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UN Convention on the Rights of the Child
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The United States and the CRC: Where We Are and How We Got Here

Dr. Karunen, Ms. Gardinier, Professor Lenzer and your staff: thank you all for organizing this event, for bringing together so many people to learn more about, and perhaps become advocates for, the UN Convention on the Rights of the Child, the CRC.

I also offer my condolences to the Price-Cohen family. Cynthia and I got to know each other relatively late in the CRC game. Cynthia was an established and accomplished expert in child rights, having worked on rights for many years. She was instrumental in seeing the CRC evolve from an idea to a treaty. I am grateful for her mentoring, her acceptance of me, her support for the campaign, and her willingness to help me on an incredible journey. It is entirely fitting that we dedicate our deliberations to her.

November 2007 marks the 18th Anniversary of UN adoption of the CRC.

While planning for these sessions, we agreed that it would be valuable to discuss how this US Campaign got its start, where it is now, and where we believe it is headed. Because most of us can benefit from a high school civics review, a simple primer on treaty ratification in the US might also be useful.

I am not a treaty scholar, however, I do know something about the CRC and its optional protocols, and to some extent about the Convention on Elimination of Discrimination Against Women (CEDAW). The Library of Congress lists 24 types of treaties. The Department of State publishes an annual list of Treaties in Force, a list that is nearly 500 pages long.

According to the Senate historian, earliest treaties had to do with relationships with Great Britain, Indian Territories, White Slavery, and Admiralty. Relationships between the States, the Senate, and the Administration were often strained over developing treaties, the process of getting them written and ratified, and over their effect.

Treaty authority is in the Constitution. Article II, section 2, states that the President "...shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." The two-third requirement ensures that a treaty will enjoy bipartisan support before it can be ratified because it is indeed rare for any political party to enjoy a two-thirds majority in the Senate. Treaties must reflect a broad national consensus.

The Department of State is the US repository for international treaties. The US acknowledges and agrees to the definition of a treaty as defined in the Vienna Convention on the Law of Treaties. Generically a treaty is an agreement “governed by international law, whether embodied in a single instrument or in two or more related instruments....” Treaties cover just about every imaginable aspect of cross-border human (and natural endeavor).

According to the website of the US Senate “...the Senate power which aroused the gravest and most widespread apprehension was that associated with the making of treaties.” Keep this thought in your mind as our discussion proceeds. The Constitution's framers gave the Senate a share of the treaty power to check presidential power. Additionally, and, this is critical in relation to the CRC, the process is intended—like it or not—to safeguard the States’ rights and sovereignty by giving each state an equal vote in the treaty-making process.

We all know about State’s Rights: any student of child protection, education, health care and other aspects of child wellbeing realizes that nearly every benefit, requirement, and standard with regard to children is State-based.

Treaties need not be resubmitted at the beginning of each new Congress. There have been instances in which treaties have lain dormant within the committee for years, even decades, without action. The US is now looking at ratification of the Treaty of the Seas which has taken decades to work its way through the process. The UN adopted CEDAW in 1979 and the CRC in 1989 and no action on either by the US--yet.

The Constitution's says that a treaty may have status as the “supreme law of the land,” along with federal statutes and the Constitution itself. However, because the CRC is not self-executing, even if it were ratified, it would not automatically take effect in all states. Under our system, until Congress legislates mandates for the States, the CRC would become law only as States’, and in many cases county and local statutes, are reviewed and amended to ensure that they concur with the content of the CRC.

Although the CRC is not “self-executing,” some Nations have adopted it intact, making the text of the CRC the law of their land. Dr. Karunen may be better able to address this issue.

The Senate may follow any of a number of courses once the White House forwards a treaty. With a two-thirds majority the Senate may approve or reject the treaty as submitted. Alternatively, it may condition its approval by adding what are known as RUDS: reservations, understandings, and declarations. A reservation that limits the US obligation may have the same effect as an amendment to the actual text of the treaty itself. Alternatively, the Senate may take no definitive action, leaving the treaty pending; it may then languish or be withdrawn.

As a leader of the Campaign for US Ratification of the CRC, I see a dim beacon of hope, that the Senate has consented to ratification of most of the treaties submitted to it

and their ratification has subsequently been signed by the president. During its first two hundred years, the Senate approved more than 1,500 treaties, approximately 90 percent of those submitted to it. Since 1789, only twenty-one treaties have been actually rejected by the Senate.

The US is currently party to nearly nine-hundred treaties and more than five-thousand executive agreements.

Let's turn now to the CRC and the Campaign.

As a Social Worker with a background in community organization and policy, I have been involved in a number of organizing efforts. I thought "what could be a more straightforward task than trying to bring people together to promote children's rights?" We would go to some child-friendly foundations, raise the hundreds of thousands of dollars needed to mount a great campaign, and "voila," we'd have ratification. Actually, I was never that delusional, although my wife refers to me as ever the optimist.

Well, it was not that simple.

First, hardly anyone had ever heard of the CRC. It stirs little interest at best and irrational opposition at worst. Interestingly, however, when described in some detail the first question posed is always: "Why haven't we ratified it?"

During the early 1990s there was at least one organized campaign to promote US ratification. Cynthia Price-Cohen, was of course, prominent among them, as were Howard Davidson of the ABA, Joe Mettimano of World Vision, Stuart Hart, of Indiana State University and David Liederman of the Child Welfare League of America, and others whom many of you know.

A coalition of groups including The National Education Association, the General Federation of Women's Clubs, US Committee (now US FUND) for UNICEF, the American Bar Association, and others worked to promote ratification in the early 1990s. They worked to raise consciousness and to encourage supportive members of the Senate to introduce ratifying legislation. One abortive effort at ratification was attempted by Senators Lugar, Rockefeller, Spector, and Biden. The bill went nowhere and was later repudiated by the Republican supporters.

Ironically, the US had been integrally involved in shaping the language and structure of the original treaty. Indeed, some of the clauses are still referred to as the Reagan clauses.

Presidential signing of a treaty is a signal to the world that a nation intends to press forward with a ratification process. Procedurally, the US thoroughly evaluates the constitutionality and potential impact of a treaty prior to giving its consent for ratification. The departments that will ultimately administer its clauses, in this case, the Departments of Justice, HHS, Labor, and State conduct such analysis.

In February 1995, President Clinton directed Secretary of State Madeleine Albright to sign the CRC. According to several sources, this was done as a personal favor to James Grant, then executive director of UNICEF, who, on his deathbed, implored the administration to ratify the treaty. It seems that Grant, the American executive of UNICEF--remember that UNICEF is the principal proponent of the CRC around the world--was essentially mortified that his country was a holdout.

The next step, consideration by the Senate Foreign Relations Committee, never happened. Recall who led the Committee at that time. Senator Helms, dubbed "Senator No" by some, we have been told, informed the administration that the CRC was DOA--dead on arrival--and that the administration should not waste its time with dead matters. Senator Helms bitterly opposed this and any other international agreement.

Due, in part, to the lengthy review process, it can legitimately take several years for a treaty to be ratified, and if the treaty is controversial (or portrayed as controversial), it can become polarizing-- which further complicates the process.

Other examples of the US significantly delaying consideration of treaties include the Convention on the Prevention and Punishment of the Crime of Genocide which took more than 30 years to be ratified in the United States. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was signed by the United States more than 25 years ago, still has not been ratified. Moreover, the U.S. Government will typically consider only one human rights treaty at a time.

Apart from an extensive analysis and traditionally lengthy ratification process, other obstacles exist. These include widespread misconceptions, misinformation and disagreement about the Convention's intent, provisions, potential impact, and political opposition.

How We Got Where We Are

A special session of the General Assembly was scheduled for mid-September 2001. For obvious reasons the session, known as UNGASS (UN General Assembly Special Session on Children) was rescheduled. It finally occurred in May 2002.

The UNGASS was intended to move the world towards standards for the CRC's implementation. The current initiative towards US ratification has its roots in early 2001 during one of the preparatory conferences (prepcons) leading up to UNGASS.

The UNGASS was to develop an outcome document entitled *A World Fit for Children*. This was intended as a design for how the CRC and should be implemented. The final document, signed by all member nations, was the result of lengthy and highly complex and negotiations at the UN. Its publication signaled general agreement in principle and

specific agreement on substantive measures to be taken around the world on behalf of children.

As you might imagine, with the UN as a Committee of the Whole focusing on children only one time in ten years, interest around the world was high; what would that body issue as guidance to the world? More than 3,000 NGOs from every corner of the globe came to New York, to the UN, to influence that outcome.

A World Fit for Children, not unlike the CRC drafting process, was heavily influenced by the US. It was a compromise too strong for some and too weak or vague for others. The precons and later the UNGASS were an exciting mélange of participation by from NGOs of all persuasions from all over the world. It was a very exciting time! Meetings from dawn to the wee hours; meetings of caucuses and subgroups; meetings with official delegations and NGOs from their own countries (an aside: it was not until late in the second prepcon that the US delegation finally agreed to meet with any NGOs representing views other than the administration's own)

It is difficult to convey to you the excitement, the heady atmosphere, the feeling that we were part of history--I met Nelson Mandela and Kofi Annan all in the same day!--of actually feeling as if what you were doing every minute of every day was vital and that it really mattered.

There were many working groups during the precons and the UNGASS itself. Significant was the Child Rights Caucus led by Jo Becker of Human Rights Watch, the late Mary Diaz of the Women's Commission, and Bill Bell of Save the Children UK. The caucus wanted to influence the UN delegations. The purpose of those meetings was to come to agreement on language that would ultimately be incorporated in the final *World Fit for Children* document.

It was during a meeting of representatives of about 40 countries that we Americans got our wake-up call.

With about six or seven of us among about 40 people from more than 30 countries, the rug was pulled out. As if rehearsed—it may have been—many individuals turned to the Americans and challenged us! Essentially, we were being asked what right we had to participate in trying to shape a document that would affect the lives of children all over the world if we could not even get our own country to join the world. While not invited to leave, our welcome seemed to have worn thin. Fortunately, the challenge was not personal; we had and still retain long-standing friends from that caucus.

That was essentially day one of the new campaign.

This Campaign was conceived then and there. A small group of Americans went through what many recognize as the early organizing pangs of a start-up. We met informally at first and then decided we could not sustain an effort without education,

common goals, and structure. We did what all good groups do at the outset: we started to meet.

In February 2003, representatives from more than fifty leading U.S. non-governmental organizations (NGOs), including social service agencies, advocacy and faith-based organizations, attorneys and grassroots organizers, met in Washington, D.C. for a two-day seminar and strategy session entitled "Moving the CRC Forward in the United States." Cynthia was one of our most important presenters that day. We dubbed the sessions the "bore yourself to tears by lawyers" days. The speakers were prominent scholars, lawyers, government representatives, and NGO and individual participants. It was exciting and animating for all involved. The planning from that Valentines Day session comprises the heart of the Campaign to this day.

Our next public activity was a Summit in May 2006. It took place at American University in Washington, DC. We struggled to organize—do not forget that we were on a financial tightrope with no real outside resource to support us. Expecting about 100-125 attendees, we prepared well. To our surprise, more than 325 people showed up, including nearly 70 young people. We were on our way! This session today is a direct outcome of the strategy and planning done at that Summit. I'd be pleased to discuss the details of the Summit later.

The Campaign now consists of nearly 500 individuals and organizations, and is growing.

In the view of the Campaign, the last substantive barrier to ratification is hurdled: the juvenile death penalty. In March 2005, the US Supreme Court, in *Roper v. Simmons*, abolished the death penalty for children convicted of capital offenses committed before they were 18 years old. Until that time the US was the only "industrialized," almost the only nation at all, to execute children. The CRC was cited by the Court as one of a number of reasons to reject the death penalty for juveniles. We remain one of the very few that permits life imprisonment without parole for juvenile offenders.

The Campaign has no "next event" yet, but we are working towards the future. A steering committee meets monthly and the Campaign as a whole meets four times a year. Our next steps will necessarily be political. We are analyzing the Senate: how much support and opposition might we have? Can we go public with a big splash (do we have the wherewithal to do so?), or do we remain quiet until we are certain that people will at least know what we're talking about? And, do we know enough about the opposition to assertively respond to criticism and proactively promote our cause? Will "going public" just serve to animate the opposition?

A few Additional Points:

- Is implementation more important than ratification? Nancy Nye's provocative paper at the International Forum for Child Welfare meeting a few years ago in Sydney, Australia, proposed that, if our real purpose was to improve lives for children in the

US, the *content*, not the political process of ratification, was really the true goal. Ratification, she suggested, is symbolic, political, and potentially divisive.

- An analysis by the ABA in the mid 1990's estimated that nearly 80 percent of the content of the CRC is already embodied in US and State statutes. A valuable contribution would be an up-to-date analysis of this question (perhaps the topic for a journal article?). Knowing what we are not doing could lead to a true assessment of the potential cost of implementation.
- There has been ongoing discussion between the organizers of the CEDAW Campaign and the CRC Campaign. Several years ago we were warned not to raise the idea of organizing to ratify the CRC because "CEDAW is first, then CRC." This, of course, is absurd and none of the legitimate organizers of the CEDAW Campaign will own such a thought.
- How much is needed to mount a viable political campaign? Does anyone doubt that our Campaign should be anything less than a political campaign? What we are talking about here—in the long term—is a full-blown educational campaign to inform the American public about the CRC and why it is important.
- The opposition has many fangs, many of which stem from a fundamental dislike of anything "foreign." Get the US out of the UN; UN out of the US; Blue-helmeted soldiers will come into our houses to tell us how to raise our kids; abortions will become rampant; homeschooling will be prohibited; parents will lose the right to educate and otherwise raise their children, teach them values, bring them up in their religion of choice and other nonsense too ridiculous to dignify with a response.
- There are of course, valid concerns such as how to properly respect the rights of States, and how to afford the cost of complete implementation. 193 other countries have managed either to take their baby steps towards implementation or to invest in children full bore. We do neither!
- State, municipal, and local declarations: We are aware that at least 19 governmental jurisdictions have issued proclamations or other supportive documents regarding the CRC. As recently as last year the State of Rhode Island renewed its commitment to the CRC by reaffirming a proclamation in support of the CRC, originally issued in 1993.

Others proclamations were issued by the New York State Assembly, the City Council of New York and a few other jurisdictions. The purpose of such proclamations or other official announcements is to acknowledge the importance of the CRC worldwide and to accept the guidance and leadership coming from the world on the care of children.

- We have upgraded our website and we have a commitment to organize additional state initiatives. And, perhaps most importantly, the Campaign has been able to

raise enough money to support a coordinator; she has been on board for nearly a year now and we believe we have funding through 2008. You will see our flag rising!

In 1999, to celebrate the tenth anniversary of CRC adoption, Carol Bellamy, executive director of UNICEF, noted “This convention has improved the lives of millions of children and made the world a better place. It has stimulated legal reform in dozens of countries, enjoined governments to take the health and well-being of children seriously, and initiated a process of goal-setting that keeps everyone honest about global progress—or the lack of it.” Ms. Bellamy lamented the failure of the US to ratify the treaty, a fact she attributed to the result of conservative opposition. Ms. Bellamy said that the US failure to ratify the treaty undermines Washington’s credibility and attempts to pressure other governments to honor United Nations accords on human rights.

Thank you for the opportunity to speak with you. Depending upon time considerations, I am please to enter into discussion.