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Opposing Viewpoints:
**The U.S. Should Not Ratify the United Nations Convention on the
Rights of the Child**

By: Charlotte Galvin

INTRODUCTION

On February 7, 1978, Poland proposed the United Nations Convention on the Rights of the Child. Poland proposed this treaty because, in the absence of a legally binding text, Poland argued it could be difficult to protect children's rights. It was the hope that the United Nations Convention on the Rights of the Child would be legally binding on all nations. The United Nations Educational, Scientific and Cultural Organization proclaimed 1979 as the International Year of the Child. In the spring of 1979, the Commission on Human Rights created a working group charged with writing the proposed Convention on the Rights of the Child. The working group met once a year in Geneva, Switzerland to write the Convention. On November 20, 1989, the General Assembly of the United Nations adopted the Convention on the Rights of the Child. The Convention on the Rights of the Child is the most widely ratified treaty to ever be introduced. When Somalia and South Sudan ratified the treaty in 2015, the United States of America became the only United Nations member state to not ratify the Convention on the Rights of the Child. While children's rights activists may disagree, the United States should not ratify the United Nations Convention on the Rights of the Child because it is politically infeasible. Activists in favor of ratification are more likely to succeed in using their political capital to lobby the government to amend certain domestic laws to better align with the Convention.

I. UNITED STATES DOMESTIC POSITION

The United States endorsed the principles of the United Nations Convention on the Rights of the Child when President Bill Clinton signed it on February 16, 1995. In 2002, the United States ratified two optional protocols of the Convention: the first protocol was on the involvement of children in armed conflict; the second was on the sale of children, child prostitution and child pornography. Additionally, most laws in the United States are already consistent with the Convention on the Rights of the Child. For example, in 2005, the United States Supreme Court found that the use of the death penalty against juvenile offenders was unconstitutional. The Supreme Court held that an individual who has committed capital murder between the ages of fifteen and eighteen cannot be sentenced to death.

Although the United States supports the principles of the treaty, it is politically difficult for any treaty to be ratified in the United States. The requirement for treaty ratification is the same as amending the constitution, which is a two-thirds vote in favor of treaty ratification in the United States Senate. Although Presidents Clinton and Obama have both supported the ratification of the Convention on the Rights of the Child,

Republican opposition in the Senate has made it impossible for the United States to ratify the treaty.

Conservatives argue that ratification would undermine United States sovereignty. ParentalRights.org is just one group in the United States that campaigns against ratification. The president of the organization, Michael Farris, who is a constitutional lawyer, has said that the "United States demonstrates its commitment to human rights whenever it follows and enforces the Constitution of the United States, which is the greatest human rights instrument in all history." Further, he has stated that ratification threatens parental rights and that,

The chief threat posed by the CRC is the denial of American self-government in accord with our constitutional processes... Our constitutional system gives the exclusive authority for the creation of law and policy on issues about families and children to state governments. Upon ratification, this nation would be making a binding promise in international law that we would obey the legal standards created by the U.N. CRC. American children and families are better served by constitutional democracy than international law.

This conservative group has additional fears. They fear that ratification would mean "children could choose their own religion, that children would have a legally enforceable right to leisure, that nations would have to spend more on children's welfare than national defense, and that a child's 'right to be heard' could trigger a governmental review of any decision a parent made that a child didn't like." Whether these fears are rational is a matter of opinion. However, these conservative beliefs have created strong Republican opposition to ratification, and the Republican Party currently controls the Senate, Judiciary, and Executive. The last time Democrats had control of the Senate and the Executive, during President Obama's first two years in office, Senate Democrats did not bring the Convention before the Senate for a vote. During this time, thirty-one Republican Senators cosponsored a resolution opposing the United Nations Convention on the Rights of the Child. The resolution stated that the convention "undermines traditional principles of US laws" and any efforts to ratify would be "contrary to principles of self-government and federalism." Because of the complete lack of political will, it is highly unlikely that the United States will be able to get two-thirds of the Senate to ratify the United Nations treaty.

II. UNITED STATES INTERNATIONAL POSITION

Lack of domestic political support for the ratification of international treaties is not uncommon in the United States. In fact, the United States has demonstrated a consistent pattern of not ratifying international treaties, so it should come as no surprise that it has failed to ratify the United Nations Convention on the Rights of the Child. For example, the United States has not ratified the Convention on Discrimination against Women, the International Covenant on Economic, Social, and Cultural Rights, the UN Framework

Convention on Climate Control and the Kyoto Protocol, or the Mine Ban Treaty. Even when the United States does ratify an international treaty, it has often withdrawn support, such as with the Anti-Ballistic Missile Treaty and the Biological and Toxic Weapons Convention and Draft Proposal.

The United States has consistently been unwilling to ratify international treaties because of the fear of harming its sovereignty. International standards imposed on the United States could “constrain the unfettered latitude of the global superpower, and arrogance in the conviction that the United States, with its long and proud history of domestic rights protections, has nothing to learn on this subject from the rest of the world.” In a 1991 address to the United Nations General Assembly, in which he talked about the role of international institutions in serving international order, President George H. Bush said, “no nation must surrender one iota of its own sovereignty.” President Barack Obama strongly defended U.S. sovereignty in his 2013 address at the United Nations when he said, “Different nations will not agree on the need for action in every instance, and the principle of sovereignty is at the center of our international order.” In his second address to the United Nations General Assembly, President Donald Trump said, “We will never surrender America’s sovereignty to an unelected, unaccountable, global bureaucracy... America is governed by Americans.”

III. ALTERNATIVE APPROACH TO ADVANCING CHILDREN’S RIGHTS

Because of this, supporters of United States’ ratification of the United Nations Convention on the Rights of the Child should shift their focus. Instead of lobbying for ratification, which is politically infeasible at this time, activists may find more success in lobbying elected officials to reform current United States laws that do not comply with the treaty. While most United States laws already comply with the treaty, there are exceptions. For example, the United States is the only country where juveniles can be sentenced to life without parole. There is momentum behind banning the practice in the aftermath of three United States Supreme Court rulings. In 2005, the Court banned the juvenile death penalty. In 2010, the Court banned sentencing juveniles convicted of non-homicide offenses to life without parole. Finally, in 2012, the Court held that mandatory sentences of life without parole for juveniles are unconstitutional. This means that in twenty-nine states, juveniles convicted of homicide offenses can still be sentenced to life at the discretion of a judge, which is directly in conflict with a provision in the United Nations Convention on the Rights of the Child. In 2016, the Court ruled that those sentenced as juveniles to mandatory life imprisonment for murder “should have a chance to be resentenced or argue for parole.” In the aftermath, states have been revisiting sentencing laws so that those serving such sentences have a chance to argue for release one day. Lobbying for the further decrease of harsh sentencing for juveniles is one example of how activists could advance children’s rights and make the United States more congruent with the United Nations Convention on the Rights of the Child, short of ratification.

CONCLUSION

Children's rights activists should stop campaigning for the United States to ratify the United Nations Convention on the Rights of the Child. Due to conservative opposition and the United States' international policy norm of not ratifying international human rights treaties, the United States will likely never ratify the CRC. While some activists may disagree, resources would likely be better spent lobbying the government to reform domestic laws which are currently at conflict with provisions of the United Nations Convention on the Rights of the Child. The advancement of children's rights is an admirable goal. Activists may find greater success in advancing the principles and spirit of the United Nations Convention on the Rights of the Child by focusing on domestic reform efforts.

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