

# WHO'S AFRAID OF THE CRC: OBJECTIONS TO THE CONVENTION ON THE RIGHTS OF THE CHILD

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I. BACKGROUND.....	630
II. UNITED STATES RATIFICATION.....	632
III. TYPES OF OBJECTIONS TO RATIFYING THE CRC.....	633
IV. ACTUAL DIFFICULTIES WITH THE CRC.....	636
V. IMPORTANCE OF TRANSMITTING THE CRC.....	639

The painfully slow process of securing the United States ratification of human rights treaties is a well established part of American history.<sup>1</sup> Although it is not surprising that one of the newest treaties, the Convention on the Rights of the Child, has not been ratified yet, it is nevertheless remarkable that it has attracted such strong, well organized opposition. According to Mr. Robert Dalton, Assistant Legal Adviser for Treaty Affairs in the Department of State, in the past decade no other treaty has attracted such a virulent reaction.<sup>2</sup> In this analysis I will discuss some of the reasons why ratification of this particular convention appears to be fraught with peril.

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1. When the United States does ratify, it attaches to the ratification a package of reservations, understandings, and declarations (RUDS), which calls into question the sincerity of any treaty commitment. As one commentator put it: "As a result of those qualifications of its adherence, United States ratification has been described as specious, meretricious, and hypothetical." Louis Henkin, *United States Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 AM. J. INT'L L. 341 (1995). See also HURST HANNUM & DANA FISCHER, UNITED STATES RATIFICATION OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS (1993); NATALIE HEVENER KAUFMAN, HUMAN RIGHTS TREATIES AND THE SENATE: A HISTORY OF OPPOSITION (1990); Natalie Hevener Kaufman & David Whitman, *Opposition to Human Rights Treaties in the Senate*, 10 HUM. RTS. Q. 309-337 (1988).

2. Interview with Robert Dalton, Assistant Legal Advisor for Treaty Affairs in the Dept. of St. (Oct. 25, 1996).

## I. BACKGROUND

One might have expected that the United States would endorse the Convention on the Rights of the Child (CRC), an exciting new treaty that is based in large part on the 1959 Declaration on the Rights of the Child. The drafting of the Convention was undertaken at the behest of the Polish government as part of the celebration of the 1979 International Year of the Child. After years of debate, representatives of states were able to forge a consensus, and the treaty represents an internationally agreed upon minimum standard for the treatment of children everywhere. It has been heralded as a "magna carta for children."<sup>3</sup> According to Lawrence LeBlanc: "No other specialized United Nations human rights convention has been accepted so quickly and with such apparent enthusiasm."<sup>4</sup>

After more than ten years of drafting, the CRC was adopted by the United Nations on November 20, 1989, and came into force on September 2, 1990, with the requisite twenty ratifications. Although the treaty specified that only twenty ratifications were required before it would enter into force, approximately 187 states promptly signed, ratified or implemented the treaty. This left the United States in the company of only a handful of states which had not ratified or indicated an intent to ratify.

One reason to expect United States ratification was the key role played by the United States during the drafting of the treaty.<sup>5</sup> Indeed, the inclusion of four articles reflected the strong influence of the United States.<sup>6</sup> However, the leadership role might not have been a significant indicator of United States support if the United States participants in the drafting process reflected the views mainly of the Presidential

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3. This phrase was used by James Grant when he was the Executive Director of UNICEF. CENTER ON CHILDREN AND THE LAW, AMERICAN BAR ASSOCIATION, CHILDREN'S RIGHTS IN AMERICA: UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD COMPARED WITH UNITED STATES LAW iii (Cynthia Price Cohen & Howard A. Davidson eds., 1990).

4. LAWRENCE J. LEBLANC, THE CONVENTION ON THE RIGHTS OF THE CHILD: UNITED NATIONS LAWMAKING ON HUMAN RIGHTS xi (1995). Another commentator also noted that: "[n]o other multilateral human rights treaty has ever taken effect so soon after it was original proposed for ratification." Lawrence L. Stentzel, II, *Prospects for United States Ratification of the Convention on the Rights of the Child*, 48 WASH. & LEE L. REV. 1285-1322 (1991).

5. *Id.* at 1285. See also *Report to the House of Delegates: United Nations Convention on the Rights of the Child*, 25 INT'L LAW. 804 (1991). The report also notes that the United States voted for the adoption of the treaty in the General Assembly. *Id.* at 804. "Roughly one-third of the provisions can be directly traced to United States proposals." Cynthia Price-Cohen, *United States Should OK Rights of Children*, TULSA WORLD, May 5, 1996, at G2.

6. Susan Kilbourne, *United States Failure to Ratify the United Nations Convention on the Rights of the Child: Playing Politics with Children's Rights*, TRANSNAT'L L. & CONTEMP. PROBS. (forthcoming 1997). This began as a Master's thesis on political management at George Washington University.

Administration and not of Congress or the public.<sup>7</sup> Furthermore, many of the nation-states that ratified the treaty quickly were not involved in the drafting process.<sup>8</sup>

Some condemn the United States' failure to ratify the CRC, calling it an embarrassment.<sup>9</sup> Others deny this criticism by arguing that the United States is simply being circumspect in its approach. The United States government maintains that the reason for the sluggish pace of ratification reflects the degree to which it takes multilateral human rights treaties seriously.<sup>10</sup> Whereas other nation-states ratify quickly but fail to implement the policies mandated by the treaty, the United States only agrees to adhere to a convention when it is certain it will be able to follow through by enforcing the treaty provisions.

The Convention on the Rights of the Child has been at the center of many different controversies.<sup>11</sup> In what follows I will highlight some of the major conflicts associated with efforts to secure ratification in the United States.<sup>12</sup> In my view most of the disputes, e.g., abortion, juvenile executions, and corporal punishment, reflect ideological divisions within this country that have little to do with the treaty itself. Because so much attention has been focused on these issues, there has been little time to address more serious questions such as the normative coherence of the convention.<sup>13</sup>

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7. Interview with Patricia Mc Nerney, Associate Majority Counsel to the Senate Committee on Foreign Relations (Oct. 29, 1996).

8. Cynthia Price Cohen, Book Review, 89 AM. J. INT'L L. 852 (1995).

9. See, e.g., Barbara J. Nauck, *Implications of the United States Ratification of the United Nations Convention on the Rights of the Child: Civil Rights, the Constitution and the Family*, 42 CLEV. ST. L. REV. 677 (1994).

10. Interview with Robert Dalton, Assistant Legal Advisor for Treaty Affairs in the Dept. of ST. (Oct. 25, 1996).

11. In a 1993 Minnesota court of appeals case, *Baker v. Chaplin*, 497 N.W. 2d 314 (Minn. Ct. App. 1993), Janine Baker, attended a rally outside the Hyatt Regency Hotel in Minneapolis where President George Bush was at a function. She wore a men's business suit, a George Bush mask, and carried a sign which read: "Q?? Why doesn't George sign the United Nations Convention on Rights of Children?" After a barricade fell (or was pushed over), a police officer attacked her with a riot stick. The legal issues were whether the officer used excessive force in violation of Baker's fourth amendment rights and whether he was immune under state and federal law. The trial court rejected both rejected both the qualified and official immunity claims, dismissing the officer's motion for summary judgment. The court of appeals affirmed. *Id.*

12. For an overview of this subject, see Howard Davidson, *The New United Nations Convention on the Rights of the Child: A Preliminary Assessment of Legal Issues Related to United States Ratification*, 11 CHILDREN'S LEGAL R. J. 8-12 (1990).

13. In an extremely astute analysis of the treaty, one scholar contends: ". . . the Convention needs a comprehensive statement as to how the various human rights conventions

## II. UNITED STATES RATIFICATION

In September 1990 the Senate and House of Representatives both adopted resolutions urging the President to sign the CRC and to seek the advice and consent of the Senate.<sup>14</sup> The resolutions passed by large majorities.<sup>15</sup> In 1993 the Senate<sup>16</sup> passed Senate Resolution 70 which again urged the President to transmit the treaty to the Senate for advice and consent. In the House there were repeated calls for the President to act.<sup>17</sup> Despite these overtures, President Bush declined to do so. A few years later, however, on February 16, 1995, President Clinton signed the Convention on the Rights of the Child. On April 3, 1995, Madelaine Albright, United States Ambassador to the United Nations, gave a speech in which she announced: “[w]e have decided to seek Senate consent to the ratification of two important human rights agreements — the convention prohibiting all forms of discrimination against women, and the Convention on the Rights of the Child.”<sup>18</sup>

In response, in June 1995 Senator Helms submitted Senate Resolution 133 to the Committee on Foreign Relations and expressed the opposition of nearly twenty senators to the CRC. In this resolution Helms admonished the President not to act on the treaty: “[i]f the President does attempt to push this unwise proposal through the Senate, I want him to know, and I want the Senate to know, that I intend to do everything

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interrelate in regard to children's rights.” Walter H. Bennett, Jr., *A Critique of the Emerging Convention on the Rights of the Child*, 20 CORNELL INT'L L.J. 45 (1987).

14. Stentzel, *supra* note 4, at 1286. The Senate voted for the Bradley Amendment No., 2626, 101st Cong., 2d Sess., 136 CONG. REC. 12, 784-86, 808-11 (daily ed. Sept. 11, 1990). The House adopted H. Res. 312, 101st Cong., 2d Sess., 136 CONG. REC. 7, 685 (daily ed. 1990).

15. *Report to the House of Delegates: United Nations Convention on the Rights of the Child*, *supra* note 5. The Senate passed the resolution despite an abortive attempt by Senator Helms to attach an amendment (2628) to the Bradley amendment (2626) which would have defined a child as any person under the age of 18 including “the unborn offspring of any human being in every state of biological development.” 101st Cong., 2d Sess., 136 CONG. REC. 1074 (daily ed. Sept. 11, 1990). The Helms amendment was tabled. 136 CONG. REC. 12803, 12807 (daily ed. 1990).

16. S. Res. 70, 103d Cong., 1st Sess., 139 CONG. REC. 1640 (daily ed. 1993).

17. *See, e.g.*, H.R. Con. Res. 140, 103d Cong., 2d Sess., 140 CONG. REC. 1791 (daily ed. 1994).

18. Ambassador Madelaine Albright, Remarks at the State Department Conference on Crises (April 3, 1995). FED. NEWS SER. (*available in Lexis*). In a speech in the House of Representatives, Congressman George Miller stated in reference to the CRC that: “. . . the Clinton Administration has all but pledged it would recommend that the United States Senate ratify the convention.” 103rd Cong., 1st Sess., 139 CONG. REC. E2967 (daily ed. 1993).

possible to make sure that he is not successful."<sup>19</sup> According to Senator Helms, more than 5,000 letters in opposition "poured into" his office and only one letter in support.<sup>20</sup> As of September 1996, there were no official plans to transmit the treaty to the Senate.<sup>21</sup>

### III. TYPES OF OBJECTIONS TO RATIFYING THE CRC

A large number of right wing organizations have disseminated literature criticizing the CRC. An excellent essay which surveys these arguments is Susan Kilbourne's article *United States Failure to Ratify the United Nations Convention on the Rights of the Child: Playing Politics with Children's Rights*.<sup>22</sup> Among some of the more controversial issues associated with the treaty are abortion, education, and discipline.<sup>23</sup>

The treaty does not, in fact, mention abortion.<sup>24</sup> So, the question of whether it is pro or anti-abortion must be inferred from various provisions. Several organizations focus on articles which they interpret as being pro-abortion, e.g., Article 24(4)(f) concerning family planning and Article 16, the right to privacy.<sup>25</sup>

One might think that the CRC could be invoked to criticize abortion. The lack of a clear definition of the child in the treaty might support this. A child is defined in Article 1 as a person under the age of eighteen, but the treaty provides no lower limit.<sup>26</sup> In the preamble there is language cited from the Declaration of the Rights of the Child to the effect that the well being of the child shall be protected both before as well as after birth. It is unclear what legal status the Preamble has but it probably

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19. Jesse Helms (June 14, 1995). Senate Resolution 133-Relative to the United Nations Convention on the Rights of the Child. S. Res. 133, 104th Cong., 1st Sess., 141 CONG. REC. 8400 (daily ed. 1995).

20. *Id.*

21. Remarks by Jamison S. Borek, Deputy Legal Adviser, State Dept., cited in Susan Kilbourne, *supra* note 6, n. 8.

22. *Id.*

23. *Id.* at 8.

24. Interestingly, Senator Helms tried unsuccessfully to introduce an amendment to Senator Bradley's amendment urging submission of the CRC for advice and consent which would define a child as "all human beings under the age of 18 including the unborn offspring of any human being in every state of biological development."

25. Martha Minow, *Whatever Happened to Children's Rights?*, 80 MINN. L. REV. 298 (1995).

26. For a criticism of the absence of minimum age, see Dominic McGoldrick, *The United Nations Convention on the Rights of the Child*, 5 INT'L J. L. & FAM. 133 (1991).

lacks juridical significance.<sup>27</sup> In addition, Article 6 contains the phrase "every child has the inherent right to life."

Evidently, some thought the above provisions were coded provisions designed to impose a position on abortion.<sup>28</sup> Despite this suspicion, the history of the drafting process indicates that the treaty was drafted in such a way as to enable each State party to determine its own policy regarding abortion.<sup>29</sup>

Education has also proved to be a controversial issue. According to some of the conservative literature, the concern was that the state could prevent parents from educating their children in accordance with their religious beliefs.<sup>30</sup> Article 29 is the specific provision which sparks debate about the nature of education in the United States.

Another major point of contention is discipline.<sup>31</sup> Some critics contend that ratification of the CRC would outlaw spanking because of language in Article 19. They assert further that Article 28 of the treaty would prohibit school discipline. The treaty itself does not explicitly forbid corporal punishment, but the Committee on the CRC has endorsed this policy.<sup>32</sup>

According to Kilbourne's study of this subject, organizations opposed to the CRC object particularly to the following articles: Article 13, freedom of expression; Article 14, freedom of thought, conscience, and religion; Article 15, freedom of association and peaceful assembly; Article 16, right to privacy; Article 17, access to information; and Article 18, responsibility of both parents to care for the child. While these types of rights are acceptable for adults, they are objectionable for children.

27. See Philip Alston, *The Unborn Child and Abortion Under the Draft Convention on the Rights of the Child*, 12 HUM. RTS. Q. 169-172 (1990).

28. *Report to the House of Delegates: United Nations Convention on the Rights of the Child*, *supra* note 5.

29. Alston, *supra* note 27. See also *Report to the House of Delegates: United Nations Convention on the Rights of the Child*, *supra* note 5; Kilbourne, *supra* note 6, at 9, *Travaux Préparatoires*, at 26.

30. See Phyllis Schafley, *The New World Order Wants Your Children*, THE PHYLLIS SCHAFLEY REPORT, Mar. 1993, Vol. 26, No. 8, at 3; James P. Lucier, *Unconventional Rights: Children and the United Nation*, FAM. POL'Y (PUB. IAM. RES.), Aug. 1992, at 1-16.

31. Media coverage focussed on this issue. See, e.g., John Rosemond, *Movement to Outlaw Spanking is Growing*, FRESNO BEE, Feb. 19, 1995, at F4.

32. Concluding Observations of the Committee on the Rights of the Child: Canada, United Nations Comm. on the Rights of the Child, 9th Sess., 25 U.N. Doc. CRC/C/15/Add.37 (1995). The Committee asked the British government to prohibit corporal punishment in private schools and "chastisement" of children at home. Alan Travis & Frances Rickford, *United Nations Attack on British Child Care*, GUARDIAN, Jan. 28, 1995, at 1.

Underlying all the objections is an interpretation of the CRC as an “anti-parent” and “anti-family” instrument. This sentiment is expressed in Senator Helms statement in support of Senate Resolution 133: “[t]he United Nations Convention on the Rights of the Child is incompatible with the God-given right and responsibility of parents to raise their children.”<sup>33</sup> On the Internet, there is a discussion group on the CRC, and documents have circulated which exemplify this type of interpretation. These are intriguing pieces of data because they reflect the fears of many of the groups mobilized to challenge any attempt to secure ratification of the CRC.<sup>34</sup>

It is quite odd that the CRC is characterized as anti-family. Consider, for instance, Article 5:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present convention.<sup>35</sup>

This provision clearly shows concern for respecting the autonomy of families and is commendable also for including a broader definition of family than the “nuclear” family. There are other provisions in the CRC which demonstrate a concern for balancing the rights of parents and guardians with those of the child.<sup>36</sup> For example, Article 14(3) concerns parental rights to control the religious upbringing of their children and is phrased in a careful way. Since the drafter of this provision wanted to make sure not to grant parental rights at the expense of children’s rights, they included the caveat that the parental rights had to be exercised “in a manner consistent with the evolving capacities of the child.” Overall, it is

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33. 141 CONG. REC. S 8400 (daily ed. 1995) (Statement of Senator Helms).

34. See Kilbourne, *supra* note 6 (discussing the study of these organizations). At the same time that the CRC was being debated, a pro-parents’ rights piece of legislation, the Parental Rights and Responsibilities Act of 1995, was introduced in Congress. Similar legislation was also proposed in Colorado. Kilbourne points out that while this does not directly conflict with the CRC, this legislative development does suggest that the nature of the dispute is parents’ rights versus children’s rights.

35. United Nations Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, art. 5, Nov. 20, 1989.

36. LEBLANC, *supra* note 4, at 114.

obvious to anyone who reads the CRC that it is a carefully drafted instrument that tries to balance parents' rights and children's rights.

There are other more standard objections to ratification. Some maintain that the United States already has sufficient legislation in place to guarantee child welfare.<sup>37</sup> Consequently, the treaty is unnecessary. The American proclivity to reject economic rights also contributes to the treaty's lack of appeal. The cost of guaranteeing some of the rights enumerated in the CRC worries some of the critics of the treaty. Another common complaint is the assertion that international tribunals are "biased against the United States."<sup>38</sup> It would be inadvisable to have other countries judge United States policies. This is part and parcel of an anti-international attitude which seems prevalent in this country in the 1990s. As it happens, the treaty-monitoring Committee has more women than men.<sup>39</sup> It is conceivable that it worries opponents that they will be judged by outsiders, and, moreover, outsiders who are female.

There seems to be greater fear of ratification in light of a general comment issued by the Human Rights Committee concerning ratifications. If reservations are deemed incompatible with the basic object and purpose of a treaty, then they may be treated as invalid. Indeed, this policy statement is cited by opponents of CRC to underscore the claim that United States sovereignty will be undermined by ratification.

If we consider the combination of criticisms of the CRC, it begins to be more clear why there has been such consternation. The treaty seems to implicate family values and world government. Conjuring up American paranoid fears about international scrutiny of American families seems to more than the Senate can bear.

#### IV. ACTUAL DIFFICULTIES WITH THE CRC

A number of normative issues remain, particularly the question of how to rank order the specific rights enumerated in the instrument.<sup>40</sup> A careful reading of the fifty-four articles in the treaty suggest that there are some internal conflicts. Where the rights clash, there is no guiding principle for determining the relative priority of these rights.

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37. See Lucier, *supra* note 30.

38. See Schafley, *supra* note 30.

39. Seven women and three men are on the committee.

40. There are not only normative inconsistencies within the treaty but between it and other treaties. See LEBLANC, *supra* note 4, at 274.

Some of the newer rights relate to identity.<sup>41</sup> For example, several articles seem to support a right to maintain cultural and religious identity: Article 8, right to preserve identity; Article 14, right to religious freedom; Article 16, right to privacy and non-interference in the family; and Article 20, temporary placements and adoptions should take into account cultural background. The key provision is Article 30, which like Article 27 of the International Covenant on Civil and Political Rights, guarantees the cultural rights of ethnic minorities, but Article 30 is broader as it includes indigenous peoples.

Despite clear language in support of these rights, there are also rights which conflict with them. Most directly in conflict is Article 24(3) which provides that, "[s]tates Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."<sup>42</sup> Of course, the dilemma is that these very traditions, prejudicial to the health of children, may be necessary for the maintenance of their cultural or religious identity.

One of the most challenging questions is how to interpret the best interests of the child standard.<sup>43</sup> Most would argue that this is to be construed consistent with Western European individualistic notions.<sup>44</sup> This is not a necessary outcome, however, and is the focus of a book edited by Philip Alston.<sup>45</sup> In the United States this might prove problematic because of a potential conflict between United States treaty obligations under the CRC and domestic obligations to indigenous peoples. The Indian Child Welfare Act is based on a group rights notion that is in tension with the individualistic best interests of the child standard.<sup>46</sup> If this is so, then it would be advisable to have a reservation on reservations, so to speak.<sup>47</sup>

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41. See George A. Stewart, *Interpreting the Child's Right to Identity in the United Nations Convention on the Rights of the Child*, 26 FAM. L. Q. 221-233 (1992).

42. This article was weakened and was almost excluded altogether were it not for NGO efforts. Though the article was drafted with female circumcision in mind, it could certainly be applied to other kinds of cultural traditions.

43. The most prominent advocate of the Children's Convention is Cythnia Cohen. She acknowledges the challenge of applying this standard cross-culturally. See Cohen, *supra* note 5, at 854.

44. See, e.g., Russell Lawrence Barsh, *The Draft Convention on the Rights of the Child: A Case of Eurocentricism in Standard-Setting*, 58 NORDIC J. INT'L L. 24-34 (1989).

45. THE BEST INTERESTS OF THE CHILD: RECONCILING CULTURE AND HUMAN RIGHTS (Philip Alston, ed. 1994).

46. George Stewart senses this difficulty. See Stewart, *supra* note 41, at 231.

47. For a discussion of reservations likely to be attached, see Elizabeth M. Calciano, *United Nations Convention on the Rights of the Child: Will It Help Children in the United States*, 15 HASTINGS INT'L & COMP. L. REV. 515 (1992).

Another reason why the Convention on the Rights of the Child has been stalled is the "one at a time" rule. Human rights NGOs seem convinced that it is best to concentrate on one treaty. The preferred one in 1996 is CEDAW which has priority ostensibly because it was sent to the Senate Foreign Relations Committee in 1980. It has languished for over fifteen years, while the CRC has not even been submitted to the Committee yet. Another justification is that the women's convention is more likely to be ratified.

This does not, however, explain why both could not be publicly supported simultaneously. That is, human rights NGOs and the Clinton Administration could lobby for both. Evidently, there is concern that the right wing opposition that is mobilized to challenge the Children's Convention might lead to the demise of CEDAW. It is unclear why CEDAW is regarded as less threatening than the Children's Convention. Both seem to involve some degree of societal change.

The reality is that feminists are, to some degree, ambivalent about children's rights. In a thought-provoking treatment of this subject, Frances Olsen discusses the "complex and ambiguous relationship" feminists have to the idea of legal protection for children.<sup>48</sup> According to Olsen women experience a loss of freedom at the birth of a child rather than at marriage.<sup>49</sup> This implies that as the rights of children are expanded, so, too, the correlative duty to guarantee these rights will require increased responsibilities on the part of women/mothers.

A related observation is that the CRC is basically oriented toward male children. According to one version of feminist theory: "[t]o the extent that the Convention deals with children as unspecified, unsituated people, it tends in fact to deal with white, male, relatively privileged children."<sup>50</sup> This concern has led to a campaign to guarantee the rights of the "girl child", a term used by UNICEF. Although the CRC may not explicitly address the problems of female children, it is unclear to what extent this contributes to the delay in securing its ratification in the United States. It is true, however, that the desire to protect CEDAW from the organizations poised to attack the CRC seems to have made it less likely that the human rights community will insist that the CRC be considered in the near future.

The most serious challenge is the undifferentiated set of responsibilities for parents and states under the CRC. There is a general

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48. Frances Olsen, *Children's Rights: Some Feminist Approaches to the United Nations Convention on the Rights of the Child*, 6 INT'L J. L. & FAM. 192 (1992).

49. *Id.* at 193.

50. *Id.* at 195.

problem with any attempt to secure children's rights because there will always be a tension among parents, governments, and children.<sup>51</sup> In the Anglo-American tradition citizens have not supported much intervention by the state. If the CRC is perceived as mandating unwarranted state intervention in family decision making, that will make it extremely difficult to be accepted. This triangular structural problem is a subtle one, and one which is not sufficiently worked out in the treaty itself. If the scope of the rights were more clear, this would alleviate the fears of American parents that the government would usurp their control of their own families.

In the final analysis, the overreaction to the CRC seems peculiar. Since the United States usually ratifies human rights treaties with a reservation that ensures that it will be non-self-executing, the effect of the treaty would be minimal. The United States government sometimes ratifies with a reservation to the effect that the treaty will only guarantee rights to the same extent as domestic law, in which case, again, there would be nothing to fear from ratification. It strikes one as odd that the treaty cannot even be accepted on a symbolic level. What can account for this?

It is not only the right wing and feminists who are uneasy about empowering children. It is likely that all parents fear this outcome.<sup>52</sup> With all the publicity about Gregory "divorcing" his parents has come a reaction that things have gone too far. In the current climate it will be hard to allay adult fears about children with legal rights that courts would enforce. Despite this anxiety, it is time to champion the CRC to protect children, who are, in virtually all cases, vulnerable.

## V. IMPORTANCE OF TRANSMITTING THE CRC

The rhetoric surrounding the CRC is mostly absurd. The treaty would pose no threat to American families, and what is needed is a serious

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51. For analyses of the triangular relationship here, see Walter Bennett, *supra* note 13, at 34; Roger Levesque, *The Internationalization of Children's Human Rights: Too Radical for American Adolescents*, 9 CONN. J. INT'L L. 237-293 (1994); Stephen Parker, *Child Support: Rights and Consequences*, 6 INT'L J. L. & FAM. 148-169 (1992); Sharon Rush, *The Warren and Burger Courts on State, Parent, and Child Conflict Resolution: A Comparative Analysis and Proposed Methodology*, 36 HASTINGS L.J. 461-513 (1985).

52. The courts are themselves ambivalent about children's rights. Martha Minow mentions that the United States Supreme Court decisions on children's rights in domestic constitutional law reflect ". . . legal ambivalence in the face of repeated efforts by advocates to extend constitutional rights to children." See Martha Minow, *Whatever Happened to Children's Rights?*, 80 MINN. L. REV. 277 (1996). Some scholars have suggested that the campaign for the CRC might be a strategy by children's rights advocates who failed to win legislative battles in Congress. See Bruce Hafen and Jonathan Hafen, *Abandoning Children to their Autonomy: The United Nations Convention on the Rights of the Child*, 37 HARV. INT'L L. J. 449-490 (1996).

debate of the meaning of the treaty to clarify the interpretation of the especially controversial provisions. The strategy of using a low profile advocacy of treaty ratification has not proven effective in the case of the Children's Convention.<sup>53</sup> It would be far better to have an open debate on the relative advantages and disadvantages of ratification.

The debate may be a nasty one. Cynthia Price Cohen, perhaps the leading advocate of the CRC, anticipates a major battle between the supporters and opponents of the treaty once the President submits it to the Senate.<sup>54</sup> It is only by taking on one's opponents directly that consensus building becomes possible. Securing ratification quietly may temporarily avoid a clash, but it simply postpones the conflict.

It has been said that the drafting of the CRC was partly a consciousness raising effort. If the United States signing of the CRC was merely a symbolic gesture of support,<sup>55</sup> then attempting to complete the process would, at the very least, show a serious commitment to the notion of children's rights. Even if ratification were 100 percent impossible, the President should show moral courage by transmitting the Convention to the Senate. It may take many years to secure ratification, as with the Genocide Convention, but it is time to begin the process.

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53. Stentzel suggests that the quiet lobbying will not be effective. Comparing the unsuccessful effort to win ratification of the International Covenant on Economic, Social, and Cultural Rights with the non-campaign to do the same for the CRC, Stentzel extends Philip Alston's assessment of the IESCR strategy: "[t]here is little reason to believe that the *stealth* or *toothless tiger* approach would succeed when it has been unsuccessful for the IESCR." Stentzel, *supra* note 4, at 1321-1322.

54. Cohen, *supra* note 8.

55. Kilbourne maintains that the signing was "only at the death-bed behest" of James Grant, former executive director of UNICEF, KILBOURNE, *supra* note 6, at 1.