

**Has the U.N. Convention on the Rights of the Child Made a Difference?**  
**What Would U.S. Participation Mean?**  
**20<sup>th</sup> Anniversary Observations**

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The U.S. Supreme Court decision of *Brown v. Board of Education*<sup>3</sup> was about equality. It was about giving every child an equal chance at life, liberty, and the pursuit of happiness. It was about deciding that the law will no longer tolerate a system that allows some children to thrive, while failing to protect and nurture other children. In a way, the Convention on the Rights of the Child hopes to accomplish the same thing. While this treaty establishes a worldwide right to education, it also addresses every other area of law that touches children's lives. The Convention on the Rights of the Child seeks, like *Brown*, to take the first steps toward creating a world in which any child—even the most vulnerable refugee—can be aided to reach his or her full potential.

The Convention on the Rights of the Child ("CRC") is a multilateral treaty designed to promote the protection of children worldwide. During the Reagan Administration, the United States played a major role in drafting the CRC,<sup>4</sup> which quickly became the most universally ratified human rights treaty in history. One hundred ninety-three countries are party to it.<sup>5</sup>

As of the date of the 20<sup>th</sup> Anniversary of the Convention's promulgation, November 20, 2009, only two countries in the world have yet to ratify the CRC: Somalia (which does not have a recognized national government), and the United States. This is most unfortunate, given that since 1948 the United States has been a leader on the world stage in the promotion of special legal protections for children. That year, we were *instrumental* in the drafting and adoption of the first United Nations document that recognized protective rights for children,

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<sup>3</sup> 347 U.S. 483 (1954).

<sup>4</sup> Luisa Blanchfield, Cong. Research Serv., *The United Nations Convention on the Rights of the Child: Background and Policy Issues*, at 1 (2009) (on file with the authors).

<sup>5</sup> UNITED NATIONS TREATY COLLECTION, STATUS OF TREATIES, <http://treaties.un.org/> (click "Status of Treaties (MTDSG)" hyperlink under "Frequently Accessed"; then click "CHAPTER IV – Human Rights"; then click "11. Convention on the Rights of the Child") (last visited Nov. 19, 2009).

The Universal Declaration of Human Rights (“UDHR”).<sup>6</sup> Article 25(2) states, “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”<sup>7</sup> In 1959, the U.S voted with the rest of the world to adopt the Declaration on the Rights of the Child unanimously in the United Nations General Assembly. The Declaration asks parents and governments to ensure certain critical rights for children, such as name and nationality, access to healthcare, treatment for disabilities, free education, and protection from exploitation and neglect.<sup>8</sup> Finally, the U.S. is a party to the International Covenant on Civil and Political Rights (“ICCPR”), which addresses the special status and protection of children in Article 24:

*“Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”<sup>9</sup>*

The United States played a pivotal role in the drafting of the CRC between 1979 and 1989, when the treaty was adopted by the General Assembly.<sup>10</sup> Specifically, the Reagan and George H.W. Bush Administrations actively contributed to negotiating the treaty’s text. Under these two Republican presidencies, the United States made textual recommendations for 38 of the 40 substantive law articles of the CRC, and contributed more new substantive provisions (which had not been in the original draft of the document) than any other country.<sup>11</sup> Specifically, we submitted initial proposals for the CRC articles that establish a child’s right to family reunification, freedom of expression, freedom of religion, freedom of association and assembly, privacy, protection from abuse, and periodic review of treatment.<sup>12</sup>

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<sup>6</sup> See, e.g., Mary Ann Glendon, A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (2001); Louis Henkin, *Rights: American and Human*, 79 COLUM. L. REV. 405, 415 (1979).

<sup>7</sup> Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3rd Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948) *available at* <http://www.un.org/en/documents/udhr/index.shtml#a25> [hereinafter UDHR]. The UDHR passed by a vote of 48 in favor, zero against, and eight abstentions. The United States voted in favor.

<sup>8</sup> Declaration on the Rights of the Child, G.A. Res. 1386 (XIV), at 19, U.N. GAOR, 14th Sess., Supp. No. 16, U.N. Doc A/4354 (Nov. 20, 1959) *available at* <http://daccess-ods.un.org/TMP/3311433.html>.

<sup>9</sup> International Covenant on Civil and Political Rights art. 24, Dec. 16, 1966, 999 U.N.T.S. 14688 (entered into force for the United States on Sept. 8, 1992) [hereinafter ICCPR].

<sup>10</sup> THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION 13 (Jonathan Todres, Mark E. Wojcik & Cris R. Revaz, eds., Transnational Publishers 2006) [hereinafter Todres].

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 14.

Although the Clinton Administration signed the treaty, it never submitted it to the Senate for its advice and consent to ratification because of strongly stated personal opposition led by then-Senate Foreign Relations Committee Chairman Jesse Helms.<sup>13</sup> The George W. Bush Administration opposed the Convention, citing federalism, sovereignty, and parental rights concerns.<sup>14</sup> However, that Administration pushed for ratification of the U.N. Optional Protocols on Children in Armed Conflict and the Sale of Children, Child Prostitution, and Child Pornography. As a result, the U.S. ratified both Protocols in December 2002.<sup>15</sup>

Currently, as we mark the 20<sup>th</sup> anniversary of the CRC's entry into force, the Obama Administration is conducting a legal review of the Convention to determine whether the President will submit it to the Senate for its advice and consent.<sup>16</sup> The review will also determine the reservations, understandings, and declarations the administration will propose to condition the ratification of the CRC.<sup>17</sup> This is nothing new; the U.S. always conditions ratification of international human rights treaties.<sup>18</sup>

Why is it important that the United States finally, at long last, ratify this Convention? We hope to answer this question and also address some of the major critiques of the Convention offered by those who oppose our country's ratification.<sup>19</sup>

Simply put, the United States should ratify the Convention because its *international leadership* on the protection of vulnerable human beings is best practiced *from the inside*. When we fail to ratify a major human rights treaty, we pay great foreign policy costs.<sup>20</sup>

First, the U.S. is precluded from playing an influential role in the creation of highly relevant, evolving international human rights law for children because, as a non-party to the core underlying treaty, it cannot participate in the institution that interprets the treaty, the international Committee on the Rights of the Child. The Committee also establishes inter-country norms and

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<sup>13</sup> Alison Dundes Renteln, *Who's Afraid of the CRC: Objections to the Convention on the Rights of the Child*, 3 ILSA J. INT'L & COMP. L. 629, 632-33 (1997).

<sup>14</sup> *Id.* at 1, 6.

<sup>15</sup> Todres, *supra* note 10, at 294.

<sup>16</sup> Blanchfield, *supra* note 4, at 5.

<sup>17</sup> *Id.*

<sup>18</sup> BARRY E. CARTER, PHILLIP R. TRIMBLE & ALLEN S. WEINER, INTERNATIONAL LAW 178 (5th ed. 2007).

<sup>19</sup> The views expressed here are our own, but we do want to note that the American Bar Association has long supported U.S. ratification of the Convention on the Rights of the Child.

<sup>20</sup> Curtis A. Bradley & Jack L. Goldsmith, *Treaties, Human Rights, and Conditional Consent*, 149 U. Pa. L. Rev. 399, 414 (2000).

decides upon the need for and development of additional related protocols or other instruments.<sup>21</sup>

Second, non-participation in the Convention's implementation impedes the full success of American diplomacy, because the U.S. cannot credibly encourage other nations to embrace human rights norms for children if it has not itself embraced those norms.<sup>22</sup> Acknowledging the importance of joining major human rights treaties, so as to strengthen the legitimacy of U.S. foreign policy around the world, during the 2008 presidential campaign, then-candidate Obama specifically remarked on the U.S. non-ratification of the CRC, saying "It is embarrassing to find ourselves in the company of Somalia, a *lawless land*. I will review this treaty and other treaties to ensure that the United States resumes its international leadership in human rights."<sup>23</sup>

The U.S. has ratified four major human rights treaties in addition to the two Optional Protocols of the children's convention: the Genocide Convention in 1988, the International Covenant on Civil and Political Rights in 1992, and in 1994 both the Torture Convention and the Convention on Elimination of All Forms of Racial Discrimination.<sup>24</sup> A good example of how the U.S. has become a leader in implementing human rights treaties it has ratified is the progressive work we have accomplished after ratifying the Optional Protocol on the Sale of Children, Child Pornography, and Child Prostitution in 2002.

Since that time, significant child protection related amendments to the U.S. Trafficking Victims Protection Act have become law, the U.S. PROTECT Act has strengthened the work of those who prosecute sexual exploitation of children, and the Adam Walsh Child Protection and Safety Act has enhanced the oversight of convicted child sex offenders.<sup>25</sup> These and other federal and state laws have closed loopholes that had inhibited victim protection, increased penalties for those who would abuse and exploit children at home or abroad, and improved assistance programs for victims, including enhancing a special visa program for immigrant child victims of trafficking, abuse, neglect, and parental abandonment.<sup>26</sup>

The U.S. should also ratify the Convention because it is, contrary to the naysayers' writings and website postings, an effective international instrument to advance the protection of

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Patrick Geary, *United States: Is Obama's Win also a Victory for Children's Rights?*, CHILD RIGHTS INFORMATION NETWORK, Nov. 7, 2008, [www.crin.org/resources/infoDetail.asp?ID=18874&flag=news](http://www.crin.org/resources/infoDetail.asp?ID=18874&flag=news). A video of the statement is hyperlinked to the online article.

<sup>24</sup> Bradley, *supra* note 21, at 415.

<sup>25</sup> Todres, *supra* note 10, at 301-03.

<sup>26</sup> *Id.*

children. Despite what the CRC fear mongers say about threats of forced U.N. interventions into individual family lives, no international police force exists to enforce provisions of *any* international human rights treaty.

Some treaties, including human rights treaties, provide countries with a cause of action to seek remedies in special tribunals to enforce the terms of a treaty. While human rights treaties create international law that can be enforced against parties through the mechanisms established by each treaty, they essentially represent agreements between countries to commit themselves to achieving *certain common aspirations*, and to – which is only fair – open themselves up to scrutiny by the international community as to whether they are living up to the provisions of the treaty.

Through the steady development of what legal scholars call “hard and soft law” at the national and local levels, the CRC has proven to be a powerful tool in the hands of child protective advocates and reformers over the past twenty years. To truly understand the impact of the CRC, it is important to understand the distinction between what legal scholars call “hard law” and “soft law.” Hard law is what we normally think of as law: legislatures write it, the executive branch enforces it, and courts interpret it and make final, enforceable judgments based on it.<sup>27</sup> Soft law, on the other hand, is often expressed in the form of declarations, statements, guidelines, and initiatives; it is essentially hortatory or aspirational, a “we hope you will comply, but we can’t do anything to make you.” Much of its force is in *moral suasion*, and *shaming bad behavior* by shedding a light on it.<sup>28</sup>

Despite lacking “enforcement teeth,” soft law can be very powerful when it comes to encouraging actions by governments to better protect vulnerable populations. It has incredible norm-creating value, as agendas of advocacy organizations and corporate codes of conduct are shaped and bolstered by soft law principals and policies.

Soft law is most frequently a precursor to instruments that may have elements of hard law,<sup>29</sup> just as the non-binding Declaration on the Rights of the Child was the precursor to the Convention on the Rights of the Child. While international treaties are not typically thought of as soft law, the CRC does not include a traditional enforcement mechanism, such as a right of action in an international tribunal or the threat of sanctions.<sup>30</sup> Perhaps the CRC’s influence is

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<sup>27</sup> JAMES B. ATLESON, ET AL., INTERNATIONAL LABOR LAW: CASES AND MATERIALS ON WORKER’S RIGHTS IN THE GLOBAL ECONOMY 8 (2008).

<sup>28</sup> *Id.*

<sup>29</sup> Dinah Shelton, *Normative Hierarchy in International Law*, 100 AM. J. INT’L L. 291, 320 (2006).

<sup>30</sup> Todres, *supra* note 10, at 28.

most deeply felt in the not-easily-quantifiable area of soft law, as its very existence prompts norm-influencing discussion -- from the classroom to the legislature to hopefully the boardrooms of multinational corporations.

In addition to inspiring the creation of soft law to promote increased protection of children, the CRC generates its own soft law through the written reports and recommendations of the Committee on the Rights of the Child.<sup>31</sup> The Committee is an 18-member body of child protection experts that reviews periodic reports by signatory nations, usually supplemented by independent reports from international and domestic non-governmental organizations. These recommendations often help international and domestic civil society set the priorities for change in a particular country.<sup>32</sup>

For example, in a report released this year, Save The Children Sweden wrote that because of the CRC, the world's most vulnerable "[c]hildren have become more visible over the last twenty years."<sup>33</sup> This increased visibility has led to increased concern and action.

When countries actually undertake legislative reform in response to the Committee's recommendations, harmful practices, such as judicial canings and female genital mutilation, have been challenged and debated. Soft law becomes hard law when new legislative initiatives are successful. Indeed, three recent reports have surveyed the effects of the CRC on legal reform and, most importantly, on how legal reforms have improved the lives of children.<sup>34</sup>

In the area of legal reform, the impact of the CRC is very impressive. Among 52 countries in Asia, Africa, Europe, the Middle East, and the Americas, UNICEF found that 21 had incorporated some or all of the CRC into their national constitutions.<sup>35</sup> Two-thirds had incorporated the Convention directly into their domestic law, and nearly every country had either adopted comprehensive children's codes based on the CRC, or was engaged in a gradual, systematic reform of existing law.<sup>36</sup>

There have also been throughout the world, facilitated by language in the CRC, extensive reforms in the areas of civil rights, health care, education, family law, responses to abuse and

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<sup>31</sup> *Cf. id.*

<sup>32</sup> SAVE THE CHILDREN SWEDEN, WHAT HAPPENED? A STUDY ON THE IMPACT OF THE CONVENTION ON THE RIGHTS OF THE CHILD IN FIVE COUNTRIES: ESTONIA, NEPAL, PERU, UGANDA AND YEMEN, 40 (2009) (on file with the authors) [hereinafter SAVE THE CHILDREN].

<sup>33</sup> *Id.* at 5.

<sup>34</sup> SAVE THE CHILDREN, *supra* note 32; UNICEF, LAW REFORM AND THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD (2007) [hereinafter LAW REFORM]; UNICEF, PROGRESS FOR CHILDREN: REPORT CARD ON CHILD PROTECTION NO. 8 (2009) [hereinafter PROGRESS].

<sup>35</sup> LAW REFORM, *supra* note 34 at 13-16.

<sup>36</sup> *Id.*

neglect, sexual exploitation, and refugee law. In the area of civil rights, the right of a child to nationality through birth registry and citizenship is fundamental to the ability of children to engage in civil society and enjoy social benefits such as schooling. The Convention has inspired law reforms to increase birth registrations in poor countries and, on the recommendation of the Committee, Sweden and the U.K. have discontinued the practice of not granting citizenship to children born in their territory to unwed native fathers and non-native mothers.<sup>37</sup>

Several Convention-promoted law reforms have focused on improving health care for children, especially through free and universal immunization, AIDS prevention, pre- and post-natal care, and specialized care for children with disabilities. For example, several countries have recently passed legal provisions that make immunizations to help stop the spread of communicable diseases, free and mandatory. They include Nigeria, Indonesia, Japan, India, Egypt, and several Latin American countries.<sup>38</sup>

Major legal reforms in the area of education have mainly involved state provision of free and compulsory primary education, raising the age of compulsory schooling, and increasing opportunities for girls and children with disabilities to attend school. Girls, children with disabilities, and poor children around the world continue to be denied educational opportunity. Chief Justice Warren remarked in *Brown* that it is doubtful that any child could “reasonably be expected to succeed in life if denied the opportunity of an education, and that such an opportunity, where the state has undertaken to provide it, is a right which must be available to all on equal terms.”<sup>39</sup> His words should inspire us to continue to fight for educational equity both at home and around the world.

In the area of family law, the Convention has promoted increased services and support for poor families and working mothers and important cutbacks in the use of state institutional care of children. A recent UNICEF report states: “[T]he provisions of the Convention concerning the family as the ideal setting for satisfying the needs of children, has struck a responsive chord, encouraging a shift away from reliance on State institutions to social programmes that provide benefits to children through their families.”<sup>40</sup> Thus, a new Romanian law has established parental rights to “raise and ensure the proper development of the child” as well as “receive information and specialized assistance that are necessary for upbringing, caring for, and raising

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<sup>37</sup> *Id.* at 35.

<sup>38</sup> *Id.* at 39-40.

<sup>39</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483, 493 (1954).

<sup>40</sup> LAW REFORM, *supra* note 34, at 52.

the child.”<sup>41</sup> A fairly recent law in Italy reinforces assistance to families with children with disabilities to reduce the institutionalization of such kids.<sup>42</sup> Finally, many countries in Latin America and around the world are increasingly recognizing the *equal* rights and responsibilities of both parents to take care of their children, meaning that legal reforms to recognize the paternity and role of unwed fathers are underway.<sup>43</sup>

In cases of abuse, abandonment, and neglect, countries working to comply with the Convention are adopting measure to increase family foster care and decrease institutionalization, of children who must be removed from their homes for their safety. For example, in Belarus, the law requires that “[c]hildren may be placed in an institution only when placement in a family is ‘impossible.’”<sup>44</sup> In addition, many countries, such as Slovenia, are developing laws to protect child victims in the criminal prosecution of child abuse cases. In that country, children under the age of 15 may not testify at trial; rather, their testimony is presented in the form of a pre-trial deposition.<sup>45</sup> Were it not for the CRC, we would also not have the current development, through UNICEF, of *Justice in Matters involving Child Victims and Witnesses of Crime: Model Law and Commentary*.<sup>46</sup>

Finally, the United Nations counts harmful and discriminatory customs and practices as forms of abuse which should be outlawed. These include female genital mutilation, forced feeding of young women, virginity testing of brides, ritual sacrifices of children, abandonment of children with birth defects, honor killings, and child marriages.<sup>47</sup> Among countries that have recently passed laws, inspired by the CRC, to ban these harmful practices are Burkina Faso, Togo, Ethiopia, South Africa, Nigeria, Nepal, Korea, India, Sri Lanka, Egypt, Lebanon, Jordan, and Bangladesh.<sup>48</sup>

To specifically address the sexual exploitation of children, many countries have raised the age of legal consent for sexual relations, amended their criminal codes to include the sexual exploitation of minors through trafficking and pornography, and provided for increased enforcement against adult pimps and perpetrators of child sex abuse. Since 1990, Fiji, India,

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<sup>41</sup> *Id.* at 51.

<sup>42</sup> *Id.* at 52.

<sup>43</sup> *Id.* at 53-54.

<sup>44</sup> *Id.* at 60.

<sup>45</sup> *Id.* at 68.

<sup>46</sup> U.N. Office on Drugs and Crime [UNDOC], *Justice in Matters involving Child Victims and Witnesses of Crime: Model Law and Commentary* (April 2009) available at [www.unodc.org/documents/justice-and-prison-reform/UNODC\\_UNICEF\\_Model\\_Law\\_on\\_Children.pdf](http://www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf).

<sup>47</sup> LAW REFORM, *supra* note 34, at 69.

<sup>48</sup> *Id.* at 70.



Indonesia, Japan, Nepal, Philippines, Korea, Sri Lanka, and Vietnam have passed new laws concerning the sexual exploitation of children.<sup>49</sup> One notable example is the revision of Sri Lanka's 100 year-old Penal Code which now criminalizes trafficking of children for the purpose of sex, provides for protection of victims of both sexes, raises the age of consent from 12 to 16 years old, and eliminates the requirement of physical injury to prove lack of consent to sex.<sup>50</sup>

In Honduras, child rape victims no longer have to bring a complaint in order for their perpetrator to be charged; the responsibility for prosecution now rests with law enforcement.<sup>51</sup> Several countries, such as Guatemala, are doing away with the practice of barring prosecution when the offender marries his child victim.<sup>52</sup> Finally, many European countries have created new legislation to establish jurisdiction over their own nationals who commit child sex offenses while travelling abroad. These provisions are especially important to address child sex tourism.<sup>53</sup>

There have also been many positive legal reforms for refugee and asylum-seeking children around the world. In Slovenia, children whose applications are denied are not returned to their country until safe arrangements can be made.<sup>54</sup> In the UK, children who cross borders unaccompanied are given priority in asylum interviews and can request reunification with family members in lieu of custodial detention.<sup>55</sup> Italian law now provides for humanitarian visas for vulnerable children who do not receive refugee status.<sup>56</sup> Canada's new Immigration Act explicitly requires that "all decisions concerning children should be guided by Article 3" of the Convention, which articulates the best interests of the child principle.<sup>57</sup>

Unfortunately, because we have not ratified the CRC, *we were not a part of aiding any of those reforms*. This is a distressing failure of U.S. foreign policy, since we have so much expertise to potentially share through promotion of CRC reforms in areas where our country has developed model laws, policies, and practices.

Changing laws already on the books is only the beginning of reform; new laws have to be promulgated and enforced to be meaningful to children in need of protection from harm. While comprehensive studies that would yield a wide range of quantifiable data are still needed, there

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<sup>49</sup> *Id.* at 72.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 73.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 75.

<sup>54</sup> *Id.* at 96.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 97.

<sup>57</sup> *Id.*

is positive, quantitative data in the areas of juvenile justice, health care, and child trafficking and exploitation. In the next section, we highlight some of these achievements.

Article 37's prohibition on torture or other cruel, inhuman or degrading treatment or punishment against children has caused a tradition of brutal judicial canings to become outlawed in South African and Uganda. In South Africa, children were sentenced to be caned in over 35,000 cases per year before the Supreme Court decided in 1996, based on a new provision on the rights of the child in their constitution, that the practice was unconstitutional.<sup>58</sup> In Uganda, beatings by law enforcement have also been outlawed as a sentence for children.<sup>59</sup>

Article 24 of the Convention, establishing the child's right to health, has had significant impact. New laws prohibiting the practice of female genital mutilation have resulted in prosecutions in Egypt, Burkina Faso, Ghana, Senegal, and Sierra Leone.<sup>60</sup> In Egypt, the practice has already been reduced by 20 percent.<sup>61</sup> New legislation in Nepal has led to 63% of households using iodized salt, which prevents goiter.<sup>62</sup> The Indian Supreme Court referenced Article 24 when it held that free lunches must be provided to hungry children in government-run primary schools.<sup>63</sup>

Article 32, recognizing the child's right to protection from economic exploitation, inspired legislation that created a national anti-trafficking agency in Nigeria. In the first twelve months of the agency's existence, it rescued hundreds of children who had been abducted and forced to labor in quarries and on plantations.<sup>64</sup>

These are but a few examples of how the CRC is inspiring and guiding meaningful legal reforms that have significant positive consequences for children in need of greater protection. However, readers may be surprised that, despite these hugely positive effects over twenty years, the CRC has many detractors within our country.

Critiques of the CRC come in three general forms. First, some critics call the CRC ineffective because it has no enforcement teeth. Second, critics claim the CRC could undermine U.S. sovereignty and our principle of federalism. Third, some critics assert the CRC

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<sup>58</sup> *Id.* at 111.

<sup>59</sup> SAVE THE CHILDREN, *supra* note 34, at 33.

<sup>60</sup> PROGRESS, *supra* note 34, at 23, 28.

<sup>61</sup> LAW REFORM, *supra* note 34, at 111.

<sup>62</sup> *Id.*

<sup>63</sup> People's Union for Civil Liberties v. Union of India & Ors., (Nov. 28, 2001), *available at* <http://www.righttofoodindia.org/orders/nov28.html>.

<sup>64</sup> LAW REFORM, *supra* note 34, at 111.

is anti-family and will reduce parental control over their children in favor of the State. I'll address each of these in turn.

Some critics claim the CRC is simply ineffective to stop the world's most horrifying abuses of children, such as child trafficking for sexual exploitation, compulsory child labor, child soldiering, forcible child marriage, and female genital mutilation, because it has no enforcement mechanisms adequate to end them.<sup>65</sup> While they are correct to say these atrocities violate the rights of children as set out in the CRC, the conclusion that their continued occurrence is evidence of the ineffectiveness of the Convention is wrong.

First, child trafficking and soldiering are largely perpetuated by *criminals and outlaws*, not governments that are State parties to the Convention. Likewise, harmful cultural practices such as female genital mutilation and child marriage are *carried out by families and religious groups*, not formally by governments.

Second, the Convention is the first step, never meant to be the last, in addressing these problems. The CRC is not a criminal enforcement statute; rather, by establishing positive legal rights for children to be protected from abusive and harmful treatment, it provides an important legal framework that legislators and reformers can and should use to advocate for domestic legislation, policies, and practices that enforce those rights within their own countries.

Other critics fear that our U.S. ratification could undermine United States sovereignty and federalism. These concerns are neither new nor completely invalid; however, the U.S. has adequately addressed them in the *other human rights treaties it has ratified* through the use of *reservations*. Reservations are an international treaty tool that allows countries to “harmonize” treaties with their domestic law and leave domestic implementation of treaty provisions to their legislatures.<sup>66</sup>

Some reservations are more substantive, explicitly declining to consent to particular treaty obligations. One example is a U.S. reservation to the International Covenant on Civil and Political Right's restriction on propaganda for war and hate speech, a reservation taken out of concern that it might conflict with U.S. First Amendment guarantees.<sup>67</sup> Others provide key interpretive limitations, such as the U.S. reservation attached to the Torture Convention's prohibition on “cruel, inhuman, or degrading treatment or punishment” that interprets that phrase to mean “cruel and unusual punishment” within the meaning of the 8th Amendment of our

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<sup>65</sup> Lynne Marie Kohm, *Suffer the Little Children: How the United Nations Convention on the Rights of the Child Has Not Supported Children*, 22 N.Y. Int'l L. Rev. 57, 63, 82, 87 (Summer 2009).

<sup>66</sup> CARTER, *supra* note 19 at 107.

<sup>67</sup> Bradley, *supra* note 21, at 417.

Constitution.<sup>68</sup> In addition, the U.S. attaches what are called “non-self-executing” declarations to human rights treaties so that they will not automatically change federal or state laws, and *not be enforceable in U.S. courts*, without very specific implementing legislation from Congress.<sup>69</sup>

Finally, the United States routinely places “federalism understandings” on human rights treaty ratifications to establish that any new treaty obligations can only be “implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein.”<sup>70</sup> This is so that the laws of state and local governments will not be federalized through Congress’s exercise of the treaty power.

A federalism understanding would be critical to the U.S. ratification of the CRC, because regulation of child/family issues is, and should be, primarily matters for the states. Notably, the U.S. attached a federalism understanding to its ratification of the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography.<sup>71</sup>

Fears have also been expressed by some that U.S. sovereignty will be threatened by Article 44, the modest enforcement mechanism of the Convention, which asks States parties to “undertake to submit to the Committee... reports on the measures they have adopted.”<sup>72</sup> Here it must be noted that the Committee responds to State reports only with Observations and Recommendations *that are not binding*, but rather function as their name suggests – to recommend areas for improvement.

This mechanism to respond to government shortcomings in implementation of the CRCs aspirations is actually *considerably weaker* than those of other international human rights conventions that the U.S. government has ratified. For example, the International Covenant on Civil and Political Rights provides for state-to-state complaints; the CRC only allows an international committee to comment on a State party report.<sup>73</sup> The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment vests an International Committee Against Torture with power to receive and process complaints against State parties by individuals.<sup>74</sup>

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<sup>68</sup> *Id.* at 418.

<sup>69</sup> *Id.* at 419; *see also* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 111 (1987).

<sup>70</sup> Bradley, *supra* note 21, at 422 (quoting U.S. federalism understanding to the ICCPR).

<sup>71</sup> Todres, *supra* note 10, at 300.

<sup>72</sup> Convention on the Rights of the Child, art. 44, G.A. Res. 45/25, art. 37, U.N. Doc. A/RES/44/25 (Dec. 12, 1989) [hereinafter CRC].

<sup>73</sup> Todres, *supra* note 10, at 28 n. 32.

<sup>74</sup> *Id.*

Finally, critics of the CRC within our country allege that conferring rights on children will undermine parental care and control by pitting, through the Convention's elements, children against their parents – in court or in the home. In fact, a careful analysis of the CRC and its history shows the contrary is true.

First, the Convention does not provide any means for a child to bring a lawsuit against his or her parents in court. Laws in the United States already allow a child to sue his parent for physical injuries resulting from intentional violence or gross parental negligence.<sup>75</sup>

Ratification would not change this right of action, but it would also *not add any other basis* for child-parent litigation. Of the dozens of official Committee Observations directed at different countries that we have reviewed, *none have suggested* that countries create any private rights of action for children to sue their parents in order to comply with the CRC.

Far from encouraging strife between children and parents, the essential role of parents in raising their children is listed within the Convention directly after the child's right to life, highlighting the protected role of the family in the CRC.<sup>76</sup> In fact, almost all of the Committee Observations we reviewed have actually encouraged countries to *do more to support struggling families* in order to make sure children stay under the care and control of their parents, rather than enter the custody of the state.

In its Observation on Sweden, for example, the Committee recommended that state programs “give priority to protecting the natural family environment...”<sup>77</sup> and in recommendations to Bolivia, the Committee stressed that all necessary measures should be taken “to return [children] to their families whenever possible and consider placement of children in institutions as a measure of last resort and for the shortest possible period.”<sup>78</sup>

Some have also expressed fears that Article 14's requirement that the *government* “respect the right of the child to freedom of thought, conscience, and religion”<sup>79</sup> would

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<sup>75</sup> *Id.* at 24.

<sup>76</sup> In fact, after the first four articles (which establish the definition of a child, the principles of non-discrimination and the best interests of the child, and State responsibility to undertake to pass legislation implementing the Convention), article 5 requires that States “respect the responsibilities, rights, and duties of parents,” article 6 recognizes a child's “inherent right to life,” and article 7 establishes the child's “right to know and be cared for by his or her parents.” CRC, *supra* note 73, arts. 1-7.

<sup>77</sup> U.N. Comm. on the Rights of the Child, 51st Session, Concluding Observations: Sweden, ¶ 35, U.N. Doc. CRC/C/SWE/CO/4 (June 12, 2009).

<sup>78</sup> U.N. Comm. on the Rights of the Child, 52nd Session, Concluding Observations: The Plurinational State of Bolivia, ¶ 46, U.N. Doc. CRC/C/BOL/CO/4 (Oct. 2, 2009).

<sup>79</sup> CRC, *supra* note 73, art. 14.

undermine parents' attempts to raise the child in their own religious tradition. The opposite is true.

In its twenty-year history, the Committee has only commented on religion when governments, especially through their educational systems, have tried to limit religious freedom or have engaged in practices that discriminate against certain religious groups. For example, the Committee expressed disapproval of a law that banned religious symbols in German schools because "this does not contribute to a child's understanding of the right to freedom of religion."<sup>80</sup> The Committee further recommended that both Korea and France take measures to ensure that children do not experience discrimination based on their religious traditions.<sup>81</sup>

Some have expressed particular concern that the Convention's provisions requiring states to provide an adequate education to all children *might undermine homeschooling*. Again, we found the opposite is true. For example, homeschooling in Great Britain rose by 80 percent in 2007.<sup>82</sup> Yet, the Committee's observations, communicated to the British Government in 2008, did not even comment on this trend, but rather expressed concern about how the British public school system was excluding or inadequately serving children with disabilities, children seeking asylum, and poor children.<sup>83</sup>

In every report we reviewed, the Committee expressed similar concerns about the right of girls, children with disabilities, immigrant children, and poor children to access quality, free public education. In these same reports, the Committee has *never commented about homeschooling*. This trend in Committee Observations corresponds to the position of a group, known as the Homeschooler's Model U.N. Club, that the Convention does not circumvent the role of parents, but rather protects children and their families from government intrusion.<sup>84</sup>

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<sup>80</sup> U.N. Comm. on the Rights of the Child, 35th Session, Concluding Observations: Germany, ¶ 30, U.N. Doc. CRC/C/15/Add.226 (Feb. 26, 2004).

<sup>81</sup> U.N. Comm. on the Rights of the Child, 50th Session, Concluding Observations: Democratic People's Republic of Korea, ¶ 30, U.N. Doc. CRC/C/PRK/CO/4 (Mar. 27, 2009); U.N. Comm. on the Rights of the Child, 52st Session, Concluding Observations: France, ¶ 46, U.N. Doc. CRC/C/FRA/CO/4 (June 11, 2009);

<sup>82</sup> Katie Razzall & Lewis Hannam, *UK home-school cases soar*, CHANNEL 4 NEWS, Sept. 26, 2007, <http://www.channel4.com/news/articles/society/education/uk+homeschool+cases+soar/847157>.

<sup>83</sup> U.N. Comm. on the Rights of the Child, 49th Session, Concluding Observations: United Kingdom of Great Britain & Northern Ireland, ¶¶ 33, 45, 65, 67, U.N. Doc. CRC/C/GBR/CO/4 (Oct. 20, 2008);

<sup>84</sup> See U.S. Fund for UNICEF, Voices of America's Children & Homeschooler's U.N. Club, Presentation on Opposition to the Convention on the Rights of the Child: Exploring Counterarguments and Seeking Clarification, [www.childrightscampaign.org/documents/OppositiontotheCRC.pdf](http://www.childrightscampaign.org/documents/OppositiontotheCRC.pdf) (last accessed Nov. 19, 2009).

World experience with regard to the CRC demonstrates that: 1) it is helping countries make a collective difference in the lives of their most vulnerable children, but that 2) there is still much work to be done, including work on topics in which the U.S. has made huge advancements and has incredible expertise. The world can greatly benefit from more direct U.S. leadership in protecting children. The fact that our country has ratified other human rights treaties clearly suggests, as others have observed, that “it is possible for the U.S. to ratify international human rights instruments related to children without conceding sovereignty, disturbing principals of federalism, or detracting from the valuable role of parents and family.”<sup>85</sup>

Thus, ratification can and should be achieved in the U.S. as soon as possible. And the CRC is *worth the effort*. While this article provides only a narrow snap-shot of constitutional and statutory reforms, as well as some concrete evidence of improvements in the lives of children, resulting from CRC-inspired reforms, it is impossible to fully quantify how the Convention is changing the way people, and governments, think about children. Convention detractors have failed to see, or at least acknowledge, this progress, choosing instead to focus on sovereignty and federalism which have been addressed successfully in other human rights treaties we have ratified. The Convention protects children, preserves and strengthens families, and is unquestionably improving the lives of kids.

Just as the effort to curb global warming takes cooperation of every country in order to tackle a problem so big and so vital to the survival of the human race, so too will U.S. ratification of the CRC do nothing but bolster the efforts of the world community in safeguarding our *most valuable* natural resource – our children. And deferred dreams of too many American children need the CRC to motivate necessary changes in federal and state law, policy, and practice that will enhance the safety, permanency, and well being of America’s most marginalized children.

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<sup>85</sup> Todres, *supra* note 21, at 309.