention mirrors that of other U.N. human rights treaties. A committee of experts—in this case, the Committee on the Rights of the Child (Committee)—is selected from among the nationals of the States Parties to lead the implementation procedure. The Committee reviews the systematic reports submitted by States Parties, holds an oral examination (or dialogue) with the State Party in question, and then drafts its recommendations in the form of Concluding Observations. The Committee then presents these Concluding Observations to the General Assembly, and the document is published. A State Party’s first report is due two years after the Convention enters into force for that State, and subsequent periodic reports are due every five years thereafter.³⁷

The Committee meets three times per year³⁸ for sessions of four weeks. The first three weeks are primarily devoted to oral dialogue with the States Parties whose reports are being examined. During the final week, the Committee prepares for the next session by meeting with NGOs from those countries whose reports it will next examine and by reviewing any submitted materials. Although Article 43 of the Convention calls for a Committee of only ten members, membership was recently enlarged to eighteen with the hope that additional members will make it possible for the Committee to keep up with the increasing number of reports that must be examined.³⁹

V. WHAT IS NEXT FOR THE UNITED STATES?

Whereas it was once regarded as an exemplar of human rights in action, world opinion of the United States is in decline. The failure of the United States to ratify the Convention has pushed it even farther down this course and placed the United States outside the world community on the issue of children.

³⁶ See CRC, *supra* note 1, art. 45.

³⁷ See Office of the U.N. High Comm’r for Human Rights, Comm. on the Rights of the Child, <http://www.ohchr.org/english/bodies/crc/> (last visited Apr. 2, 2006).

³⁸ These meetings occur in January, either May or June, and either September or October.

³⁹ See CRC, *supra* note 1, art. 43.

Among other international ramifications, U.S. ability to argue that another country has not lived up to its obligations under the Convention is seriously compromised. This is a concrete problem in light of the United States' inclusion of the shortcomings of States Parties to the Convention with regard to children's rights in its annual survey of human rights abuses.⁴⁰

Fear, uncertainty, and misinformation all play a part in preventing U.S. ratification of the Convention. Critics seemingly fail to understand that the Convention, like every U.N. human rights treaty, encompasses three principles: (1) it is entered into voluntarily by sovereign nations who seek to comply with standards they hold to be desirable; (2) the Committee's role is to assist nations in meeting their goals; and (3) nations in no way surrender any piece of their sovereignty by ratifying the treaty. States Parties are free to interpret the Convention as they deem appropriate, and, upon ratification, they may designate those parts of the treaty with which they do not choose to comply by making a "reservation" to that provision.⁴¹ For example, when the United States ratified the International Covenant on Civil and Political Rights, it filed a reservation to Article 6, paragraph 2, which prohibits execution for "crimes committed by persons below eighteen years of age."⁴² In addition, although treaties are the supreme law of the land, the United States usually takes the position that human rights treaties are "non-self-executing." Thus, the treaty cannot go into force without the passage of domestic legislation. In other words, the United States can control how the treaty is interpreted and applied within its borders.

Many Americans misunderstand the structure and function of the United Nations, viewing it as some sort of world government possessing universal powers of enforcement. American parents have been known to argue that if the United States ratifies the Convention, the United Nations will "prevent me from spanking my children," will "force me to let my children join gangs," or will "prevent me from making my children go to church." Anti-ratification dissidents, including former Senator Jesse Helms, assert that the Convention interferes with the independence of the parent-child relationship. Nothing could be further from the truth. At least nineteen of the Convention's forty-one substantive articles give special deference to the parent-child relationship.

⁴⁰ See U.S. Dep't of State, Country Reports on Human Rights Practices, <http://www.state.gov/g/drl/rls/hrrpt/> (last visited Apr. 2, 2006).

⁴¹ CRC, *supra* note 1, art. 51.

⁴² Reservations, Declarations, Notifications and Objections Relating to the International Covenant on Civil and Political Rights and the Optional Protocols Thereto, U.N. Doc. CCPR/C/2/Rev.4 (Aug. 24, 1994).

Examples of this support for the family appear in: Article 7, which declares that a child has “the right to know and be cared for by his or her parents;”⁴³ Article 18, which calls on States Parties to “ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child;”⁴⁴ and Article 9, which further calls on States Parties to “ensure that a child shall not be separated from his or her parents against their will.”⁴⁵ In fact, Article 5 basically asserts that Parties to the Convention should defer to the child’s parents or guardians when determining the scope of the child’s exercise of rights under the Convention.⁴⁶ Article 14, paragraph 2 includes similar language.⁴⁷

Additionally, those unfamiliar with the treaty-making process do not understand, first, that implementation and enforcement are not synonymous and, second, that a State Party is not subject to punishment for a failure to meet the Convention’s standards. The State Party is merely obligated to correct the situation before the next report.⁴⁸

⁴³ CRC, *supra* note 1, art. 7, ¶ 1. The child shall also “be registered immediately after birth and shall have the right from birth to a name [and] the right to acquire a nationality.” *Id.*

⁴⁴ *Id.* art. 18, ¶ 1. Paragraph 1 of Article 18 also states, “Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.” *Id.*

⁴⁵ *Id.* art. 9, ¶ 1. Paragraph 1 of Article 9 provides an exception to this separation principle if:

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. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.

Id.

⁴⁶ *Id.* art. 5. Article 5 states:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, 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.

Id.

⁴⁷ *Id.* art. 14, ¶ 2. Article 14 states:

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

Id. art. 14, ¶¶ 1, 2.

⁴⁸ *See* CRC, *supra* note 1, art. 45.

As noted above, the United States cannot become a member of the Committee on the Rights of the Child because, although it has signed the Convention,⁴⁹ it has not ratified it.⁵⁰ However, the United States did ratify the Convention's two Optional Protocols⁵¹—the Optional Protocol on the Involvement of Children in Armed Conflict (“Armed Conflict Protocol”)⁵² and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (“Child Prostitution Protocol”).⁵³ Failure to ratify the main instrument to which these protocols are attached presents some interesting ironies. First, the Armed Conflict Protocol raises the age of combat to eighteen years—the very age that the United States strongly argued against in Article 38 of the Convention.⁵⁴ Second, the Committee on the Rights of the Child, of which the United States cannot be a member, monitors U.S. compliance with both protocols. The Committee's monitoring undercuts one of the main U.S. arguments against ratification—that ratification would give “foreigners” a say in U.S. internal policy decisions.

The United States has ratified the International Covenant on Civil and Political Rights,⁵⁵ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁵⁶ and the Convention on the Elimination of All Forms of Racial Discrimination.⁵⁷ The Convention on the Rights of the Child would not have a different national effect than these other treaties. In fact, ratifying the Convention would have positive implications. Ratification

⁴⁹ The United States signed the Convention on February 16, 1995. See OFFICE OF THE U.N. HIGH COMM'R FOR HUMAN RIGHTS, STATUS OF RATIFICATIONS OF THE PRINCIPAL HUMAN RIGHTS TREATIES 11 (June 9, 2004), available at <http://www.unhcr.ch/pdf/report.pdf>.

⁵⁰ See CRC, *supra* note 1, art. 43.

⁵¹ Linda Smith & Mohamed Mattar, *Creating International Consensus on Combating Trafficking in Persons: U.S. Policy, the Role of the U.N., and Global Responses and Challenges*, FLETCHER F. WORLD AFF., Winter 2004, at 155, 157. Both of the Protocols were ratified on December 23, 2002. *Id.* U.S. ratification of the Protocols included “understandings,” which stated that these ratifications created no obligations on the United States under the Convention on the Rights of the Child.

⁵² Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, G.A. Res. 263, U.N. GAOR, 54th Sess., Annex I, U.N. Doc. A/RES/54/263 (May 25, 2000).

⁵³ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 263, U.N. GAOR, 54th Sess., Annex II, U.N. Doc. A/RES/54/263 (May 25, 2000).

⁵⁴ See TRAVAUX PRÉPARATOIRES, *supra* note 17, at 512. See discussion *supra* Part II.

⁵⁵ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. EXEC. DOC E, 95-2 (1978), 999 U.N.T.S. 171.

⁵⁶ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (Dec. 10, 1984).

⁵⁷ International Convention on the Elimination of all Forms of Racial Discrimination, Mar. 7, 1966, S. EXEC. DOC. C, 95-2 (1978), 660 U.N.T.S. 195.

could act as a lever for closely scrutinizing the status of children in every State and for ensuring that States do not neglect children's rights. Additionally, ratification would provide a measuring stick for scrutinizing U.S. children's rights policies, thereby giving power and legitimacy to the work of children's rights advocates. In addition to relying on moral suasion, advocates could also cite international law as a basis for their child rights efforts.

Since the United Nations adopted the Convention in 1989, the Convention's supporters have engaged in numerous efforts to push the United States toward ratification. Various supporters have established organizations, held conferences, taught courses, and written articles—all without substantial success. Although the Clinton Administration signed the Convention, this treaty still languishes somewhere in the White House, never having been sent to the Senate for advice and consent.⁵⁸ Indeed, some consider promoting U.S. ratification a hopeless endeavor prior to the next presidential election.

Times are changing, however, and the American public is becoming more aware of the fact that the United States is part of a global community within which it is becoming increasingly unpopular. In light of this increasing unpopularity, the Bush Administration might weigh the costs and benefits and discover that ratification—a clear affirmation of international children's rights—could help reverse this sentiment and prove otherwise beneficial.⁵⁹ Such a move by the United States would finally provide an official outlet in which to use its strength and leadership to support internationally recognized child rights values both at home and abroad—a role it seemingly abandoned in 1989.

⁵⁸ The President has the power, with the advice and consent of the Senate, to make treaties. U.S. CONST. art. II, § 2, cl. 2.

⁵⁹ With a determined and optimistic outlook, a coalition of child rights organizations and supporters is organizing a pro-ratification summit to be held May 18–20, 2006 at American University in Washington, D.C. See Child Rights Info. Network, CRINMAIL 748: Special Edition on the 41st Session of the UN Committee on the Rights of the Child (Jan. 24, 2006), http://www.crin.org/email/crinmail_detail.asp?crinmailID=1022. Child rights advocates throughout the United States see this summit as a rallying place for building a national coalition in favor of ratification. See *id.*