

Suffer the Children?: A Call for United States Ratification of the United Nations Convention on the Rights of the Child

Lainie Rutkow*
Joshua T. Lozman**

I. INTRODUCTION***

Protecting the human rights of children is critical to the development and continuity of nations. Yet, worldwide, the dignity and rights of children are violated every day.¹ The United Nations Children's Fund's ("UNICEF")² annual report, for 2005, on children's health and development chronicles the difficulties children around the world face. Of the 2.2 billion children in the world, 1.9 billion live in developing countries.³ It is estimated that since 1990 more than 1.5 million children have been killed in armed conflict.⁴ Many children are born with health difficulties. In two of the world's most populous countries, Bangladesh and India, thirty percent of infants are underweight at birth.⁵ The life expectancy for children born in the developing world remains as low as forty to forty-five years in countries such as Afghanistan, Democratic Republic of the Congo, and Ethiopia.⁶ For those children

* Ph.D. Candidate, Department of Health Policy & Management, Johns Hopkins Bloomberg School of Public Health; M.P.H., Johns Hopkins Bloomberg School of Public Health, 2005; J.D., New York University School of Law, 2004; B.A., Yale University, 1999.

** M.P.H., Johns Hopkins Bloomberg School of Public Health, 2005; M.B.A., Johns Hopkins University, 2005; B.A., Dartmouth College, 2001.

*** The authors would like to thank Stephen Teret and the staff of the *Harvard Human Rights Journal*.

1. See, e.g., Editorial, *Endangered Children*, BALT. SUN, Jan. 1, 2005, at 12A; Lydia Polgreen, *Civilians Bear Brunt of the Continuing Violence in Darfur*, N.Y. TIMES, Jan. 22, 2005, at A3; Press Release, Human Rights Watch, Côte d'Ivoire: Ex-Child Soldiers Recruited for War (Mar. 31, 2005).

2. UNICEF is the U.N. body charged with "advocat[ing] for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential." UNICEF, Mission Statement, http://www.unicef.org/about/who/index_mission.html (last visited Feb. 15, 2006).

3. UNICEF, THE STATE OF THE WORLD'S CHILDREN 2005: CHILDHOOD UNDER THREAT (2004).

4. *Id.* at 10.

5. *Id.* at 110-11.

6. *Id.* at 106.

who do survive early childhood, one in seven, worldwide, is denied access to any healthcare and fifteen million have been orphaned by HIV/AIDS.⁷

In the United States, an estimated 1400 children die each year from abuse and neglect.⁸ Over seventeen percent of Americans under the age eighteen, or 12.9 million children, grow up in poverty.⁹ The reality of these children's lives demonstrates their need for strong protections. Commenting on UNICEF's "State of the World's Children 2005" report, U.N. Secretary-General Kofi Annan said, "[o]nly as we move closer to realizing the rights of all children will countries move closer to their goals of development and peace."¹⁰

In light of the plight many children face, it is not a surprise that the U.N. Convention on the Rights of the Child ("CRC") is the most successful U.N. human rights treaty with regard to the number of nations that have signed and ratified the treaty.¹¹ In fact, every self-governed nation in the world has both signed and ratified the CRC, with a single exception—the United States.¹² This Article makes the case that the time has arrived for the U.S. Senate to give advice and consent to ratify this critically important convention. Part II explains the role that the U.N. plays in protecting human rights around the world. Part III discusses the CRC and explains its different provisions. Part IV examines the United States' past treatment of human rights treaties. Part V explores the United States' treatment of the CRC to date, including an analysis of the reasons for the United States' failure to ratify the CRC. Part VI responds to arguments against United States' ratification of the CRC. Finally, Part VII explains why the time has arrived for the United States to ratify the CRC.

II. THE ROLE OF THE UNITED NATIONS IN PROTECTING HUMAN RIGHTS

The chasm between the United States' critical role in forming the U.N. and its current lack of leadership on human rights efforts is both ironic and unfortunate. World War II redefined the world's power structure. The United States grew into a superpower, in part through its role in defeating Nazi Germany.¹³ If "a treaty . . . records the situation, the power equilibrium . . .

7. *Id.* at 2.

8. *Child Abuse and Neglect Fatalities: Statistics and Interventions*, FACT SHEET (Nat'l Clearinghouse on Child Abuse and Neglect, D.C.), 2004, <http://nccanch.acf.hhs.gov/pubs/factsheets/fatality.cfm>.

9. Press Release, U.S. Census Bureau, Income Stable, Poverty Up, Numbers of Americans With and Without Health Insurance Rise, Census Bureau Reports (Aug. 26, 2004).

10. UNICEF, *supra* note 3, at vii.

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

12. See OFFICE OF THE UNITED NATIONS HIGH COMM'R FOR HUMAN RIGHTS, STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES 10–11 (2004); UNICEF, Frequently Asked Questions, Convention on the Rights of the Child, http://www.unicef.org/crc/index_30229.html (last visited Feb. 16, 2005) (Somalia has signed but not ratified the CRC. "Somalia is currently unable to proceed to ratification as it has no recognized government."); see also Amnesty Int'l, *United States of America: Rights of Children Must be Respected* AI Index: AMR 51/058/2003, Apr. 25, 2003.

13. See generally Jack Goldsmith, *Statutory Foreign Affairs Preemption*, 2000 SUP. CT. REV. 175, 194–95 ("Between the beginning of World War I and the end of World War II, the United States emerged as a world superpower . . .").

just prior to [the treaty's] formulation,"¹⁴ then the change in power equilibrium after the Second World War demanded a new treaty and, further, a new organization to govern international cooperation. This new equilibrium led to the dissolution of the League of Nations,¹⁵ to which the United States was not even a member,¹⁶ and to the drafting of the Charter of the United Nations ("U.N. Charter") on June 26, 1945.

The U.N. Charter clearly reflects the post-World War II change in "power equilibrium,"¹⁷ but it also reflects the horrors from which the world had just emerged. The preamble to the U.N. Charter confirms that the United Nations was created to be more than a peacemaking organization and that its scope was to surpass that of the League of Nations. Outlined in the preamble are goals such as reaffirming human rights, establishing conditions under which international obligations can be respected, and promoting social progress and "better standards of life in larger freedom."¹⁸ The early and clear focus on protecting human rights and dignity, as well as promoting social progress, is evident both in the preamble to the Charter and in the body of the document.¹⁹ Indeed, Article 1 of the U.N. Charter first mentions the right to self-determination, which is a central part of many other subsequent human rights documents.²⁰ The United States showed its support for the U.N. Charter by ratifying the document a mere thirty-two days after it was opened for signature.

The United Nations took a direct step toward codifying human rights when the Universal Declaration of Human Rights ("Universal Declaration") was authored in 1948.²¹ Although the United States signed the Universal Declaration, a declaration, unlike a convention, does not involve any formal means of implementation; "[r]ather it asks every individual and organ of society to strive to promote respect for the rights and freedoms enumerated."²² In other words, a declaration is not legally binding.²³

14. James Burnham, *What is the Purpose of the United Nations?*, ANNALS AM. ACAD. POL. & SOC. SCI., July 1947, at 1.

15. At the end of World War I, the League of Nations was created to implement the treaties of World War I and "to promote international cooperation and to achieve international peace and security." League of Nations Covenant pmbl.

16. Leland M. Goodrich, *From League of Nations to United Nations*, INT'L ORG., Feb. 1947, at 3.

17. See Burnham, *supra* note 14, at 1. The power structure is evidenced by the nations that were granted the five permanent seats on the U.N. Security Council, which constitute one-third of the Security Council's membership. The five seats were granted to China, France, Russia [then the Soviet Union of Socialist Republics], the United Kingdom, and the United States.

18. U.N. Charter pmbl.

19. *Id.* ("To reaffirm faith in fundamental human rights . . ."); *id.* art. 1, ¶ 3 ("To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.").

20. See, e.g., International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 1, 999 U.N.T.S. 171, 173 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, art. 1, 993 U.N.T.S. 3, 5 [hereinafter ICESR].

21. G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948).

22. Margaret E. Galey, *The Universal Declaration of Human Rights: The Role of Congress*, 31 POL. SCI. & POL. 524, 524 (1998).

23. See, e.g., Amulf S. Gubitz, Note, *The U.S. Aviation and Transportation Security Act of 2001 in Conflict*

Eleanor Roosevelt, then the United States' representative to the U.N. Commission on Human Rights, cast the U.S. vote for adoption of the Universal Declaration, with support from Secretary of State George Marshall. Roosevelt also negotiated two draft treaties, the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social and Cultural Rights ("ICESR").²⁴ The United States' role in drafting the U.N. Charter, as well as the International Bill of Rights (which consists of the Universal Declaration, the ICCPR, and the ICESR), was significant, but the United States has been hesitant to ratify many of the subsequent human rights treaties into law.²⁵

III. THE CONVENTION ON THE RIGHTS OF THE CHILD

The CRC is the youngest of the major U.N. human rights documents. It was adopted by the U.N. General Assembly on November 20, 1989, and entered into force on September 2, 1990.²⁶ The CRC was ratified by 100 States Parties within two years of its adoption.²⁷ By 1997, the treaty claimed over 191 States Parties.²⁸ The United States remains the only self-governed nation in the world that has not ratified the CRC. The CRC contains classic civil and political, as well as economic, social, and cultural, rights. The CRC has three components: the preamble, the provision of core rights to children, and the articles on implementation.

The CRC's preamble provides a history of the humanitarian documents that created precedents for human rights conventions and set the stage for the CRC. The preamble, which was written "in accordance with the principles proclaimed in the Charter of the United Nations, [recognizes that] the inherent dignity and . . . the equal and inalienable rights of all members of the human family [are] the foundation of freedom, justice and peace in the world."²⁹

The CRC's reference to the U.N. Charter evidences a seeming conflict wrought throughout the document between the concept of a child as an individual or maturing adult and the concept of a child as a member of a fam-

With the E.U. Data Protection Laws: How Much Access to Airline Passenger Data Does the United States Need to Combat Terrorism?, 39 NEW ENG. L. REV. 431, 434 (2005) ("While [a] Declaration is not legally binding on any nation, authorities have suggested that it is evidence of customary international law of human rights . . .").

24. Galey, *supra* note 22, at 524.

25. See Jeffery Huffines, *The Role of N.G.O.s in U.S. Ratification of Human Rights Treaties*, 3 ILSA J. INT'L & COMP. L. 641, 641 (1997). The United States has not yet ratified the ICESR, the Convention on the Elimination of All Forms of Discrimination Against Women [hereinafter CEDAW], or the CRC. OFFICE OF THE UNITED NATIONS HIGH COMM'R FOR HUMAN RIGHTS, *supra* note 12, at 11.

26. CRC, *supra* note 11, pmb1.

27. Jaap E. Doek, *The U.N. Convention on the Rights of the Child: Some Observations on the Monitoring and the Social Context of Its Implementation*, 14 U. FLA. J.L. & PUB. POL'Y 125, 126 (2003).

28. *Id.*

29. CRC, *supra* note 11, pmb1.

ily, "the fundamental group of society."³⁰ The CRC's preamble states that "the child should be fully prepared to live an individual life in society and brought up in the spirit of the ideals proclaimed in the charter of the United Nations."³¹ The preamble also cites the Universal Declaration's proclamation that "childhood is entitled to special care and assistance."³² It pays homage to past documents that support the rights of the child: the Geneva Declaration of the Rights of the Child of 1924, the Declaration of the Rights of the Child of 1959, the Universal Declaration, the ICCPR, and the ICESR.³³

The CRC provides three categories of central rights to children: provisional, protective, and participatory.³⁴ The provisional category of rights includes classic civil and political rights such as the "inherent right to life,"³⁵ "the right of the child to the enjoyment of the highest attainable standard of health,"³⁶ "the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development,"³⁷ and "the right of the child to education."³⁸ Protective rights include the expectations that "States Parties shall take measures to combat the illicit transfer and non-return of children abroad" and that "States Parties shall take all appropriate . . . measures to protect the child from all forms of physical or mental violence, injury or abuse."³⁹ Participatory rights include the rights to "freedom of expression,"⁴⁰ "freedom of thought, conscience and religion,"⁴¹ and "freedom of association."⁴² The CRC's provisions for the participatory rights of children are the ones that have often sparked resistance among U.S. interest groups.⁴³ Arguments against these participatory rights have been expressed vehemently by conservative family rights activists and have contributed to the failure of the United States to ratify the CRC.⁴⁴

30. *Id.* For a discussion of concerns raised by this conflict, see *infra* Parts V.C.4 & VI.D.

31. *Id.*

32. *Id.*

33. See ICCPR, *supra* note 20; ICESR, *supra* note 20; Declaration of the Rights of the Child of 1959, G.A. Res. 1386, U.N. GAOR, 14th Sess., Supp. No. 16, U.N. Doc. A/4354 (Nov. 20, 1959); Universal Declaration, *supra* note 21; League of Nations O.J. Spec. Supp. 28, at 66 (1924).

34. Thomas Hammarberg, *The U.N. Convention on the Rights of the Child—And How to Make It Work*, 12 HUM. RTS. Q. 97, 100 (1990). Hammarberg defines a provisional right as "the right to get one's basic needs fulfilled." A protective right is defined as "the right to be shielded from harmful acts or practices." A participatory right is defined as "the right to be heard on decisions affecting one's own life." *Id.*

35. CRC, *supra* note 11, art. 6.

36. *Id.* art. 24.

37. *Id.* art. 27.

38. *Id.* art. 28.

39. *Id.* arts. 11, 19.

40. *Id.* art. 13.

41. *Id.* art. 14.

42. *Id.* art. 15.

43. See generally Richard G. Wilkins et al., *Why the United States Should Not Ratify the Convention on the Rights of the Child*, 22 ST. LOUIS U. PUB. L. REV. 411, 412 (2003) ("First, we believe that the CRC's newly minted autonomy rights are neither beneficial to children nor harmonious with traditional notions of salutary family life Second, we have concluded that the CRC's sweeping reconstruction of family life lies beyond Congress' reach.").

44. See, e.g., Patrick F. Fagan, *How U.N. Conventions on Women's and Children's Rights Undermine Family*,

IV. RATIFICATION OF HUMAN RIGHTS TREATIES BY THE UNITED STATES

The CRC was opened for signature, ratification, and accession on January 26, 1990.⁴⁵ Article 46 of the CRC opens the convention to signature by all States.⁴⁶ Articles 47 and 48 open the CRC to ratification and for accession.⁴⁷ While accession and ratification lead to the same outcome, unlike signature, they are legally binding. The United Nations requires two steps to ratify the CRC. First, “[t]he appropriate organ of the country takes a formal decision to be a Party to the Convention in accordance with the relevant domestic constitutional procedures.”⁴⁸ Then, “[t]he Government deposits the instrument of ratification or accession” with the Secretary-General of the U.N.⁴⁹ The CRC becomes legally binding in the country thirty days after the instrument of ratification or accession has been received.

Under the U.S. system for ratifying international treaties, the President signs the treaty, but only with the advice and consent of the Senate. Although signature of a treaty is generally understood to demonstrate intent to ratify,⁵⁰ after signature, ratification is not always imminent. For example, after signing the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”), the United States took nearly forty years to ratify the Genocide Convention.⁵¹

There are currently seven major U.N. human rights conventions: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention against Torture”), the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), the ICCPR, the Genocide Convention, the ICESR, and the CRC.⁵² The United

Religion, and Sovereignty, 1407 HERITAGE FOUND. BACKGROUNDER 1 (2001); William Saunders, Senior Fellow and Dir., Ctr. For Human Life and Bioethics, Family Research Council, Address to the World Congress of Families: The U.N. Threat to the Family: Bad Treaties Make Bad Law (Oct. 26, 2001). For a discussion of the parental rights arguments raised by family rights activists, see *infra* Parts V.C.4 & VI.D.

45. CRC, *supra* note 11, art. 6.

46. *Id.* art. 46.

47. *Id.* art. 47; *id.* art. 48.

48. *Id.* art. 53.

49. *Id.*

50. See, e.g., Maria Grahn-Farley, *International Child Rights at Home and Abroad*, 30 CAP. U. L. REV. 657, 704 (2002).

51. Ilia B. Levitine, *Constitutional Aspects of an International Criminal Court*, 9 N.Y. INT'L L. REV. 27, 36 (1996).

52. CRC, *supra* note 11; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter Convention against Torture]; CEDAW, Dec. 18, 1979, 1249 U.N.T.S. 13; International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195; ICCPR, *supra* note 20; ICESR, *supra* note 20; Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention]. Some literature also includes the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as one of the major U.N. human rights treaties. See, e.g., Margaret L. Satterthwaite, *Crossing Borders, Claiming Rights: Using Human Rights Law to Empower Women Migrant Workers*, 8 YALE HUM. RTS. & DEV. L.J. 1, 45 (2005).

States has ratified four of these conventions.⁵³ Although this may be viewed as a strong record of support for human rights, the United States has attached to each of these ratifications a “package of reservations, understandings, and declarations.”⁵⁴ Many of these reservations are attributed to the proposed Bricker Amendment of the 1950s.⁵⁵ At that time, Senator John Bricker (R-Ohio) led a campaign to amend the Constitution to include the following provision: “A treaty shall become effective in the United States only through legislation which would be valid in the absence of the treaty.”⁵⁶ Although the amendment was defeated, a non-self-executing clause mirroring the Bricker Amendment has been added by the United States to the ratification of all human rights treaties.⁵⁷

Nearly thirty years after the Bricker Amendment was defeated, Senator Jesse Helms (R-N.C.), who was the ranking member of the Senate Foreign Relations Committee at the time, insisted that a reservation on national sovereignty, stating that “nothing in the Convention requires or authorizes legislation or other action by the United States of America prohibited by the Constitution of the United States as interpreted by the United States,”⁵⁸ be attached to the Genocide Convention. A compromise was eventually reached where the language of the proposed reservation was softened to a proviso sent to all States Parties explaining that “no legislation or action is required that is prohibited by the U.S. Constitution.”⁵⁹ Similar provisos were sent to the States Parties upon the ratification of the ICCPR in 1992 and the ratification of the Convention on the Elimination of All Forms of Racial Discrimination in 1994.⁶⁰ Additionally, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture, and the ICCPR were all ratified as non-self-executing by the United States.⁶¹ These reservations certainly reduce the legal authority of the ratifications. Arguably, the reservations also reduce the significance of the ratifications.

The major human rights treaties that have not yet been ratified by the United States have faced similar problems.⁶² Concerns about the U.S. sovereignty pervade every human rights convention, including those not yet ratified

53. The United States has ratified the Convention against Torture, the ICCPR, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Genocide Convention. See OFFICE OF THE UNITED NATIONS HIGH COMM’R FOR HUMAN RIGHTS, *supra* note 12, at 11; Levitine, *supra* note 51, at 36.

54. Louis Henkin, Editorial Comment, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 AM. J. INT’L L. 341, 341 (1995).

55. See *id.* For a discussion of the Bricker Amendment, see *infra* Part V.C.2.

56. Henkin, *supra* note 54, at 348.

57. *Id.* at 346. For a discussion of the non-self-executing clause, see *infra* Part VI.B.

58. Huffines, *supra* note 25, at 645.

59. *Id.* This proviso was not included in the ratification of the Genocide Convention.

60. *Id.*

61. See *id.*

62. The three major human rights treaties not yet ratified by the United States are CRC, *supra* note 11; CEDAW, *supra* note 52; ICESR, *supra* note 20. See OFFICE OF THE UNITED NATIONS HIGH COMM’R FOR HUMAN RIGHTS, *supra* note 12, at 11.

by the United States, as evidenced by the inclusion of the non-self-executing clause in each of the U.S.-ratified human rights treaties.⁶³ Additionally, the four main areas of U.S. opposition to the CRC—sovereignty, federalism, reproductive and family planning rights, and parents' rights—are all criticisms also leveled against CEDAW and the ICESR.

The Senate has debated whether to ratify CEDAW many times.⁶⁴ CEDAW was submitted to the Senate for advice and consent by President Jimmy Carter in 1980 and again, by President Bill Clinton, in 1994.⁶⁵ When the United States signed CEDAW in July of 1980, the Senate had failed to give advice and consent on any major human rights treaty.⁶⁶ A State Department report proposed reservations to CEDAW so that "ratification of [] [CEDAW] would not change domestic law."⁶⁷ The reservations were suggested in an attempt to protect U.S. sovereignty, to prevent an international treaty from affecting domestic law. If CEDAW is ratified by the United States, it will likely be with a reservation that the treaty is not self-executing, preventing the terms of CEDAW from automatically becoming part of U.S. law.⁶⁸

CEDAW has faced opposition in the United States primarily from groups that oppose abortion⁶⁹ despite the fact that CEDAW makes no explicit reference to abortion and the fact that the State Department declared CEDAW "abortion neutral."⁷⁰ This opposition has included a Senate resolution submitted by Senator Helms stating that "the Convention's agenda to promote abortion worldwide invades the laws of countries that hold a religious or moral belief that abortion is the destruction of innocent human life and that it subjects expectant mothers to physical and emotional trauma."⁷¹ Led by Helms in the Senate, many leaders and groups opposed to CEDAW also believe that "[CEDAW] is about denigrating motherhood and undermining the family."⁷² Despite the opposition to CEDAW, on July 30, 2002, the Senate Foreign Relations Committee voted twelve to seven in favor of sending CEDAW to

63. See *infra* note 115; *infra* Part VI.B. Qingjiang Kong, *China's WTO Accession and the ASEAN-China Free Trade Area*, 7 J. INT'L ECON. L. 839, 859 n.54 (2004) ("A 'self-executing' international treaty can be applied directly without further legislative or other measures to implement it; a non-self-executing agreement cannot be directly applied, but must be implemented by legislative or other measures.").

64. See, e.g., 148 CONG. REC. E312-14 (daily ed. Mar. 11, 2002) (statement of Rep. Lee); 146 CONG. REC. S1276-77 (daily ed. Mar. 8, 2000) (statement of Sen. Helms); 145 CONG. REC. S15115 (daily ed. Nov. 19, 1999) (statement of Sen. Boxer).

65. See Malvina Halberstam, *United States Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women*, 31 GEO. WASH. J. INT'L L. & ECON. 49, 50 (1997).

66. See *id.* at 54.

67. *Id.* at 56.

68. See Julia Ernst, *U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women*, 3 MICH. J. GENDER & L. 299, 315 (1995).

69. See, e.g., CitizenLink: A Web Site of Focus on the Family, Oppose CEDAW!: The U.N. Convention on the Elimination of All Forms of Discrimination Against Women, Aug. 16, 2002, <http://www.family.org/cforum/feature/a0021811.cfm>; Traditional Values Coalition, Convention Endangers Rights of Women, May 10, 2002, <http://www.traditionalvalues.org/print.php?sid=285>.

70. 140 CONG. REC. D1136, 1139 (daily ed. Sept. 27, 1994) (statement of Jamison S. Borek).

71. 146 CONG. REC. S3926 (daily ed. May 11, 2000) (statement of Sen. Helms).

72. *Id.*

the full Senate for ratification. The treaty, however, was not brought up for a vote before the end of the 107th Congress, and the United States has yet to ratify CEDAW.

The ICESR has been described as the “most significant statement of aspirations for a regime of minimum welfare guarantees protected by international law.”⁷³ It entered into force in 1976 and was signed by President Carter, and then sent to the Senate for advice and consent. The ICESR includes the “right to work,”⁷⁴ “the right of everyone to social security, including social insurance,”⁷⁵ and “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”⁷⁶ The reasons for U.S. opposition to ratification of the ICESR are more fundamental than the reasons for opposition to CEDAW and the CRC in that the opposition to the ICESR “arise[s] essentially from the absence of clear agreement on values between the United States and the international community when it comes to the very concept of economic, social and cultural rights.”⁷⁷ Although sovereignty issues are one basis for U.S. opposition to the ICESR,⁷⁸ the resistance to ratification is more focused on the values of community espoused by the ICESR and on the disagreement about whether these values should be defined as rights.⁷⁹

Although fundamental differences between the United States and the international community are more readily apparent in the ICESR than in CEDAW and the CRC, and although opposition to the ratification of the ICESR does differ from that faced by the CRC and CEDAW, all three conventions face U.S. opposition due to concerns about international law infringing on domestic law and policy. Despite this opposition, the fact remains that the impact of U.S. ratification on any treaty is real and significant.⁸⁰

73. Frank E. L. Deale, *The Unhappy History of Economic Rights in the United States and Prospects for Their Creation and Renewal*, 43 *How. L.J.* 281, 314 (2000).

74. ICESR, *supra* note 20.

75. *Id.* art. 9.

76. *Id.* art. 11.

77. Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 *AM. J. INT'L L.* 365, 367 (1990).

78. *See id.* at 377.

79. *See id.* at 372.

80. “[R]atification would make an important global statement regarding the seriousness of our national commitment to these issues [R]atification would have a major impact in ensuring both the appearance and the reality that our national practices fully satisfy or exceed international standards.” Harold Hongju Koh, Testimony before the U.S. Senate Foreign Relations Committee, Regarding United States Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (June 13, 2002).

V. THE UNITED STATES' TREATMENT OF THE CONVENTION ON THE RIGHTS OF THE CHILD

A. *Calls for Ratification*

On November 20, 1989, the governments represented at the U.N. General Assembly adopted the CRC and officially made it a part of international law.⁸¹ On January 26, 1990, the CRC was opened for signature, ratification, and accession, and it entered into force on September 2, 1990.⁸² Since that time, several attempts have been made in the U.S. Congress to ratify the CRC. On January 23, 1990, Bill Bradley (D-N.J.) introduced a resolution in the Senate that urged the President to submit the CRC to the Senate "for its advice and consent to ratification."⁸³ The resolution ultimately had sixty co-sponsors. It stated that implementation of the CRC would "help establish universal legal standards for the care and protection of children against neglect, exploitation, and abuse."⁸⁴ One week later, Gus Yatron (D-Pa.) introduced an identical resolution in the House.⁸⁵ The resolution had eighty-nine co-sponsors. The House and Senate resolutions were adopted.⁸⁶ However, President George H. W. Bush failed to sign or pursue ratification of the CRC.

In 1992, during the next Congress, Bernard Sanders (I-Vt.) introduced a resolution to the House calling for U.S. ratification of the CRC.⁸⁷ The resolution, which gained eighty-four co-sponsors, explained that, as of May 1992, "117 countries had become state parties to the [CRC] by ratification or accession, and 29 others had signed the [CRC] indicating their intention to ratify the Convention in the future . . . [T]he United States is the only Western industrialized Nation which has neither signed nor ratified the [CRC] . . ." ⁸⁸ Two months later, Patrick Leahy (D-Vt.) introduced an identical resolution in the Senate.⁸⁹ The resolution had twenty-three co-sponsors. Again, the CRC went unsigned.

The following year, during the 103d Congress, Sanders introduced a House conference resolution that reiterated Congress's "sense . . . regarding the need for the President to seek the Senate's advice and consent to ratification of the [CRC]."⁹⁰ A month later, Bradley again introduced a resolution

81. CRC, *supra* note 11.

82. *Id.*

83. S. Res. 231, 101st Cong. (1990).

84. *Id.*

85. H.R. Res. 312, 101st Cong. (1990).

86. H.R. Res. 312, 101st Cong., 2d Sess. (1990); 136 CONG. REC. H7685 (daily ed. Sept. 17, 1990); Amendment No. 2626, 101st Cong., 2d Sess., 136 CONG. REC. S12808 (daily ed. Sept. 11, 1990). The Senate amendment was adopted despite Senator Helms's failed attempt to attach amendment 2628 to Bradley's amendment. Helms's amendment would have defined a child differently than the CRC, as "the unborn offspring of any human being in every state of biological development." 136 CONG. REC. S12806-08 (daily ed. Sept. 11, 1990).

87. H.R. Res. 515, 102d Cong. (1992).

88. *Id.*

89. S. Res. 352, 102d Cong. (1992).

90. H.R. Con. Res. 15, 103d Cong. (1993).

to the Senate that echoed the sentiment of his 1990 resolution.⁹¹ This time the resolution had fifty-four co-sponsors. In May 1994, Leahy addressed the Senate to urge his fellow senators to co-sponsor the resolution. He explained that

[t]he administration's resistance [to ratifying the CRC] is due to misunderstandings about the convention. Opponents claim that it is antifamily . . . or infringe[s] upon States rights. The [CRC] does none of these things.

It does create an internationally approved, minimum standard for protecting children from poverty, abuse, and cruel labor practices. It calls on nations to affirm the rights of children not to go hungry, to be educated, and to live without persecution on the basis of gender, race, religion or creed. In short, it provides a framework around which to build a safe, healthy, stable environment for our children's development.⁹²

Echoing this opinion, John LaFalce (D-N.Y.) introduced a resolution asking members of the House to call for U.S. ratification of seven treaties, five of which are specifically human rights treaties, including the CRC.⁹³ In a separate statement, LaFalce entreated, "[t]he United States must now stand and be counted. We must show ourselves to be truly on the side of peoples seeking freedom, individual liberty, civil rights, and human dignity."⁹⁴ Despite these efforts, the CRC remained untouched by the United States.

However, on February 10, 1995, the White House issued a press release stating that President Clinton had decided the United States would sign the CRC. But the statement went on to say that when the President decided to send the CRC to the Senate for advice and consent to ratification, he would "ask for a number of reservations and understandings . . . [to] protect the rights of the various states under the nation's federal system of government and maintain the country's ability to use existing tools of the criminal justice system in appropriate cases."⁹⁵ Madeleine Albright, acting as the U.S. Delegate to the U.N., signed the CRC on behalf of the United States on February 16, 1995.

With the President poised to send the CRC to the Senate for advice and consent to ratification, Senator Helms submitted a resolution, with twenty-

91. S. Res. 70, 103d Cong. (1993).

92. 140 CONG. REC. S5963 (daily ed. May 18, 1994).

93. H.R. Res. 253, 103d Cong. (1993).

94. 139 CONG. REC. E2195-96 (daily ed. Sept. 21, 1993).

95. Press Release, The White House, White House Statement on U.S. Decision to Sign U.N. Convention on Rights of the Child (Feb. 10, 1995) (on file with The White House Office of the Press Secretary), <http://www.ibiblio.org/pub/archives/whitehouse-papers/1995/Feb/1995-02-10-us-co-sign-un-convention-on-rights-of-child.text>.

six co-sponsors, urging the President not to pursue ratification of the CRC.⁹⁶ The proposed resolution stated that

- (1) [The CRC] is incompatible with the God-given right and responsibility of parents to raise their children;
- (2) [The CRC] has the potential to severely restrict States and the Federal Government in their efforts to protect children and to enhance family life;
- (3) [T]he United States Constitution is the ultimate guarantor of rights and privileges to every American, including children.⁹⁷

No further action was taken on the CRC that year. The most recent call for ratification of the CRC appeared as part of a bill introduced by Sanders to the House in 1997.⁹⁸ The bill died in the House Ways and Means Committee. In 2006, the CRC has not yet been transmitted to the Senate for ratification, and the current administration has not announced any plans to do so.

B. Ratification of the Optional Protocols

On May 25, 2000, the United Nations adopted two optional protocols to the CRC.⁹⁹ The first protocol called on States Parties to curb children's involvement in armed conflict.¹⁰⁰ The second protocol required States Parties to prohibit the sale of children, child prostitution, and child pornography.¹⁰¹ For purposes of signing and ratification, these optional protocols are treated the same as any other U.N. treaty. In July 2000, President Clinton signed both protocols,¹⁰² and both the U.S. Senate and House adopted resolutions calling for prompt ratification of these protocols.¹⁰³ President Clinton transmitted the protocols to the Senate for advice and consent to ratification in late July 2000,¹⁰⁴ and on December 23, 2002, the United States, under the leadership of President George W. Bush, ratified both optional protocols.¹⁰⁵ Al-

96. S. Res. 133, 104th Cong. (1995).

97. *Id.*

98. H.R. 3017, 105th Cong. (1997).

99. Optional Protocols to the Convention on the Rights of the Child, G.A. Res. 54/263, Annex II, U.N. GAOR, 54th Sess., U.N. Doc. A/RES/54/263 (June 26, 2000).

100. This protocol states, *inter alia*, that "States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces." *Id.* arts. 1–2, at Annex I.

101. This protocol states, *inter alia*, that "States Parties shall prohibit the sale of children, child prostitution and child pornography . . ." *Id.* art. 1, at Annex I.

102. Press Release, The White House, United Nations Protocols on Child Soldiers and the Sale of Children, Child Prostitution and Child Pornography (July 5, 2000).

103. H. R. Con. Res. 384, 106th Cong., 2d Sess. (2000); 146 CONG. REC. H5762, 5764 (daily ed. July 11, 2000).

104. Press Release, The White House, Message from the President to the Senate on Children's Rights (July 25, 2000).

105. Press Release, U.S. Dep't of State, Ratification of Optional Protocols to the Convention on the Rights of the Child (Dec. 23, 2002).

though the passage of these optional protocols is distinct from ratification of the CRC itself,¹⁰⁶ U.S. ratification of the protocols does demonstrate some recognition of the role of international law in protecting children's rights.

C. The United States' Reluctance To Ratify the Convention on the Rights of the Child

During the fifteen years since the CRC was opened for signature and ratification, the U.S. critics of the convention have posited a variety of arguments. Some of these arguments have been raised officially in Congress while others have been voiced in the legal and other academic literature.¹⁰⁷ To understand why the United States has not yet ratified the CRC, it is important to review the arguments made by those opposed to its ratification. The discussion below addresses the most frequently made anti-ratification arguments.

1. Sovereignty Concerns

Before embarking on a discussion of the CRC opponents' sovereignty concerns, it is helpful to briefly consider the history behind contemporary views of sovereignty. "Sovereign" refers to "a source of ultimate authority, as opposed to authority that is shared with another institution or subordinated to systemic norms and enforcement mechanisms."¹⁰⁸ In the realm of international law, sovereignty refers to the independence of nations; "without sovereignty, a nation-state cannot, by definition, be independent."¹⁰⁹

106. UNITED NATIONS TREATY COLLECTION, TREATY REFERENCE GUIDE 4 (1999), <http://untreaty.un.org/English/guide.asp#protocols> ("An Optional Protocol to a Treaty is an instrument that establishes additional rights and obligations to a treaty . . . but is of independent character and subject to independent ratification.").

107. See, e.g., Amendment 2628, *supra* note 86; Susan Kilbourne, *Opposition to U.S. Ratification of the United Nations Convention on the Rights of the Child*, 4 LOY. POVERTY L.J. 55 (1998); Kristine K. Nogosek, *It Takes a World to Raise a Child: A Legal and Public Policy Analysis of American Asylum Legal Standards and Their Impact on Unaccompanied Minor Asylees*, 24 HAMLINE L. REV. 1, 19 (2000) ("One organization has based its opposition in the ratification of the Convention on the argument that: '[T]he U.N. Convention on the Rights of the Child would make Congress the national guardians of children, charged with seeking 'the best interest of the child,' and answerable to the United Nations.'"); John F. Harris, *U.S. to Sign U.N. Pact on Child Rights*, WASH. POST, Feb. 11, 1995, at A3 ("Some critics said the [CRC] might allow children to sue their parents or prohibit states from executing juvenile murderers."); cf. L. Kathleen Roberts, Note, *The United States and the World: Changing Approaches to Human Rights Diplomacy Under the Bush Administration*, 21 BERKELEY J. INT'L L. 631, 649 (2003) ("In May [2002], at the U.N. General Assembly Special Session on Children, the U.S. delegation statement indicated the U.S. commitment to 'improve the lives of children' though it made no reference to children's human rights. According to Human Rights Watch, it opposed 'any reference to the Convention on the Rights of the Child.'").

108. Brad R. Roth, *The Enduring Significance of State Sovereignty*, 56 FLA. L. REV. 1017, 1019 (2004); see John H. Jackson, *Sovereignty-Modern: A New Approach to an Outdated Concept*, 97 AM. J. INT'L L. 782, 782 (2003) ("'Sovereignty' also plays a role in defining the status and rights of nation-states and their officials. Thus, we recognize 'sovereign immunity' and the consequential immunity for various purposes of the officials of a nation-state. Similarly, 'sovereignty' implies a right against interference or intervention by any foreign (or international) power.").

109. Bob Barr, *Protecting National Sovereignty in an Era of International Meddling: An Increasingly Difficult Task*, 39 HARV. J. ON LEGIS. 299, 301 (2002).

In the first half of the twentieth century, the United States grew to be a superpower.¹¹⁰ Nations around the world witnessed advances in global communication and transportation,¹¹¹ bringing the nations into greater and more frequent contact. This increased interaction “led to the establishment of standing organizations that functioned as trade or defense pacts”¹¹² Unfortunately, global conflicts arose and eventually culminated in World War II. Following the war’s end, several nations determined to form a body that would preclude future global tragedies. As a result, the United Nations was created to “save succeeding generations from the scourge of war . . . , to reaffirm faith in fundamental human rights . . . , to establish conditions under which justice and respect for the obligations arising from . . . international law can be maintained, and to promote social progress”¹¹³ As nations joined international organizations, such as the United Nations, they “agreed to subrogate their individual sovereignty in a specific, limited matter or for a specific, limited time.”¹¹⁴

It is against this backdrop that academicians and politicians have expressed serious concerns about the ramifications for U.S. sovereignty each time the country ratifies a treaty.¹¹⁵ Essentially, there are two lines of arguments that ratification of international treaties threatens U.S. sovereignty. First, detractors worry that

giving force to transnational rules laid down by non-American decision makers surrenders U.S. sovereignty. The reasoning appears self-evident: sovereignty as a “final say” is a *sine qua non* of statehood, and it is indivisible. To the extent that a state is subject to

110. *Id.* at 302.

111. Amy M. Steketee, Note, *For-Profit Education Service Providers in Primary and Secondary Schooling: The Drive for and Consequences of Global Expansion*, 11 *IND. J. GLOBAL LEGAL STUD.* 171, 171 (2004) (“Innovations in technology, transportation, and communication during the twentieth century have paved the way for greater global connectedness and interdependence.”).

112. Barr, *supra* note 109, at 302.

113. U.N. Charter pmbl., *supra* note 18.

114. Barr, *supra* note 109, at 302. Concerns about the constitutionality of treaties can be traced back to this period. David Golove, *Human Rights Treaties and the U.S. Constitution*, 52 *DEPAUL L. REV.* 579, 585 (2002) (“Of course, human rights treaties became a source of sustained constitutional controversy only after World War II with the birth of the modern human rights era, inaugurated most importantly by the Universal Declaration of Human Rights, the Genocide Convention, and the two covenants designed to implement the former in binding treaty fashion.”).

115. See, e.g., Michael J. Dennis, *Newly Adopted Protocols to the Convention on the Rights of the Child*, 94 *AM. J. INT’L LAW* 789, 796 n.42 (2000) (explaining that CRC was not sent to Senate for advice and consent because “many senators had expressed strong concerns that the Convention would infringe on U.S. sovereignty”); Deborah M. Weissman, *The Human Rights Dilemma: Rethinking the Humanitarian Project*, 35 *COLUM. HUM. RTS. L. REV.* 259, 311 (2004) (“[C]oncerns that multilateral agreements might infringe on U.S. sovereignty have resulted in an unwillingness to ratify a number of human rights treaties.”); cf. Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 *VA. J. INT’L L.* 643, 650 (1990) (“Treaties on human rights are likely to jeopardize the sovereignty of states parties without at the same time offering them a commercial advantage that may render a compromise of sovereignty worthwhile.”); Michael Ignatieff, *America the Mercurial*, *LEGAL AFF.*, Mar./Apr. 2005, at 68.

law made elsewhere, it has lost its sovereignty and, perhaps, in some deep way, its right to call itself a "state."¹¹⁶

This was one of the central reasons the entrance of the United States into the North American Free Trade Agreement, the World Trade Organization, and the International Criminal Court was criticized.¹¹⁷ Because these agreements "were effectively permanent and could not be changed without the consent of the signatories,"¹¹⁸ critics claimed that the United States had forsaken its sovereign status. Similar concerns have been voiced about U.S. ratification of the U.N. treaties.¹¹⁹

A second, related argument holds that treaties frequently create decision-making bodies whose members are "not elected or appointed by Americans,"¹²⁰ yet whose decisions are binding on the United States. When these bodies create law, it is "at one remove from the terms to which the Senate agreed [when it ratified the treaty]."¹²¹ It is due to these concerns that the United States has failed to ratify several of the major human rights treaties.

2. Federalism Concerns

In federalist systems, federal power is limited "so as to protect state sovereignty."¹²² The United States has cited concerns about the impact on federalism as a reason to stall ratification of nearly every human rights treaty.¹²³ Federalism-based arguments against ratification of international treaties date back to the early twentieth century when, in 1916, the United States entered into a treaty with Great Britain to provide greater protection to certain migratory birds. When, eighteen months after its entrance into this bird treaty, the United States passed the Migratory Bird Treaty Act, which "pro-

116. T. Alexander Aleinikoff, *Thinking Outside the Sovereignty Box: Transnational Law and the U.S. Constitution*, 82 TEX. L. REV. 989, 992–93 (2004).

117. Jenik Radon, *Sovereignty: A Political Emotion, Not a Concept*, 40 STAN. J. INT'L L. 195, 202–03 (2004); see Bruce Ackerman & David Golove, *Is NAFTA Constitutional?*, 108 HARV. L. REV. 799, 803 (1995) ("[In the 1980s] NAFTA became a symbol of new-fangled internationalist entanglements that threaten to compromise [U.S.] 'sovereignty.'"); cf. Samuel P. Baumgartner, *Is Transnational Litigation Different?*, 25 U. PA. J. INT'L ECON. L. 1297, 1375–76 (2004) ("Despite conflicting empirical claims regarding the status of actual state autonomy, the problem arises from a normative concept of sovereignty that no longer seems practicable in a world in which domestic lawmaking is increasingly constrained by international regimes, such as the WTO, NAFTA, and various human rights treaties, some of which may be considered to have constitution-like effects.").

118. Radon, *supra* note 117, at 203.

119. *Id.* at 204.

120. *Id.*

121. Mark Tushnet, *Transnational/Domestic Constitutional Law*, 37 LOY. L.A. L. REV. 239, 253 (2003).

122. Erwin Chemerinsky, *Empowering States When It Matters: A Different Approach to Preemption*, 69 BROOK. L. REV. 1313, 1328 (2004).

123. Judith Resnik, *Categorical Federalism: Jurisdiction, Gender, and the Globe*, 111 YALE L.J. 619, 665–66 (2001) ("Although the Bricker Amendment did not become law, some believe it has become fact—through practices of the Senate that consistently limit the application of international laws by reference to federalism."); Peter J. Spiro, *The States and International Human Rights*, 66 FORDHAM L. REV. 567, 575 (1997) ("At the same time that the United States finally moved on the ICCPR and one other major human rights convention, others remain stalled at least in part as a result of federalism concerns.").

hibited the killing, capturing, or selling [of] any of the migratory birds included in the terms of the treaty,"¹²⁴ the state of Missouri challenged the treaty and statute as violating the Tenth Amendment. In the Supreme Court's majority opinion in *Missouri v. Holland*, Justice Oliver Wendell Holmes explained that the test of validity for a treaty differs from the test of validity for acts of Congress in that "[i]f a treaty is valid there can be no dispute about the validity of the [implementing] statute under Article 1, Section 8, as a necessary and proper means to execute the powers of Government Acts of Congress are the supreme law of the land only when made in pursuance of the Constitution, while treaties are declared to be so when made under the authority of the United States."¹²⁵ Justice Holmes's opinion went on to state that "[b]ut for the treaty and the statute there soon might be no birds for any powers to deal with. We see nothing in the Constitution that compels the Government to sit by while a food supply is cut off and the protectors of our forests and crops are destroyed."¹²⁶

Today, *Missouri v. Holland* is generally understood to stand for the principle that "Congress has power to enact legislation to implement a treaty, even if it would lack the power to enact the same legislation absent the treaty."¹²⁷ However, while *Missouri* remains good law, academics and commentators are bitterly divided over whether or not the case was properly decided,¹²⁸ mainly because of *Missouri*'s implication "that a treaty could be used to grant the federal government authority over the states which otherwise would not have been constitutionally permitted."¹²⁹

By the 1950s, several members of Congress had begun to overtly question the *Missouri* Court's ruling.¹³⁰ This movement was led by Senator Bricker,¹³¹ who proposed a constitutional amendment that would have made a treaty effective in the United States only through legislation that would be valid in the

124. *Missouri v. Holland*, 252 U.S. 416, 431 (1920).

125. *Id.* at 432–33.

126. *Id.* at 435.

127. Nicholas Quinn Rosenkranz, *Executing the Treaty Power*, 118 HARV. L. REV. 1867, 1868 (2005).

128. Compare *id.* at 1868 ("This Article endeavors to prove that *Missouri v. Holland* is wrongly decided.") and Barr, *supra* note 109, at 319 ("Remarkably, the ruling is still valid law, even though there is no way to view this holding other than an illegitimate amendment of the Constitution.") with Golove, *supra* note 114, at 586–87 ("[*Missouri v. Holland*] is strongly supported by both textual and historical considerations. Although always controversial, the ruling in *Missouri* is consistent with both the original understanding of the treaty power and with the dominant understandings throughout most of U.S. history."); Peter J. Spiro, *supra* note 123, at 576 (1997) ("One might go so far as to question whether the treaty power now encompasses a federal capacity to overcome state laws in spheres of traditional state authority, at least not on the basis of international human rights treaties. The Supreme Court, of course, found such a federal power in its 1920 decision in *Missouri v. Holland*, and one would have no reason to suppose that the Court would depart from that ruling if it were to reconsider the issue.");

129. John R. Worth, Note, *Globalization and the Myth of Absolute National Sovereignty: Reconsidering the "Un-Signing" of the Rome Statute and the Legacy of Senator Bricker*, 79 IND. L.J. 245, 253 (2004).

130. See, e.g., Barr, *supra* note 109, at 320; Golove, *supra* note 114, at 587.

131. It was later discovered that Bricker and his colleagues "were primarily concerned with the potential impact that the UN human rights conventions might have on racial segregation in the South." Worth, *supra* note 129, at 254.

absence of the treaty.¹³² Had the amendment passed, it would have severely curbed the United States' ability to adhere to human rights treaties. President Dwight D. Eisenhower opposed the Bricker Amendment, and it was ultimately defeated. However, to ensure the amendment's defeat, Eisenhower "promised that the United States would not accede to international human rights covenants or conventions."¹³³

In the case of the CRC, which "deals almost exclusively with areas of law traditionally thought to be reserved to the states,"¹³⁴ the federalism concerns engendered by the *Missouri* decision and Bricker Amendment controversy are especially prevalent. The CRC touches on many aspects of family law and juvenile justice that have customarily been regulated by the states and not the federal government. In particular, the CRC addresses family separation and reunification,¹³⁵ child placement and custody issues,¹³⁶ and protection of children from abuse and neglect.¹³⁷ Critics claim that U.S. ratification of the CRC "would negatively affect the ability of state courts in the United States to deal with legal issues touching children."¹³⁸

In addition to federalism concerns related to the CRC's potential impact on the states' traditional authority over family law, another basis for U.S. opposition to the CRC is its provision banning juvenile executions.¹³⁹ The CRC states that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."¹⁴⁰ Until recently, the United States permitted individual states to execute persons convicted of capital crimes committed when they were under the age of eighteen.¹⁴¹ However, in *Roper v. Simmons*, the Supreme Court eliminated the possibility of juvenile executions in the United States.¹⁴² Thus, the *Roper* decision essentially nullified any hesitation in ratifying the CRC based on its potential impact on individual states' right to execute juveniles.

132. Henkin, *supra* note 54, at 348.

133. *Id.* at 348–49.

134. Susan Kilbourne, Student Research, *The Convention on the Rights of the Child: Federalism Issues for the United States*, 5 GEO. J. ON FIGHTING POVERTY 327, 327 (1998).

135. CRC, *supra* note 11, arts. 9, 10.

136. *Id.* art. 20.

137. *Id.* arts. 34, 39.

138. John Quigley, *U.S. Ratification of the Convention on the Rights of the Child*, 22 ST. LOUIS U. PUB. L. REV. 401, 405 (2003).

139. See, e.g., Howard Davidson, *A Model Child Protection Legal Reform Instrument: The Convention on the Rights of the Child and Its Consistency with United States Law*, 5 GEO. J. ON FIGHTING POVERTY 185, 187 (1998); Michelle Z. Hall, *Convention on the Rights of the Child: Has America Closed its Eyes?*, 17 N.Y.L. SCH. J. HUM. RTS. 923, 927 (2001).

140. CRC, *supra* note 11, art 37(a). For a discussion of the manner in which the United States should treat the CRC's prohibition on lifetime imprisonment for individuals convicted of capital crimes while they were juveniles, see *infra* note 213.

141. See, e.g., Carrie Martin, *Spare the Death Penalty, Spoil the Child: How the Execution of Juveniles Violates the Eighth Amendment's Ban on Cruel and Unusual Punishment in 2005*, 46 S. TEX. L. REV. 695 (2005).

142. *Roper v. Simmons*, 543 U.S. 551 (2005).

3. Reproductive and Family Planning Concerns

The CRC maintains no explicit position on the issues of contraception, abortion, or other family planning services. Nevertheless, U.S. critics fear that because the CRC does not explicitly offer protection to the fetus, its ratification will endorse abortion and encourage children to have abortions.¹⁴³

4. Parents' Rights Concerns

The parents' rights movement is grounded in several Supreme Court cases that have affirmed certain parental rights. In 1923, the Court decided *Meyer v. Nebraska*,¹⁴⁴ which concerned a Nebraska statute that prohibited the teaching of foreign languages to any student who had not graduated from the eighth grade.¹⁴⁵ Although the Court struck down the statute, the parent's rights movement has found constitutional support for its cause in the *Meyer* Court's discussion of the Fourteenth Amendment as including the right to "establish a home and bring up children"¹⁴⁶ Two years later, in *Pierce v. Society of Sisters*,¹⁴⁷ the Court affirmed the rights of parents by striking down an Oregon statute that required parents or guardians to send children between ages eight and sixteen to a public school in the district where the child resided.¹⁴⁸ The Court found that the statute "unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."¹⁴⁹ *Meyer* and *Pierce*, which remain good law, established broad parental rights.¹⁵⁰

In 1982, the Court again turned to the Fourteenth Amendment to expand the scope of parental rights in *Santosky v. Kramer*.¹⁵¹ This case examined a New York law that allowed the termination of parental rights when it was

143. See, e.g., David P. Stewart, *Ratification of the Convention on the Rights of the Child*, 5 GEO. J. ON FIGHTING POVERTY 161, 167 (1998); Hall, *supra* note 139, at 926.

144. 262 U.S. 390 (1923).

145. *Id.* at 397.

146. *Id.* at 626.

147. 268 U.S. 510 (1925).

148. *Id.* at 530.

149. *Id.* at 534-35.

150. The rights established in *Meyer* and *Pierce* were tempered by the Court's decision in *Prince v. Massachusetts* in which the Court struck down a Massachusetts law that forbade girls under the age of eighteen from selling periodicals in public places. 321 U.S. 158, 160-61 (1944). Although the Court recognized "[t]he rights of children to exercise their religion, and of parents to give them religious training and to encourage them in the practice of religious belief," the Court found that "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction." *Id.* at 165, 167. The Court summarized its analysis by stating that "[p]arents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves." *Id.* at 170.

151. 455 U.S. 745 (1982).

found that the child was “permanently neglected.”¹⁵² The “fair preponderance of the evidence” standard was used to make a determination of “permanent neglect[.]”¹⁵³ In *Santosky*, however, the Court raised the evidentiary standard stating that “the Due Process Clause of the Fourteenth Amendment demands [that] . . . [b]efore a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence.”¹⁵⁴ Taken together, *Meyer*, *Pierce*, and *Santosky* establish a clear line of support for certain parental rights.

Proponents of the parental rights movement have taken issue with the CRC, raising the twin concerns that the CRC elevates the rights of children to the detriment of their parents and that it endangers fundamental family relationships.¹⁵⁵ Supporters of the parents’ rights movement believe that the CRC grants children an unprecedented amount of autonomy. This line of reasoning finds that

[c]hildren are not autonomous. They are, by definition, “immature”—socially, mentally, emotionally, and physically. Hence, societies keep children from driving automobiles, from shooting guns, drinking alcohol, smoking, voting, viewing sexually explicit movies and photographs, and entering into binding contracts. Such “deprivations” protect children (and others) from the consequences of their immaturity. Adults impose such limitations not from arrogance or cruelty, but from wisdom.¹⁵⁶

Critics of the CRC further emphasize the role that parents play in protecting children: “[I]t was an accepted reality of life in America that children are too immature to handle the tremendous responsibility adult ‘freedoms’ carry with them. Consequently, under the American model, parents determine when children are mature enough to handle adult responsibilities.”¹⁵⁷ As these concerns suggest, supporters of the parents’ rights movement fear that the CRC legally grants “autonomous capacity to children [and] ignores the realities of education and child development to the point of abandoning children to a mere illusion of real autonomy.”¹⁵⁸

A related but slightly different fear about the CRC is that it will threaten the social cohesion of the family by injecting the state into the traditional family structure.¹⁵⁹ Opponents of the CRC explain that “the family, as the fun-

152. *Id.* at 747.

153. *Id.* at 755.

154. *Id.* at 747–48.

155. See, e.g., Kevin Mark Smith, *The United Nations Convention on the Rights of the Child: The Sacrifice of American Children on the Altar of Third-World Activism*, 38 WASHBURN L.J. 111 (1998); Wilkins et al., *supra* note 43, at 417.

156. Wilkins et al., *supra* note 43, at 417.

157. Smith, *supra* note 155, at 125–26.

158. Wilkins et al., *supra* note 43, at 417.

159. Hall, *supra* note 139, at 926 (“[T]he opposition believes that the CRC would undermine parental authority and threaten the parent-child relationship.”).

damental 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 Ratifying the CRC would threaten [this]."¹⁶⁰ As a result, the family unit would be shattered as children looked outside of the family to the state, rather than their parents, for guidance and support.¹⁶¹

As a direct result of these concerns, in 1995, days before President Clinton signed the CRC, opponents of the treaty's ratification introduced bills in the House and Senate entitled the "Parental Rights and Responsibilities Act of 1995."¹⁶² The bills, which were identical, were introduced to "protect the fundamental right of a parent to direct the upbringing of a child"¹⁶³ and sought to prohibit federal, state, and local governments from "interfer[ing] with or usurp[ing]" this "fundamental right."¹⁶⁴ Further, the bills attempted to elevate the standard used to evaluate all cases of government interference with parental rights to strict scrutiny. Both bills died in committee and were never reintroduced.

VI. REFUTATION OF VIEWS OPPOSING THE CONVENTION ON THE RIGHTS OF THE CHILD

As already explicated, previous attempts by the United States to ratify the CRC have proved vastly unsuccessful.¹⁶⁵ However, current events, recent judicial decisions, and the international political climate all support a renewed effort to ratify the CRC. Moreover, the current state of children's health and development demands that the United States pay closer attention to the inherent human rights of each child.

A. Responses to Sovereignty Concerns

Although sovereignty concerns are frequently cited as a reason to avoid U.S. ratification of human rights treaties,¹⁶⁶ the manner in which these sovereignty concerns are framed must be considered. Detractors of the CRC and other international treaties believe that being subject to international law infringes on U.S. sovereignty. However, the United States can only be bound by international law through the exercise of its own legislative processes. In order for the United States to become a party to an international agreement, "a domestic decision-maker [e.g., the Senate]" must accept the agreement

160. Wilkins et al., *supra* note 43, at 434.

161. Cf. Smith, *supra* note 155, at 122 ("It is cardinal with us that the custody, care, and nurture of the child reside first in the parents, whose primary functions and freedom include preparations for obligations the state can neither supply nor hinder.").

162. S. Res. 984, 104th Cong. (1995); H.R. 1946, 104th Cong. (1995).

163. S. Res. 984, 104th Cong. pmb. (1995).

164. *Id.* § 4.

165. For a discussion of previous U.S. attempts to ratify the CRC, see *supra* Part V.A.

166. For a discussion of these concerns, see *supra* Part V.C.1.

and “conclude[] that a non-U.S. rule should be a rule of decision within the United States.”¹⁶⁷ It is entirely possible that a domestic institution will decide that the United States’ interests, both at home and abroad, are best served by ratifying a treaty or entering a trade agreement. Such a determination can be viewed “as the result[] of an exercise of sovereignty, not as evidence of a lapse of sovereignty.”¹⁶⁸ After all,

[A] sovereign nation can decide that its sovereign interests are advanced . . . by making agreements with other nations that limit what it can otherwise do. . . . Even more, a sovereign nation can decide that its sovereign interests are advanced . . . by agreeing with other nations to delegate interpretive authority over treaties to some supranational body.¹⁶⁹

A sovereign nation’s authority and ultimate success derive, in part, from recognizing when a multilateral or bilateral agreement promotes that nation’s political, economic, or humanitarian interests. The agreement may limit a nation’s sovereignty in a specific area, but it is a sovereign nation’s prerogative to determine when such a trade-off is beneficial.

In addition, several recent Supreme Court decisions demonstrated that certain justices are willing to consider international law and the laws and practices of other nations when drafting their opinions.¹⁷⁰ For example, in *Grutter v. Bollinger*, a case sustaining the University of Michigan Law School’s “narrowly tailored use of race in admissions decisions,”¹⁷¹ Justice Ruth Bader Ginsburg’s concurring opinion cited the International Convention on the Elimination of All Forms of Racial Discrimination as an example of how the majority’s “observation that race-conscious programs ‘must have a logical endpoint’ . . . accords with the international understanding of the office of affirmative action.”¹⁷² A few days later, in *Lawrence v. Texas*,¹⁷³ which held that a Texas statute

167. Tushnet, *supra* note 121, at 262.

168. Aleinikoff, *supra* note 116, at 1994.

169. Tushnet, *supra* note 121, at 261.

170. Cf. Stephen Breyer, Associate Justice, Supreme Court of the United States, Keynote Address at the Proceedings of the Ninety-Seventh Annual Meeting of The American Society of International Law: The Supreme Court And The New International Law (Apr. 4, 2003) (“Ultimately, I believe that the ‘comparativist’ view that several of us have enunciated will carry the day—simply because of the enormous value in any discipline of trying to learn from the similar experience of others.”); Sandra Day O’Connor, Keynote Address at the Proceedings of the Ninety-Sixth Annual Meeting of the American Society of International Law (Mar. 16, 2002) (“Although international law and the law of other nations are rarely binding upon our decisions in U.S. courts, conclusions reached by other countries and by the international community should at times constitute persuasive authority in American courts.”).

171. 539 U.S. 306, 342 (2003)

172. *Id.* at 342 (Ginsburg, J., concurring) (citation omitted); see also Ruth Bader Ginsburg, *Looking Beyond Our Borders: The Value of a Comparative Perspective in Constitutional Adjudication*, 40 IDAHO L. REV. 1, 1 (2003) (“National, multinational, and international human rights charters and tribunals today play a key part in a world with increasingly porous borders. My message in these remarks is simply this: We are the losers if we do not both share our experience with, and learn from others.”).

173. 539 U.S. 558 (2003).

prohibiting sexual contact between consenting adults of the same sex was unconstitutional, Justice Anthony Kennedy, writing for the majority, noted that other nations also recognized the right of homosexual adults to engage in consensual, intimate contact:

To the extent that *Bowers* [v. *Hardwick*] relied on values we share with a wider civilization, it should be noted that the reasoning and holding in *Bowers* have been rejected elsewhere. The European Court of Human Rights has followed not *Bowers* but its own decision in *Dudgeon v. United Kingdom* Other nations, too, have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct. The right the petitioners seek in this case has been accepted as an integral part of human freedom in many other countries. There has been no showing that in this country the governmental interest in circumscribing personal choice is somehow more legitimate or urgent.¹⁷⁴

Even more recently, in *Roper v. Simmons*,¹⁷⁵ Justice Kennedy noted in his majority opinion, striking down the use of the death penalty on individuals convicted of capital crimes that they committed when they were juveniles, that “[i]t is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty”¹⁷⁶ While, of course, these developments do not alter U.S. sovereignty, they do show a growing recognition of the interconnectedness of the world’s nations and an acknowledgement that the laws and practices of other nations can influence domestic law.

B. Responses to Federalism Concerns

Arguments that the CRC, if ratified by the United States, will upset the balance between the states and the federal government and violate the Tenth Amendment of the U.S. Constitution can be refuted both by the current state of the law and contemporary U.S. practice.¹⁷⁷ First, federalism objections to the CRC are essentially negated by *Missouri*’s holding that the treaty power gives the U.S. government authority over the states that is otherwise prohibited by the Constitution.¹⁷⁸

In addition, the United States has several policies in place to ensure that ratification of international agreements does not impair federalism. First, U.S. ratifications of international treaties are accompanied by reservations,

174. *Id.* at 576–77 (citations omitted). *Bowers v. Hardwick* held that a Georgia sodomy statute did not violate any fundamental right of homosexual adults. 478 U.S. 186 (1986).

175. *Roper*, 543 U.S. 551. For a discussion of the *Roper* opinion, see *infra* Part VI.B.

176. *Id.* at 578.

177. U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

178. For a discussion of *Missouri v. Holland*, see *supra* Part V.C.2.

declarations, and understandings (“RUDs”)¹⁷⁹ that “severely limit the[] application [of human rights treaties] in the United States.”¹⁸⁰ This package of RUDs traditionally includes a federalism clause, with the idea that “the United States could leave implementation [of the treaty] largely to the states.”¹⁸¹ This seeming contravention of the *Missouri* decision is reinforced by the “the policy of the United States, when ratifying human rights treaties, that those treaties [] make no significant changes to the American legal system.”¹⁸²

To further ensure that human rights treaties do not significantly alter its federal structure, the United States has declared that the human rights treaties it ratifies are non-self-executing,¹⁸³ meaning that U.S.-ratified treaties do not automatically have legal force, “but must be implemented by legislative or other measures.”¹⁸⁴ This non-self-execution is designed to deny judges in the United States the ability to decide cases based upon the international standards created in human rights treaties.¹⁸⁵ Opponents of the non-self-executing clause believe that the clause undermines the seriousness with which the United States should approach human rights issues.¹⁸⁶

In addition to these general concerns, as already mentioned, one of the United States’ primary reasons for failing to ratify the CRC is because of the CRC’s prohibition on juvenile executions.¹⁸⁷ Until March 1, 2005, this provision conflicted with U.S. law because the U.S. Supreme Court held in *Stanford v. Kentucky*¹⁸⁸ that there was “neither a historical nor a modern societal consensus forbidding the imposition of capital punishment on any person who murders at 16 or 17 years of age [S]uch punishment does not offend the Eighth Amendment’s prohibition against cruel and unusual pun-

179. Connie de la Vega, *Human Rights and Trade: Inconsistent Application of Treaty Law in the United States*, 9 UCLA J. INT’L L. & FOREIGN AFF. 1, 2 (2004) (stating that “federalism constraints were raised first to prevent and later severely limit the [United States’] involvement in and application of human rights treaties through the use of reservations, understandings, and declarations (RUDs)”).

180. *Id.* at 3.

181. Henkin, *supra* note 54, at 341.

182. Sanford Fox, *To Ratify the Convention*, 5 GEO. J. ON FIGHTING POVERTY 267, 267 (1998).

183. Henkin, *supra* note 54, at 346.

184. Kong, *supra* note 63, at 859 n.54.

185. Henkin, *supra* note 54, at 346.

186. *See id.* at 349–50; cf. Robin H. Gise, Note, *Rethinking McClesky v. Kemp: How U.S. Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination Provides a Remedy for Claims of Racial Disparity in Death Penalty Cases*, 22 FORDHAM INT’L L.J. 2270, 2307 (1999) (“Many commentators oppose the non-self-executing declaration on legal and policy grounds. First, some scholars note that non-self-executing declarations are inconsistent with Article VI of the U.S. Constitution, which states that treaties are the supreme law of the land. Second, commentators argue that the non-self-executing declaration nullifies the effect of [a treaty] in the United States by preventing U.S. citizens from [bringing] causes of action under the [treaty].”).

Some opponents of the non-self-executing clause have suggested a compromise similar to the one reached with Senator Helms during the debate over the Convention against Torture where a bipartisan compromise reduced the sovereignty reservation to a proviso to be sent to all States Parties that stated that “no legislation or action is required that is prohibited by the U.S. Constitution.” Huffines, *supra* note 25, at 645.

187. *See supra* Part V.C.2.

188. 492 U.S. 361 (1989), *overruled in part by* Roper v. Simmons, 543 U.S. 551.

ishment.”¹⁸⁹ Thirteen years later, however, in *Atkins v. Virginia*,¹⁹⁰ the Court outlawed capital punishment for the mentally retarded. The Court held that “in the light of our ‘evolving standards of decency,’ . . . [capital] punishment is excessive and . . . the Constitution ‘places a substantive restriction on the State’s power to take the life’ of a mentally retarded offender.”¹⁹¹

In March 2005, in its landmark decision in *Roper v. Simmons*,¹⁹² the Court sought to resolve the seeming inconsistency between *Stanford* and *Atkins*. Christopher Simmons had planned and committed a capital murder when he was seventeen years old. After his eighteenth birthday, a Missouri court sentenced him to death for the crime and the state’s Supreme Court affirmed the decision in 1997.¹⁹³ After the *Atkins* case came down, Simmons filed a new petition for post-conviction relief with the state of Missouri.¹⁹⁴ After the Missouri Supreme Court reevaluated Simmons’s case in light of *Atkins* and determined that “a national consensus has developed against the execution of juvenile offenders,”¹⁹⁵ the Supreme Court accepted the case on appeal to evaluate the juvenile death penalty under the Eighth Amendment.

The Eighth Amendment, made applicable to the states through the Fourteenth Amendment,¹⁹⁶ prohibits “cruel and unusual punishments.”¹⁹⁷ In *Roper*, the Court explained that the Eighth Amendment’s prohibition against cruel and unusual punishment “must be interpreted according to its text, by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design.”¹⁹⁸ To apply this framework, the Court looks to “the evolving standards of decency that mark the progress of a maturing society”¹⁹⁹

The Court began its analysis by surveying the states’ contemporary practices regarding juvenile executions. It found that in the last ten years, only three states—Oklahoma, Texas, and Virginia—executed people for crimes they committed while juveniles.²⁰⁰ The Court also noted that since its *Stanford* decision, “no State that previously prohibited capital punishment for juveniles has reinstated it. This fact, coupled with the trend toward abolition of the juvenile death penalty, carries special force . . . in light of the

189. *Id.* at 380. In 1988, in *Thompson v. Oklahoma*, a plurality of the Court held that capital punishment could not be used against anyone who was less than sixteen years old at the time they committed the crime in question. 487 U.S. 815 (1988).

190. 536 U.S. 304 (2002). *Atkins* overturned the Court’s previous decision, *Penry v. Lynaugh*, which held that the Eighth Amendment did not require mentally retarded offenders to be exempt from death sentences. 492 U.S. 302 (1989).

191. *Atkins*, 536 U.S. at 321.

192. *Roper*, 543 U.S. at 551.

193. *State v. Simmons*, 944 S.W.2d 165, 169 (1997) (en banc).

194. *Roper*, 543 U.S. at 559.

195. *State ex rel. Simmons v. Roper*, 112 S.W.3d 397, 399 (2003) (en banc).

196. U.S. CONST. amend. XIV.

197. U.S. CONST. amend. VIII; *Roper*, *supra* note 142, at 569.

198. *Roper*, 543 U.S. at 560.

199. *Id.* at 561. (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

200. *Id.* at 564–65.

particular trend in recent years toward cracking down on juvenile crime in other respects.”²⁰¹ The Court recognized this trend as part of a growing national consensus that “our society views juveniles . . . as ‘categorically less culpable than the average criminal.’”²⁰²

The Court stated that the differences between juveniles and adults are such “that juvenile offenders cannot with reliability be classified among the worst offenders.”²⁰³ First, the Court recognized “the comparative immaturity and irresponsibility of juveniles” that results in almost every State prohibiting “those under 18 years of age from voting, serving on juries, or marrying without parental consent.”²⁰⁴ The Court also found that juveniles are “more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.”²⁰⁵ Finally, the Court recognized that “the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.”²⁰⁶ The Court relied on these differences between juveniles and adults to hold that “it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.”²⁰⁷ In light of these observations, the Court pointed out that the two main justifications for the death penalty—retribution and deterrence—would not be achieved by imposing the death penalty on juvenile offenders.²⁰⁸

Finally, the Court recognized that the United States is “the only country in the world that continues to give official sanction to the juvenile death penalty.”²⁰⁹ The Court explained that while this observation is not controlling, it “referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment’s prohibition of ‘cruel and unusual punishments.’”²¹⁰ In particular, the Court emphasized the CRC’s provision prohibiting the use of capital punishment against juvenile offenders.²¹¹ The Court went so far as to state that “the United States now stands alone in a world that has turned its face against the juvenile death penalty.”²¹²

201. *Id.* at 566.

202. *Id.* at 567.

203. *Id.* at 569.

204. *Id.*

205. *Id.*

206. *Id.* at 570.

207. *Id.*

208. *Id.*

209. *Id.* at 575.

210. *Id.*; see Anne E. Kornblut, *Justice Ginsburg Backs Value of Foreign Law*, N.Y. TIMES, Apr. 2, 2005, at A10 (“Fears about relying too heavily on world opinion ‘should not lead us to abandon the effort to learn what we can from the experience and good thinking foreign sources may convey,’ Justice [Ruth Bader] Ginsburg told members of the American Society of International Law.”).

211. *Roper*, 543 U.S. at 576. Since 1990, only China, Democratic Republic of Congo, Iran, Nigeria, Pakistan, Saudi Arabia, Yemen, and the United States have executed juveniles. In recent years each of these countries has “either abolished capital punishment for juveniles or made public disavowal of the practice.” *Id.* at 576–77.

212. *Id.* at 577.

In light of the Supreme Court's definitive holding in *Roper* prohibiting capital punishment for capital crimes committed by juveniles, the CRC's prohibition on juvenile execution can no longer be cited as a reason for postponing U.S. ratification of the treaty.²¹³

C. Responses to Reproductive and Family Planning Concerns

The CRC does not take a position on family planning or abortion issues.²¹⁴ Most observers assume that the CRC's authors deliberately left the CRC's provisions on family planning open to interpretation by each of the ratifying States Parties.²¹⁵ Thus, the CRC provisions may be interpreted as recognizing a fetus as a child in need of protection. Although the CRC defines a child as a "human being below the age of eighteen years,"²¹⁶ the CRC does not establish when childhood begins. Although an individual eighteen years or older is not a "child" under the CRC, the CRC does not set a floor at which childhood starts. This omission, coupled with the statement in the CRC's preamble that "[t]he child needs special safeguards and care . . . before as well as after birth,"²¹⁷ allows nations who ratify the CRC to interpret Article 6's "inherent right to life" clause²¹⁸ as applying to fetuses.²¹⁹ Regardless of other nations' interpretations, U.S. law does allow the practice of abortion.²²⁰ Because the CRC does not violate any U.S. abortion or family planning law, its ratification by the United States would not result in any conflict between U.S. domestic policy and international law.

D. Responses to Parents' Rights Concerns

A careful parsing of the CRC reveals that objections to it based on parental rights arguments misconstrue the CRC's intentions.²²¹ Critics often claim

213. Ideally the United States would follow all aspects of the CRC's Article 37(a), including the article's prohibition against life imprisonment of juveniles. Currently, the United States continues to sentence some offenders convicted of crimes they committed as juveniles to life imprisonment without the possibility of release. See, e.g., Malika T. Djafar, Background to Special Personal Statement, *Voices: Incarcerated Youths*, 3 WHITTIER J. CHILD & FAM. ADVOC. 285, 285 (2004) ("[I]n 2003, a juvenile as young as fourteen years of age can be sentenced to life imprisonment without possibility of parole."). There is no indication that the United States plans to end this practice. However, the United States could ratify the CRC with a reservation stating that it will continue to use life imprisonment without possibility of release as a sentence for persons who committed certain offenses while juveniles. See *infra* Appendix.

214. See Stewart, *supra* note 143, at 178 ("A credible effort was made during the drafting process to ensure that the Convention is 'abortion neutral.'").

215. Philip Alston, *The Unborn Child and Abortion Under the Draft Convention on the Rights of the Child*, 12 HUM. RTS. Q. 156, 157 (1990).

216. CRC, *supra* note 11, art. 1.

217. *Id.* at pmbl.

218. *Id.* art. 6.

219. For example, certain countries with strict abortion laws, such as Ireland and the Philippines, have ratified the CRC. Hall, *supra* note 139, at 927.

220. Planned Parenthood of S.E. Pa. v. Casey, 505 U.S. 833 (1992); *Roe v. Wade*, 410 U.S. 113 (1973).

221. Cf. Bruce C. Hafen & Jonathan O. Hafen, *Abandoning Children to Their Autonomy: The United Nations Convention on the Rights of the Child*, 37 HARV. INT'L L.J. 449, 451 (1996) ("While there is much to

that the CRC's "participatory" rights grant autonomy rights to children that are best controlled by parents.²²²

Yet, early on, the CRC states that the family is the "fundamental group of society" and that "parents have common responsibilities for the upbringing and development of the child."²²³ Articles 12 and 13 of the CRC focus on children's right to freedom of expression.²²⁴ However, Article 13 describes specific restrictions to this freedom, including a restriction "[f]or the protection of . . . morals."²²⁵ The term "morals" is not defined in the CRC, which allows each States Party to interpret the term.

Article 14 grants a child the right to freedom of thought, conscience, and religion.²²⁶ These are rights that are similar to those guaranteed by the U.S. Constitution to every American.²²⁷ Part two of Article 14 guarantees to parents the right to raise their children in accordance with the parents' religious beliefs, explaining that States Parties "shall respect the right and duties of the parents . . . to provide direction to the child in the exercise of his or her right"²²⁸

The past decade has seen a rapid increase in the number of parents who use electronic devices or services to control the content their children see on television and through other mass media forums.²²⁹ Although this may appear to conflict with Article 17 of the CRC, which grants children the right to "access information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health,"²³⁰ Article 17's intention is only to allow a child to access helpful information. For example, the CRC encourages the media to produce "material of social and cultural benefit"²³¹ and encourages "the development of appropriate guidelines for the protection of the child from information and material injurious to his or her

praise in the CRC's approach to child protection, in this article we take the position that the CRC's vision of child autonomy is misguided."); Wilkins et al., *supra* note 43, at 417 ("[L]egally granting—rather than actually teaching—autonomous capacity to children ignores the realities of education and child development to the point of abandoning children to a mere illusion of real autonomy.").

222. See, e.g., Hafen & Hafen, *supra* note 221, at 412 ("[W]e believe that the CRC's newly minted autonomy rights are neither beneficial to children nor harmonious with traditional notions of salutary family life Second, we have concluded that the CRC's sweeping reconstruction of family life lies beyond Congress' reach.").

223. CRC, *supra* note 11, pmbl., art. 18.

224. *Id.* arts. 12, 13.

225. *Id.* arts. 2(b), 13.

226. *Id.* art. 14.

227. U.S. CONST. amend. I.

228. CRC, *supra* note 11, art. 14.

229. See, e.g., Walter S. Mossberg, *MSN and AOL Offer Extras for Broadband, But are They Worth It?*, WALL ST. J., Apr. 15, 2004, at B1 ("[P]arental controls . . . keep your kids away from nasty things online. If you are a parent of young children, you probably would gladly pay extra monthly for good controls"); Chana R. Schoenberger, *Clinton Backs Voluntary Ratings System to Let Parents Regulate Internet Use*, WALL ST. J., July 17, 1997, at B9 ("Filtering software will play a major role in the [Clinton] administration's plan for protecting children from material their parents find objectionable.").

230. CRC, *supra* note 11, art. 17.

231. *Id.*

well-being.”²³² The CRC makes no suggestion on what the “appropriate guidelines” should be, leaving this task to the States Parties that ratify the CRC.

These provisions make clear that the intention of Article 17 is not to provide children with a justification for demanding access to illicit or distasteful media, but rather to aid children in accessing materials that are beneficial to their development.

VII. WHY RATIFY NOW?

Over the last several years, the United States has come under intense scrutiny from domestic and international media and from international governments and their citizens for its policies on U.S. military deployment to Iraq.²³³ These policies were criticized as being unilateral and as being developed without any heed to the views of the United States’ historical allies.²³⁴ Due to the U.N.’s opposition to the U.S.-led invasion in Iraq, the relationship between the two bodies deteriorated with U.S. officials deeming the United Nations an irrelevant organization.²³⁵ Although the United States has back-pedaled on this last point in the past year,²³⁶ U.S. ratification of the CRC now would be a well-timed show of support for the United Nations.

The political capital for supporting many of the provisions of the CRC is evident in current domestic legislation. For example, U.S. public opinion polls consistently show a strong desire for improved education and health care systems.²³⁷ Currently, eighteen states have bills in their legislatures to provide for universal health care coverage.²³⁸ The bi-partisan No Child Left Behind Act was signed into law in January 2002 by President Bush, with the goal of providing a quality education to the most underserved children.²³⁹

The events of the past decade provide further reasons why the time has come for the United States to proclaim its support for the CRC to the international community. The 1990s saw large-scale human rights violations due to intra- and international conflicts in which millions of children lost their lives. Massive human rights violations against children occurred in Bosnia-

232. *Id.*

233. See, e.g., John Hall, *Growing Hostility to U.S. Worries Many Americans*, RICHMOND TIMES, Sept. 14, 2003, at A9; Robert Schlesinger, *Surveys Suggest Global Opinion of U.S. On Decline*, BOSTON GLOBE, June 4, 2003, at A8.

234. See, e.g., *Binding the Colossus—America and the World*, ECONOMIST, Nov. 22, 2003, at 28; Bruce Nussbaum, *The High Price of Bad Diplomacy*, BUS. WEEK, Mar. 24, 2003, at 33.

235. See, e.g., Editorial, *A Not-So-Irrelevant U.N.*, CHRISTIAN SCI. MONITOR, May 21, 2003, at 8; Anne-Marie Slaughter, *Accused of Irrelevance and Deeply Divided Over Iraq, the United Nations Has Never Mattered More*, WASH. POST, Mar. 2, 2003, at B1.

236. See, e.g., Michael J. Jordan, *UN Chief Tries to Bridge Gaps with US*, CHRISTIAN SCI. MONITOR, Jan. 24, 2005, at 7; Christopher Marquis, *For the Allies of America, the Price of Support is Rising*, N.Y. TIMES, June 28, 2004, at 1.

237. See, e.g., Press Release, The Pew Research Center for the People & the Press, 85% See U.S. Addicted to Oil—50% Say We Can Quit (Feb. 7, 2006) (on file with authors).

238. Nar’l Conference of State Legislatures, *Universal Health Care: 2005 Legislation*, available at <http://www.ncsl.org/programs/health/universalhealth.htm> (last visited Feb. 23, 2006).

239. No Child Left Behind Act, 20 U.S.C. § 6301 (2003).

Herzegovena,²⁴⁰ Chechnya,²⁴¹ Rwanda,²⁴² and the Sudan,²⁴³ among others, in the past decade alone. Given these occurrences, the need for passage of the CRC is as critical as ever. Ratification of the CRC by the world's only superpower,²⁴⁴ will give a needed boost to the enforcement of human rights law. This Article argues that the United States' ratification of the CRC will, as it has done with other treaties, give greater credence and international support to its principles. Ratification will commit the United States and the world to better protection and promotion of the health, welfare, and security of children.

VIII. CONCLUSION

In 1995 the United States signed the CRC, indicating its intent to support the CRC and pursue its ratification. Ten years later, children, domestically and around the world, continue to face human rights violations. Until last year, the United States remained the sole country in the world to condone the practice of execution for capital crimes committed by juveniles.²⁴⁵ Even after the Supreme Court's landmark decision in *Roper*,²⁴⁶ the United States continues to stand alone as the only self-governed nation to withhold ratification of the CRC. The United States should now reconsider action toward improving children's human rights. No member of the U.S. Congress has called for ratification of the CRC since 1997. The analysis of legal, political, and social factors above suggests that a window of opportunity has arrived for the United States to demonstrate its commitment to human rights and children's rights by joining the rest of the world and ratifying the CRC. To that end, this Article proposes that Congress call on the President to seek advice and consent of the Senate for ratification of the CRC. Attached to this Article is a proposed resolution urging the President to seek advice and consent for ratification.²⁴⁷ The time has come for Congress to follow the original intent behind the U.S. signature on the CRC with ratification, and, in doing so, make a definitive statement about this nation's commitment to human rights.

240. See, e.g., Roger Richards, *Sarajevo's Lost Innocents: The Children of Bosnia, Under Fire*, WASH. POST, Mar. 21, 1993, at F1; Chuck Sudetic, *Healing Children, Can Bosnia Heal Itself?*, N.Y. TIMES, June 24, 1994, at A1.

241. See, e.g., Nora Boustany, *A Glitzy Party with a Somber Theme*, WASH. POST, Mar. 1, 2000, at A12; Fred Weir, *Chechen Children Seek Solace Through Art*, CHRISTIAN SCI. MONITOR, May 31, 2000, at 8.

242. See, e.g., Wendy Driscoll, *Tiny, Ragged Voyagers*, WASH. POST, Sept. 1, 1994, at A21.

243. See, e.g., Marc Lacey, *Want, Violence and Death Steal Childhood in Sudan*, N.Y. TIMES, Aug. 15, 2004, at 1.18; Somini Sengupta, *Death and Sorrow Stalk Sudanese Across Border*, N.Y. TIMES, Aug. 20, 2004, at A.1.

244. Rebecca Trail, Note, *The Future of Capital Punishment in the United States: Effects of the International Trend Towards Abolition of the Death Penalty*, 26 SUFFOLK TRANSNAT'L L. REV. 105, 125-27 (2002) (describing U.S. as "world's superpower").

245. *Roper*, 543 U.S. at 577.

246. *Id.*

247. See *infra* Appendix.

APPENDIX
RESOLUTION

Urging the President to submit the Convention on the Rights of the Child to the Senate for its advice and consent to ratification.

Whereas it has been ten years since the United States signed the Convention on the Rights of the Child and children both at home and around the world remain vulnerable and continue to suffer human rights violations every day;ⁱ and

Whereas there are currently over 73,000,000 children under age eighteen living in the United States and children constitute approximately twenty-five percent of the U.S. population;ⁱⁱ and

Whereas more than 1.5 million children have been killed in armed conflict worldwide since 1990;ⁱⁱⁱ and

Whereas one in seven children worldwide is denied access to any health care;^{iv} and

Whereas every year two million children around the world are exploited as part of the commercial sex industry;^v and

Whereas every self-governed country in the world, with the exception of the United States, has proclaimed its commitment to upholding and enforcing children's rights by ratifying the Convention on the Rights of the Child;^{vi}

Resolved, that the United States accepts the general principles of Article 37(a). The United States submits the Convention on the Rights of the Child for ratification with reservation for the United States to continue imposing the penalty of life imprisonment without possibility of release to juveniles for certain crimes. The United States, therefore, ratifies the Convention on the Rights of the Child to the extent that it is able to comply with Article 37(a).

Resolved, that it is the sense of the Senate/House of Representatives that the President should promptly seek the advice and consent of the Senate to ratification of the Convention on the Rights of the Child, adopted by the United Nations General Assembly with the support of the United States on November 20, 1989.

i. See, e.g., Editorial, *Endangered Children*, BALT. SUN, Jan. 1, 2005, at 12A; Lydia Polgreen, *Civilians Bear Brunt of the Continuing Violence in Darfur*, N.Y. TIMES, Jan. 24, 2005, at A3; Press Release, Human Rights Watch, Côte d'Ivoire: Ex-Child Soldiers Recruited for War (Mar. 31, 2005).

ii. U.S. CENSUS BUREAU, PROJECTED POPULATION OF THE UNITED STATES, BY AGE AND SEX: 2000 TO 2050 (TABLE 2A) (2004).

iii. UNICEF, THE STATE OF THE WORLD'S CHILDREN 2005 20 (2004).

iv. *Id.* at 2.

v. *Id.* at 153.

vi. OFFICE OF THE UNITED NATIONS HIGH COMM'R FOR HUMAN RIGHTS, STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES 11 (2004).