

NANNIES IN BLUE BERETS: UNDERSTANDING
THE UNITED NATIONS CONVENTION ON
THE RIGHTS OF THE CHILD:
A LEGAL ANALYSIS

MICHAEL P. FARRIS*

On November 20, 1989, an historic treaty proclaiming a world-wide regime of human rights for children was adopted and opened for ratification.¹ By September 2nd of the following year, the Convention on the Rights of the Child [hereinafter CRC] had been ratified by twenty nations, the number required for it to enter into force.² This means it became effective and binding on those nations.³

Currently, the CRC has been ratified by a total of 193 nations.⁴ This makes it the most widely adopted human rights treaty of any kind.⁵ Only two nations have not ratified or acceded to the CRC, the United States and Somalia.⁶ Both the United States and Somalia have signed the CRC, but neither has received the necessary approval required by the internal law of the nation to become an official party to the treaty.⁷

On February 16, 1995, Madeline Albright, then the United States Ambassador to the United Nations, signed the CRC on

* Michael P. Farris, J.D., is Chairman of the Home School Legal Defense Association (HSLDA) and Chancellor of Patrick Henry College. Farris was named one of the "Top 100 Faces in Education for the Twentieth Century" by Education Week. In 2010, Farris received a Post Graduate Diploma in Public International Law from the University of London.

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

2. THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: A GUIDE TO THE "TRAVAUX PREPARATOIRES" 633 (Sharon Detrick ed. 1992).

3. UNICEF, Path to the Convention on the Rights of the Child, http://www.unicef.org/crc/index_30197.html (last visited Feb. 20, 2010) [hereinafter UNICEF, Path to the Convention].

4. UNICEF, Child Rights—Related Conventions and Protocols, http://www.unicef.org/progressforchildren/2007n6/index_41852.htm (last visited Feb. 20, 2010).

5. UNICEF, Path to the Convention, *supra* note 3.

6. *Id.*

7. *Id.*

behalf of the United States.⁸ Although the signing of the treaty was proclaimed a great victory by the then-First Lady Hillary Clinton,⁹ President Clinton never sent the treaty to the Senate for ratification.¹⁰

It was important to employ the correct legal terminology of both American constitutional law and international law in the foregoing description of the status of this treaty. There are some key differences between domestic and international law—even in terminology. For example, if the United States Senate voted to approve the treaty by the requisite two-thirds majority, then United States constitutional law would refer to that as “ratification,”¹¹ but international law would call it “accession.”¹² The goal in making this distinction is not to expound on the somewhat dry differences between ratification and accession but rather to point out that the CRC is not a mere statement of altruism or political philosophy but rather a legal instrument with potentially binding legal consequences.

Under the most basic rule of international law, every nation that becomes a party to a treaty is obligated to perform the duties that it assumes under the terms of the treaty.¹³ Moreover, under the Vienna Convention on the Law of Treaties, every treaty is superior to all internal law—including the nation’s constitution¹⁴—with one important exception, which will be discussed later.

The United States Constitution reflects a variant of this same theme. Article VI contains this clause:

This Constitution, and the Laws of the United States
which shall be made in Pursuance thereof; and all Trea-

8. Michael Smith, *U.N. Treaty Might Weaken Families*, WASH. TIMES, Jan. 11, 2009, at M17.

9. John F. Harris, *U.S. to Sign U.N. Pact on Child’s Rights*, WASH. POST, Feb. 11, 1995, at A3.

10. Smith, *supra* note 8.

11. U.S. CONST. art. II, § 2, cl. 2. See also M. Cherif Bassiouni, *Symposium: Reflections on the Ratification of the International Covenant on Civil and Political Rights by the United States Senate*, 42 DEPAUL L. REV. 1169, 1172 n.13 (1993).

12. UNITED NATIONS, UNITED NATIONS TREATY COLLECTION: TREATY REFERENCE GUIDE 6, 8 (1999) <http://untreaty.un.org/English/guide.pdf>.

13. Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention].

14. *Id.* arts. 27, 46.

ties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.¹⁵

This clause clearly proclaims that treaties are superior to all state laws and state constitutions to the extent that the provisions of state law are in conflict with the rules contained in the treaty.

Virtually all law governing the parent-child relationship is state law, not federal law.¹⁶ Thus, the supremacy of the CRC, a treaty, would supersede the vast majority of American law concerning children since the vast majority of American law regarding children is state law. The overriding supremacy of a treaty over state law can be directly inferred from the previously quoted constitutional provision.

A related question is whether the treaty would be superior to our federal Constitution and federal laws made by Congress. The United States Supreme Court has ruled that the Constitution itself is superior to a treaty with regard to our domestic law.¹⁷ However, international law contains the opposite rule—treaties trump national constitutions.¹⁸

There is some debate over the issue of whether a treaty would prevail over an inconsistent act of Congress.¹⁹ Based on United States case law, it is fair to conclude that treaties and federal statutes would likely be viewed of equal rank and, therefore, the most recent enactment would prevail. Under this view, new treaties trump old federal laws regarding United States domestic law.²⁰ Under international law, however, there is no doubt that a treaty trumps a conflicting federal statute.²¹

15. U.S. CONST. art. VI.

16. LYNN D. WARDLE & LAURENCE C. NOLAN, *FUNDAMENTAL PRINCIPLES OF FAMILY LAW* 30 (2d ed. 2006).

17. *Reid v. Covert*, 354 U.S. 1, 18 (1957).

18. Vienna Convention, *supra* note 13, art. 27.

19. See generally Jonathon Turley, *Dualistic Values in the Age of International Legisprudence*, 44 *HASTINGS L.J.* 185, 186–90 (1993).

20. *Medellin v. Texas*, 552 U.S. 491, 509 (2008) (“[A] later-in-time federal statute supersedes inconsistent treaty provisions.”) (citing *Cook v. United States*, 288 U.S. 102, 119–20 (1933)).

21. Vienna Convention, *supra* note 13, art. 27.

If the United States becomes a party to this treaty, then it will have both a legal and moral duty to implement and obey the provisions contained therein. The duty to comply with the treaty would fall on the national government.²² Thus, Congress, not the states, would have the duty under international law to implement all provisions of the treaty.²³ These include regulations in the areas of education, health care, family discipline, the child's role in family decision-making, and a host of other subjects.

By ratifying this treaty, Congress would not only acquire the duty to implement the treaty, Congress would also acquire the jurisdiction necessary to directly legislate on education, health care, and family life.²⁴ Under current law, Congress cannot enact laws that directly govern these areas.²⁵ Generally speaking, if Congress wants to regulate something in one of these areas, it enacts federal funding for the states but conditions the receipt of the funds on the state's implementation of the prescribed federal guidelines.²⁶

This would change if the CRC is ratified. For example, the treaty clearly bans all corporal punishment, including spanking by parents.²⁷ Currently, only the states can regulate corporal punishment.²⁸ But if the CRC were ratified, Con-

22. CRC, *supra* note 1, art. 4.

23. U.S. CONST. art. VI, cl. 2. *See also* CRC, *supra* note 1, art. 4.

24. *Id.* *See also* T. Alexander Aleinikoff, *Thinking Outside the Sovereignty Box: Transnational Law and the United States Constitution*, 82 TEX. L. REV. 1989, 1994 (2004).

25. *See* SANFORD N. KATZ, FAMILY LAW IN AMERICA 139 (2003); Don S. Browning, *The United Nations Convention on the Rights of the Child: Should it be Ratified and Why?*, 20 EMORY INT'L L. REV. 157, 158 (2006) ("Family law in the United States is, for the most part, a constitutional responsibility of the fifty states.")

26. *New York v. United States*, 505 U.S. 144, 166–67 (1991) (quoting *South Dakota v. Dole*, 483 U.S. 203, 206–07 (1986)). *See also* Ryan C. Squire, *Effectuating Principles of Federalism: Reevaluating the Federal Spending Power as the Great Tenth Amendment Loophole*, 25 PEPP. L. REV. 869, 884 (1997–98) (discussing Congress' methods of influencing the implementation of state legislation that falls outside the scope of Congress' enumerated constitutional powers). *See also* KATZ, *supra* note 25.

27. CRC, *supra* note 1; Comm. On the Rights of the Child, *General Comment No. 8: The Right of the Child to the Protection from Corporal and Other Cruel or Degrading Forms of Punishment*, 3 U.N. Doc. CRC/C/GC/7 (Mar. 2, 2007) [hereinafter *General Comment No. 8*].

28. *See* Christopher B. Fuselier, *Corporal Punishment of Children: California's Attempt and Inevitable Failure to Ban Spanking in the Home*, 28 J. JUV. L. 82, 84–85 (2007) (citing David Orentlicher, *Spanking and Other Corporal Punishment of*

gress would have both the power and the duty to implement legislation which directly imposes legal sanctions against parents who spank their children.²⁹

Additionally, though Congress would have the power to control corporal punishment, it would not have discretion to permit it. By ratifying the treaty, Congress would have a duty to ban all corporal punishment, including corporal punishment administered in the home.³⁰ The only discretion retained by Congress would be to specify the punishment to be meted out against parents who violated the provision of the treaty that bans spanking.³¹

This general introduction to the interplay of treaty law with United States domestic law should make it readily apparent that Congress ought to exercise the utmost caution in adopting any treaty. A thorough understanding of the meaning and application of a proposed treaty is essential to any decision regarding its ratification. Congress should not ratify (i.e. promise to obey) a treaty, if it is its intention to not obey or to only partially obey its provisions.

International law imposes a duty upon nations to fully implement the provisions of those treaties that they ratify.³² Moral law imposes the same duty.³³ Thus, it would be foolish to ratify a treaty without carefully considering whether the substantive rules and policies contained in the treaty are superior to those made by the members of Congress.

Before considering the details of the CRC, it is important to examine one more piece of its background. The CRC is an international human rights treaty. Accordingly, a basic understanding of the scope of human rights treaties is necessary.

Children by Parents: Overvaluing Pain, Undervaluing Children, 35 Hous. L. Rev. 147, 150-53 (1998)).

29. U.S. CONST. art. VI; Aleinkoff, *supra* note 24. See also Jason M. Fuller, *The Science and Statistics Behind Spanking Suggest that Laws Allowing Corporal Punishment are in the Best Interests of the Child*, 42 AKRON L. REV. 243, 256-57 (2009).

30. See CRC, *supra* note 1; *General Comment No. 8*, *supra* note 27. See also Fuller, *supra* note 29.

31. U.S. CONST. art. I, § 8, cl. 10.

32. Vienna Convention, *supra* note 13.

33. See, e.g., *Matthew* 5:37 ("Simply let your 'Yes' be 'Yes,' and your 'No,' 'No'; anything beyond this comes from the evil one.").

I. AN OVERVIEW OF THE SCOPE OF HUMAN RIGHTS LAW

Like most human rights treaties, the Convention on the Rights of the Child contains a codification of five groups of interdependent rights: political, civil, social, cultural, and economic.³⁴ Note the term “interdependent.” The theory of human rights law is that if a child does not have enough to eat (an economic right), of what value is education (a social right) or due process in a juvenile delinquency hearing (a civil right)?³⁵ Thus, economic rights, like the right to food, are guaranteed to children every bit as much as civil rights such as the right to due process.

The traditional American theory of rights—as represented by documents like The Bill of Rights—are guarantees of liberty that act as limitations on the power of government.³⁶ The government may not invade the freedom of speech, press, or religion.³⁷ Human rights theory embraces most of these kinds of rights but contains an entirely different sector of rights in addition to those mentioned.³⁸ In short, human rights theory guarantees the right to complete care by the state—not just to children, but to all persons.³⁹

One law professor who embraces this approach to human rights law gives us a revealing description of the meaning of a related treaty:

In essence, [the articles of the treaty] deal with the rights to food, clothing, and housing, the right of access to physical and mental health care, and the right to education. In terms of the “ratifiability” of the Covenants by the United States, the issues raised by that cluster of rights are twofold. Is the United States prepared to commit itself to the general proposition that there is indeed a human right to each of these social goods or, put differ-

34. UNICEF, HUMAN RIGHTS FOR WOMEN AND CHILDREN: HOW UNICEF HELPS MAKE THEM A REALITY 1 (1999), http://www.unicef.org/publications/files/pub_human_rights_children_en.pdf.

35. See Katharine G. Young, *The Minimum Core of Economic and Social Rights: A Concept in Search of Content*, 33 YALE J. INT'L L. 113, 128–34 (2008).

36. BERNARD SCHWARTZ, THE GREAT RIGHTS OF MANKIND: A HISTORY OF THE AMERICAN BILL OF RIGHTS 1 (1977).

37. U.S. CONST. amend. I.

38. See generally Universal Declaration of Human Rights, G.A. Res. 217A (III), at 75, U.N. GAOR, 183d plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948).

39. JACK DONNELLY, INTERNATIONAL HUMAN RIGHTS 154–55 (1998).

ently, to the satisfaction of each of these basic human needs? And, even if it is, is it prepared to accept the specific level of obligation in that regard provided for by the Covenant?⁴⁰

Geraldine Van Bueren, a human rights professor at the University of London and one of the drafters of the CRC, describes human rights law and children's rights in terms that are clearly socialistic.⁴¹

International human rights law is a peaceful but powerful instrument of change. In essence, human rights is about peacefully redistributing unequal power The essence of economic and social, and to an extent cultural, rights is that they involve redistribution, a task with which, despite the vision of human rights, most constitutional courts and regional and international tribunals are distinctively uncomfortable.⁴²

However, Professor Van Bueren praises those courts willing to boldly implement social and economic provisions of human rights treaties:

The combating of child poverty is a good place to begin, not only because of the near universal ratification of the United Nations Convention on the Rights of the Child (CRC) of 1989, which symbolizes an international commitment to tackle child poverty, but also because of the way international law has been utilized by some national courts to support judicial activism in protecting children's rights.⁴³

Treaty obligations are traditionally categorized in terms of their priority in relation to implementation.⁴⁴ The highest treaty obligations are those which may not be derogated even in times of national emergency.⁴⁵ Professor Van Bueren

40. Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 AM. J. INT'L L. 365, 369 (1990).

41. Geraldine Van Bueren, *Combating Child Poverty—Human Rights Approaches*, 21 HUM. RTS. Q. 680 (1999).

42. *Id.* at 680–81.

43. *Id.* at 681 (citing CRC, *supra* note 1; Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ. T.S. No. 005 [hereinafter Convention on Human Rights]; GERALDINE VAN BUEREN, *THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD* (1998)) [hereinafter VAN BUEREN, *INTERNATIONAL LAW*].

44. Van Bueren, *Combating Child Poverty*, *supra* note 41, at 684.

45. *Id.* (citing CRC, *supra* note 1).

states, “[I]n terms of treaty law, children’s economic, social, and cultural rights are so fundamental that no derogations from the implementation of these rights are allowed, even in times of emergency which threaten the life of the nation.”⁴⁶

Professor Van Bueren comments on the acceptability of the CRC in the United States.⁴⁷ She describes the duty of the government to provide for the economic needs of children as being “to the maximum extent of available resources . . . regardless of the economic model followed by the State party.”⁴⁸ She states that this duty:

[I]s one of the reasons that the United States will find it difficult to become a party to the CRC; political philosophies that undermine social welfare on the basis of privacy are not acceptable. The CRC has shifted the focus from the historical benefits approach . . . to a child’s right to an equitable share in the resources of the country. The CRC provides an ideology for state intervention.⁴⁹

The Committee on the Rights of the Child provides official interpretations of the treaty in the reports it issues. These reports describe compliance by each state party.⁵⁰ If the Committee criticizes a nation’s failure to comply with the CRC, this constitutes a tacit finding that the nation has violated international law.⁵¹ Despite the fact that the Committee has no true enforcement power, it is an important source for learning what the treaty requires of a state party. Professor Van Bueren notes that in one of these reports, the United Nations Committee on the Rights of the Child, criticized Egypt and Indonesia on the proportion of their budget spent on defense, as compared to the proportion spent on children’s social expenditure.⁵² The Committee also criticized Austria,⁵³ Australia,⁵⁴ Denmark,⁵⁵ the United Kingdom,⁵⁶

46. *Id.*

47. *Id.* at 692.

48. *Id.*

49. *Id.*

50. Anne F. Bayefsky, *The U.N. Human Rights Treaties: Facing the Implementation Crisis*, 15 WINDSOR Y.B. ACCESS TO JUST. 189, 191 (1996).

51. Vienna Convention, *supra* note 13, arts. 2, 11, 26.

52. Van Bueren, *Combating Child Poverty*, *supra* note 41, at 694, 705.

53. Comm. on the Rights of the Child, *Concluding Observations of the Comm. on the Rights of the Child: Austria*, ¶ 46, U.N. Doc. CRC/C/15/Add.251 (Mar. 31, 2005).

and others failing to spend enough tax dollars on social welfare for children. Thus, it can reasonably be inferred that the CRC requires states to place greater importance on the social welfare of children than on national defense.

Remember that Professor Van Bueren commends those activist courts in various nations which have decided to directly order compliance with the CRC.⁵⁷ It is, then, reasonable to anticipate that children's rights activists would bring lawsuits in American federal courts in hopes of finding sympathetic judges who would hold that America spends too much on military defense and order a redistribution of funds toward children's social programs. Today, such a lawsuit would not likely prevail. No one can guarantee that the result would be the same in a decade or two.

So far, four basic principles have been established:

- The CRC is a treaty that creates binding legal obligations.
- The CRC is supreme over all state law.
- Domestic and international law differ on whether CRC overrides the United States Constitution.
- The CRC is a human rights treaty that imposes a socialistic duty on the government to furnish a child's economic, social, and cultural needs.

These points alone should plant doubts about the advisability of ratifying the CRC. Looking into the specific principles and rules contained in the CRC only confirms those doubts.

54. Comm. on the Rights of the Child, *Concluding Observations of the Comm. on the Rights of the Child: Australia*, ¶¶ 17–18, U.N. Doc. CRC/C/15/Add.268 (Oct. 20, 2005).

55. Comm. on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Denmark*, ¶¶ 18–19, U.N. Doc. CRC/C/DNK/CO/3 (Nov. 23, 2005).

56. Comm. on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Great Britain and Northern Ireland*, ¶ 10, U.N. Doc. CRC/C/15/Add.188 (Oct. 9, 2002).

57. Van Bueren, *Combating Child Poverty*, *supra* note 41, at 681 (citing CRC, *supra* note 1; Convention on Human Rights, *supra* note 43; VAN BUEREN, INTERNATIONAL LAW, *supra* note 43).

II. TWO CENTRAL PRINCIPLES OF THE CRC

The two most important principles of the CRC are the "best interests of the child" principle⁵⁸ and "the child's right of participation" in all relevant matters principle.⁵⁹

Article 3(1) provides: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."⁶⁰

Article 12(1) provides: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."⁶¹

An example of how these principles are understood and implemented is a case litigated by this author in Island County, Washington, in the early 1980s.⁶² At the time, Washington State had a law on the books which allowed its juvenile courts to assume jurisdiction over a child on the sole grounds of conflict between a parent and child.⁶³

A thirteen year-old boy in that county complained to the counselors in his public school that his parents took him to church more often than he desired. The parents attended church Sunday morning, Sunday evening, and Wednesday night. The boy was willing to attend church only on Sunday morning. This, of course, constituted a conflict between parent and child. Therefore, the school counselors turned the matter over to the Department of Social Services who immediately took custody of the boy and scheduled a hearing approximately three days later. The parents retained this

58. CRC, *supra* note 1, art. 3.

59. Barbara A. Atwood, *The Child's Voice in Custody Litigation: An Empirical Survey and Suggestions for Reform*, 21 ARIZ. L. REV. 629, 650 (2003) (citing CRC, *supra* note 1, art. 12).

60. CRC, *supra* note 1, art. 3.

61. *Id.* art. 12.

62. As this was a juvenile case, citation information is unavailable to the public for privacy reasons.

63. WASH. REV. CODE § 13.32.040 (1978 & SUPP. 1978) (repealed 1979). See generally *In re Sumey*, 621 P.2d 108 (1980).

author as their lawyer to contest this removal and to get their son back.

There was no suggestion of abuse or neglect of any kind. The sole issue was whether the child's wishes regarding the frequency of church attendance would be honored over the direction of the parents. Under traditional American law, this case would have never been filed or would have been immediately dismissed.⁶⁴ Absent proof of abuse or neglect, courts and social workers simply do not have the authority to intervene in parental decisions of this nature.⁶⁵ Under traditional standards, the government may not substitute its judgment for that of the parent until there is proof of abuse, neglect, or some other form of harm to the child.⁶⁶

But under this new Washington law, the standards were different.⁶⁷ Without any finding of abuse or neglect, the trial judge ruled that the wishes of the child should be taken into account, and it was his view that the best interests of the child would be served if the boy was allowed to limit his attendance at church to once a week. Accordingly, he ordered the parents to follow the boy's wishes or else the state would retain custody of the child.

This author wanted to appeal the case for the parents but could not guarantee them that they would retain custody of their son during the appeal. Accordingly, they decided to not appeal and obey the court's order so that they could regain custody of their son.

This case is an absolutely perfect example of what would be permissible if the United States adopted the CRC.

In two very important areas of parental choice—religion and education—it is absolutely clear that the CRC interferes with parental choice and elevates a child's wishes over that of the parent, at least as the child gets older.

64. *See, e.g.*, *In re Mead*, 194 P. 807, 809 (1920).

65. *Id.*

66. *Id.*

67. WASH. REV. CODE § 13.32.040 (1977). *See In re Sumey*, 621 P. 2d 108, 109–10 (1980); *In re Welfare of Becker*, 553 P. 2d 1339, 1343 (1976) (stating that police and social workers have the right to take a child from his or her parents without any proof of abuse on the part of the parents).

The Committee on the Rights of the Child issued an official report on September 29, 2006, regarding Ireland that contains a number of relevant and troubling items:

The Committee . . . notes that a high number of the complaints received by the Ombudsman for Children relate to a lack of respect for the views of the child. In light of Article 12 of the Convention, the Committee recommends that the State party . . . [s]trengthen its efforts to ensure, including through Constitutional provisions, that children have the right to express their views in all matters affecting them and to have those views given due weight, in particular in families, schools and other educational institutions, the health sector and in communities.⁶⁸

In a more specific critique of the provisions for respecting the views of the child, the Committee made the following statement: "While noting that social, personal and health education is incorporated into the curricula of secondary schools, the Committee is concerned that adolescents have insufficient access to necessary information on reproductive health."⁶⁹ "The education is optional and parents can exempt their children."⁷⁰

The CRC Committee clearly condemns the practice of states that permit parents to decide whether their child will participate in public school sex education. In the 1995 report on the United Kingdom's compliance with the CRC, the nation was criticized for allowing parents to make decisions to remove their child from participation in sex education classes in government schools without adequate measures to ensure that the child's viewpoints were considered and weighed appropriately.⁷¹

It is noteworthy that no criticism was leveled against either Ireland or the UK for failing to consider the child's viewpoint in those cases where the parents allowed their

68. Comm. on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Ireland*, ¶ 24, U.N. Doc. CRC/C/IRL/CO/2 (Sept. 29, 2006) [hereinafter *Concluding Observations: Ireland*].

69. *Id.* ¶¶ 52-53.

70. *Id.* ¶ 52.

71. Comm. on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland*, ¶ 14, U.N. Doc. CRC/C/15/Add.34 (Feb. 15, 1995) [hereinafter *Concluding Observations: UK & Northern Ireland*].

child to attend the sex education classes.⁷² Nor was there any criticism for failure to consider the child's views in the decision to enroll the child in the government schools in the first place.⁷³ The child's wishes seem to get special attention only when the parents want something different from the wishes of the government.

Professor Van Bueren explains the general approach of the CRC in this way. She notes that unlike earlier treaties, the CRC does not include a provision that allows parents to have their children educated in conformity with their parents' beliefs. She further argues that the child's right to freedom of expression and the right of the parents to initially give direction and later only guidance entitles children to participate in decisions and conform their education to their own convictions.⁷⁴

Does the child also have the right to choose his own religion? Under the CRC, parents do have the right to provide direction to the child. Such parental power, however, is subject to two restraints. First, such direction should take into account the evolving capacities of the child, as expressly required by the Convention. Second, the direction should not be so unyielding that it equals coercion.

The right to freedom of religion in the Convention on the Rights of the Child includes Article 12 which gives the child the right to express his own views in the matter of choice of religion.⁷⁵

Insofar as Professor Van Bueren (who is acknowledged as one of the world's leading authorities on the CRC⁷⁶) has an accurate understanding of this Convention, the result in Island County, Washington falls squarely in line with the requirements of this treaty. Under the CRC, social workers and courts have the power to decide whether they think a parent's decision about education or church is truly in the

72. *Id.* ¶ 14; *Concluding Observations: Ireland*, *supra* note 68, ¶¶ 52–53.

73. *Concluding Observations: Ireland*, *supra* note 68, ¶¶ 58–63; *Concluding Observations: UK & Northern Ireland*, *supra* note 71, ¶ 32.

74. VAN BUEREN, *INTERNATIONAL LAW*, *supra* note 43, at 242–44.

75. *Id.* at 136–38, 156–59.

76. *Van Bueren Wins Children's Rights Award*, *TIMES* (London), Nov. 26, 2003, at 5.

child's best interest, after giving the child's views whatever weight the government believes is appropriate.

When one looks at the actual application and enforcement of the CRC, it is neither parents nor children who make the final decision in the case of conflict—it is the state that has the power and duty under the CRC to make the ultimate decision on what the child's views are and whether those views are in the child's best interests.

III. HOW COULD THE CRC EVER BE RATIFIED?

Many of the details of the provisions of the CRC are relevant to this discussion and provide helpful reference points for understanding the real life impact of the CRC. A sampling of those details include:

- Spanking is banned, including in the home.⁷⁷
- Children have a legally binding right to leisure.⁷⁸
- Children have a right to reproductive health information without regard to parental involvement or permission.⁷⁹
- It is illegal to sentence juvenile murderers to death.⁸⁰
- It is illegal to sentence juvenile murderers to life in prison.⁸¹

However, while relevant, these details are not as important to understand as the two overarching principles just studied:

- Government can override parental decisions on the best interest of the child without proof of abuse, neglect, or harm.⁸²
- Children have legally enforceable rights to complain about parental decision-making in every area of their life, including religious and educational decisions.⁸³

Indeed, since the CRC gives the government broad power to override parents' decisions regarding the upbringing of their children, the details of the various provisions become

77. CRC, *supra* note 1, art. 19(1).

78. *Id.* art. 31(1).

79. *Id.* art. 28(1)(a).

80. *Id.* art. 37(a).

81. *Id.*

82. *See id.* art. 13.

83. *See generally id.* arts. 12–14.

somewhat superfluous—at least in light of the scope of this article.

Based on the foregoing discussion, it is fair to wonder how the proponents of the CRC hope to secure its passage. The short answer is that the proponents of the CRC plan to bluff. They make certain claims about the meaning and application of this treaty that are difficult to sustain in the face of a clear analysis. They appear to hope that no careful analysis of the domestic application of the CRC will be communicated to the Senate. Any criticism of the CRC is dismissively rejected as “uninformed” while CRC advocates appear to believe that they need not substantiate the legal validity of any of their assertions.

The website of the core group pushing for ratification of this treaty, the Children’s Rights Campaign, has a page dedicated to answering criticisms of the CRC.⁸⁴ The website introduction reads as follows:

Over 300 organizations representing the interests of the religious, education, health care, humanitarian, labor, legal, and social service communities have lent their support for ratification of the CRC. However, a small number of political organizations have spearheaded efforts to oppose United States ratification. These groups have sought to minimize the Convention’s value by employing “scare tactics” to fallaciously portray the CRC as a threat to American families. In general, opponents largely base their arguments on unsubstantiated claims regarding national sovereignty and interference in the parent-child relationship.

They allege that ratification of the CRC:

- would endanger national and state sovereignty;
- would undermine parental authority by allowing the UN to dictate how parents raise and teach their children; and
- would enable children the right to do as they please, including taking legal action against their parents, having abortions, joining gangs, etc.

84. The Campaign for U.S. Ratification of the Convention on the Rights of the Child, CRC FAQs—Myths and Facts, http://childrightscampaign.org/crcindex.php?sNav=getinformed_snav.php&sDat=faqs_dat.php (last visited Feb. 20, 2010) [hereinafter Campaign].

These false claims are the result of misconceptions, erroneous information, and a lack of understanding about how international human rights treaties are implemented in the United States.⁸⁵

Notice the clever portrayal of organizations that support the treaty as religious, education, health care, and humanitarian organizations whereas those who oppose the treaty are characterized as political organizations. The National Education Association—together with its highly effective political action committee—is an educational organization.⁸⁶ The Home School Legal Defense Association is a political organization.⁸⁷ Perhaps, these simple clues reveal that the true nature of the website is closer to propaganda than to fair analysis.

Following this introduction, the Children's Rights Campaign announces that opponents have attempted to defeat the CRC using nine "myths."⁸⁸ Citing only a single source,⁸⁹ the Children's Rights Campaign claims that what it says is the truth while everything its critics say is myth, no matter how well supported.⁹⁰

While the claim of the pro-CRC website might warrant a book-length refutation, the remainder of this article is devoted to analyzing and responding to a reasonable number of the website's central claims.

First, the Children's Rights Campaign website states that opponents of the treaty are wrong to state that ratification of the CRC would endanger national and state sovereignty⁹¹ and that it is a myth that "[t]he Convention would become the 'Supreme Law' of the land."⁹²

However, Article 27 of the Vienna Convention on the Law of Treaties clearly states that "[a] party may not invoke the

85. *Id.*

86. Nat'l Educ. Ass'n Legislative Action Ctr, [http:// www.nea.org/home/LegislativeActionCenter.html](http://www.nea.org/home/LegislativeActionCenter.html) (last visited Oct. 28, 2009).

87. Home School Legal Defense Association, *Who We Are*, <http://www.hslda.org/about/> (last visited Oct. 28, 2009).

88. Campaign, *supra* note 84.

89. *Id.* (citing *Reid v. Covert*, 354 U.S. 1, 17 (1957)).

90. *Id.*

91. *Id.*

92. *Id.*

provisions of its internal law as justification for its failure to perform a treaty.”⁹³ In addition, Article VI of the United States Constitution demonstrates that treaties prevail over state constitutions and state laws.⁹⁴ Thus, the claim that it is a “myth” that treaties will not affect state sovereignty or become the supreme law of the land are simply incorrect.

In support of the idea that the CRC would not interfere with national and state sovereignty the Children’s Rights Campaign Website states “[a]s with any treaty, each U.S. state would be responsible for developing and executing its own legislation,” and “[t]he Convention contains no language or directives with regard to how it should be implemented,” thus making each country responsible for deciding what steps should be taken to implement the treaty.⁹⁵

However, the Inter-Agency Standing Committee Reference Group on Humanitarian Action and Human Rights rejects such a proposition:

Human rights law also contains provisions obliging states to implement its rules, whether immediately or progressively. States must adopt a variety of legislative, administrative, judicial and other measures that may be necessary to give effect to the rights provided for in the various treaties. This includes providing for a remedy before domestic courts for violations of specific rights and ensuring that the remedy is effective. The fact that a state has a federal or devolved system of government does not affect a state’s obligation to implement human rights law.⁹⁶

More specifically, Professor Van Bueren states the duties of governments ratifying the treaty as follows:

Underpinning this approach are the legal consequences of states becoming party to the Convention on the Rights

93. Vienna Convention, *supra* note 13, art. 2.

94. U.S. CONST. art. VI (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

95. Campaign, *supra* note 84.

96. Inter-Agency Standing Comm. Reference Group on Humanitarian Action and Human Rights, Frequently Asked Questions on International Humanitarian, Human Rights, and Refugee Law, <http://www.icva.ch/doc00001023.html#24> (last visited Oct. 28, 2009).

of the Child. The United Nations Convention on the Rights of the Child moves the borders for the state of what is political and what can be subject to a legal challenge in courts, particularly in resource allocation and budgetary matters. The Convention and other international laws in effect narrows what were previously unfettered discretionary powers of governments. Before governments become party to human rights treaty they are obliged to ensure that there are the resources, either to implement the Convention on becoming party or shortly thereafter, in accordance with international law. **Hence, there is no interference with national sovereignty, the nationally sovereign decisions on how resources on children's rights to be expended have already been taken. In essence, the government has exercised its political powers, and it has to live with the legal consequences.**⁹⁷

Thus, based on the writing of a proponent and authority on the Convention, full state discretion ends when the CRC is ratified. To the same point, the Children's Rights Campaign Website acknowledges the potential legal consequences of ratifying the treaty with reservations:

The U.S. can ratify the CRC with reservations, understandings and declarations (RUDs). RUDs address specific conflicts between the U.S. Constitution and a particular Convention. Reservations modify a treaty's provisions (e.g., if a provision of the CRC is in conflict with the U.S. Constitution, the U.S. can file a "reservation" to the provision, so that the provision does not apply). Understandings and Declarations help to clarify how the U.S. believes a particular provision should be interpreted. RUDs do not legally exempt the U.S. from adhering to a provision.⁹⁸

This is a curious "truth." On the one hand the website claims that "reservations modify a treaty's provisions."⁹⁹ On the other hand it says that "RUDs do not legally exempt the United States from adhering to a provision."¹⁰⁰ According to this logic the United States would still have to obey the treaty

97. Geraldine Van Bueren, *International Rights of the Child, Section D*, University of London 36 (2006) (emphasis added).

98. Campaign, *supra* note 84.

99. *Id.*

100. *Id.*

regardless of the reservations, understandings, or declarations. This is a clear contradiction.

In any event, both the text of the CRC and the Vienna Convention on the Law of Treaties are very clear about permissible and impermissible reservations. For example, the United Nations Convention on the Rights of the Child, Article 51(2) states that “[a] reservation incompatible with the object and purpose of the present Convention shall not be permitted.”¹⁰¹ Likewise, the Vienna Convention on the Law of Treaties, Article 19 Formulation of Reservations provides that “[a] State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless . . . the reservation is incompatible with the object and purpose of the treaty.”¹⁰²

Additionally, Professor Louis Henkin writes in the *American Journal of International Law*:

Reservations designed to reject any obligation to rise above existing law and practice are of dubious propriety: if states generally entered such reservations, the convention would be futile. The object and purpose of the human rights conventions, it would seem, are to promote respect for human rights by having countries—mutually—assume legal obligations to respect and ensure recognized rights in accordance with international standards. Even friends of the United States have objected that its reservations are incompatible with that object and purpose and are therefore invalid.

By adhering to human rights conventions subject to these reservations, the United States, it is charged, is pretending to assume international obligations but in fact is undertaking nothing.¹⁰³

The Children’s Rights Campaign website goes on to assert that the CRC is not a “self-executing treaty,” or in other words, it “cannot be automatically implemented without legislative action.”¹⁰⁴

101. CRC, *supra* note 1, art. 51(2).

102. Vienna Convention, *supra* note 13, art. 19.

103. Louis Henkin, Editorial Comment, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 AM. J. INT’L LAW 341, 343–44 (1995).

104. Campaign, *supra* note 84.

This is, however, not entirely accurate. Professor Arlene Andrews, Director of the Division of Family Policy at the University of South Carolina, writes that “[t]he Convention is generally regarded as having two classes of rights for the purposes of self-execution, one class that is self-executing and one that is not self-executing.”¹⁰⁵ Thus, on the whole, the idea that ratification of the CRC will not interfere with national and state sovereignty, or that the United States can qualify its ratification of the CRC through RUDs is not sustainable in the face of good research and clear analysis.

Second, the Children’s Rights Campaign website claims as myth that “[t]he CRC undermines the primacy of the parent-child relationship.”¹⁰⁶ Again, the words of one of the CRC’s strongest proponents prove this statement to be false. Professor Van Bueren writes:

Best interests provides decision and policy makers with the authority to substitute their own decisions for either the child’s or the parents’, providing it is based on considerations of the best interests of the child. Thus, the Convention challenges the concept that family life is always in the best interests of children and that parents are always capable of deciding what is best for children.¹⁰⁷

Professor Van Bueren further asserts that:

State parties are obliged to ‘assure’ to children who are capable of forming views the rights to express those views ‘in all matters affecting the child’ and to give those views’ due weight in accordance with the age and maturity of the child’. By incorporating a reference to ‘all matters affecting the child’ there is no longer a traditional area of exclusive parental or family decision making.¹⁰⁸

International law is therefore establishing boundaries within which states are under a duty to ensure that parental power is properly exercised and within limits

105. Robin Kimbrough, *Entitlement to “Adequacy”: Application of Article 27 to U.S. Law*, in *IMPLEMENTING THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: A STANDARD OF LIVING ADEQUATE FOR DEVELOPMENT* 167, 171 (Arlene Bowers Andrews & Natalie Hevener Kaufman eds., 1990).

106. Campaign, *supra* note 84.

107. VAN BUEREN, *INTERNATIONAL LAW*, *supra* note 43, at 46.

108. *Id.* at 137 (quoting CRC, *supra* note 1, art. 12.).

The international protection of children's civil rights now touches the core of family life.¹⁰⁹

Furthermore, several official reports by the CRC Committee reveal that the proper operation of the treaty will radically change parent-child relationships. For example, the United Nations Committee on the Rights of the Child, Official Report on Jordan (2006) states the following:

[T]he Committee continues to be concerned that respect for the views of the child remains limited owing to traditional societal attitudes towards children within the family and the community at large.

In the light of Article 12 of the Convention, the Committee recommends that the State party continue to promote and facilitate, within the family, schools and other institutions, in courts and communities, respect for the views of children and their participation in all matters affecting them¹¹⁰

Another example is provided by the United Nations Committee on the Rights of the Child, Official Report on Ireland (2006) which states: "[T]he Committee is deeply concerned that corporal punishment within the family is still not prohibited by law The Committee . . . urges the State party to: a) Explicitly prohibit all forms of corporal punishment in the family; b) Sensitize and educate parents and the general public about the unacceptability of corporal punishment."¹¹¹ Parents need government re-education if the CRC is to be successful.

The Children's Rights Campaign website also asserts as myth the related idea that "[r]atification would allow the UN to dictate how parents should raise their children,"¹¹² and claims that "[u]nder the Convention, parental responsibility is protected from government interference."¹¹³ Particularly, the website states that "[r]atification of the Convention would

109. *Id.* at 73.

110. Comm. on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Jordan*, ¶¶ 40–41, U.N. Doc. CRC/C/JOR/CO/3 (Sept. 29, 2006).

111. *Concluding Observations: Ireland*, *supra* note 68, ¶¶ 39–40.

112. Campaign, *supra* note 84.

113. *Id.*

not prevent parents from homeschooling their children.”¹¹⁴ Once again, Professor Van Bueren’s own words contradict these assertions:

In contrast with other international treaties, the Children’s Convention does not contain a provision establishing the right of parents to have their children educated in conformity with the parents’ convictions Specifically, Articles 5, 12, 14, and 28 strengthen the argument that children living in states parties to the Children’s Convention have the right to participate in decisions to ensure that their education is in conformity with their religious and moral convictions.¹¹⁵

Van Buren further states that “the Children’s Convention potentially protects the rights of the child who philosophically disagrees with the parents’ educational goals.”¹¹⁶ Impliedly, this means that if the child disagrees with the parents’ educational choices for the child, the State will step in to facilitate the desires of the child. As stated before, the State looks to two criteria to determine when parental decisions are acceptable. First, the parents must take into account the evolving capacities of the child, and second, the parents’ direction must not amount to “coercion.”¹¹⁷

Thus, the State will step in if it makes the determination that either the parents are not taking into account the evolving capacities of the child—a very amorphous standard—or that the child is being “coerced” by its parents—a term for which the Convention does not provide a definition, presumably because it is left to the discretion of the State to determine the meaning of “coercion.”

Third, the Children’s Rights Campaign website claims as myth the view that “[t]he CRC embraces the view that children are autonomous agents who are capable, in all areas, of making adult decisions and dealing with adult situations.”¹¹⁸ It asserts instead that “[t]he Convention does not extend to children all of the same rights accorded to adults, such as the

114. *Id.*

115. Geraldine Van Bueren, *The International Protection of Family Members’ Rights as the 21st Century Approaches*, 17 *HUM. RTS. Q.* 732, 744–45 (1995).

116. *Id.* at 745.

117. See VAN BUEREN, *INTERNATIONAL LAW*, *supra* note 43, at 158.

118. Campaign, *supra* note 84.

right to vote and unrestricted freedom to make independent decisions" and asserts:

The framers of the CRC understood that children's ability to exercise certain rights is dependent upon their age and maturity and influenced by their culture, environment, and life experiences. The Convention encourages parents to deal with rights issues with their children "in a manner consistent with the evolving capacities of the child."¹¹⁹

If the earlier statement that parents would not be allowed to "coerce" their children in any way is not enough to refute this claim, Professor Van Bueren's statements supply any deficiency:

[S]tates should take account of the evolving capacities of each individual child. This is underlined by the duty in the Convention on the Rights of the Child . . . under which *States Parties are obliged* to assure to all children capable of expressing views **the right to express views** in all matters affecting the child, **the child's views being given due weight in accordance with the child's age and maturity.**¹²⁰

Presumably under this analysis, any child that is found by the state to have the maturity level of an adult will have his views given weight accordingly.

One area that is generally considered to be in the "adult" realm of decision-making is that of sexual expression. The developing trend under the CRC expands children's rights to include those traditionally afforded adults and allows children to make "adult" decisions.

One aspect of the right to freedom of expression which, on the whole has been untested before international and regional human rights fora is whether the right to freedom of expression includes the right to sexual expression. If children have the right to freedom of expression and their right to freedom of expression is *similar to adults* the next question must be whether the right incorporates physical acts. Sexual acts as forms of expression are comparable in many respects to the case of symbolic speech

119. *Id.* (quoting CRC, *supra* note 1, arts. 5, 14).

120. VAN BUEREN, INTERNATIONAL LAW, *supra* note 43, at 75 (emphasis added).

It is, however, difficult to sustain the argument that the right of children to express themselves to either heterosexual or homosexual relations is of little interest to the public. Certainly some forms of public sexual activities are arguably included within freedom of expression.¹²¹

This quote notes that at least some forms of sexual activities are acceptable for children (those with rights under the CRC). Thus, it can be inferred that the CRC encourages allowing children to make "adult" decisions that they could not make until now.

Fourth, the Children's Rights Campaign website states it is a "myth" to contend that "[t]he Convention gives children the right to sue their parents."¹²² Once again, the truth about this issue is supplied by Professor Van Bueren, who writes:

International law grants an individual rights and duties which are capable of being enforced directly in the national courts but both the extent and manner of the implementation is generally determined by the national law of each country. A state, however, cannot plead provisions of its national law as authority for committing a violation of international law.¹²³

This clearly states that those individuals subject to international law have the right to enforce those laws in their national courts, contrary national laws notwithstanding. Because the CRC is an international treaty, children subject to the CRC would have the right to enforce its provisions in the courts of their citizenship, regardless of that nation's law.

Linda Elrod, Washburn University School of Law Professor and past Chair of the American Bar Association Family Law Section, supports this interpretation as well:

Ratification of the Convention itself would be a major step forward in improving the laws that protect and secure rights for children. The CRC obligates its parties to draft legislation and programs to protect children, to create procedures assuring fairness in removing children from their homes, and to assure that the child's voice is heard. Article 12 makes the ability of a child to express his or her views an internationally recognized human

121. *Id.* at 139-140 (emphasis added).

122. Campaign, *supra* note 84.

123. Van Bueren, *Combating Child Poverty*, *supra* note 41, at 681.

right which could be regarded as customary international law. It is time to move beyond the political and economic arguments that have kept Congress from ratifying the CRC and give children full rights of citizenship.

The interests of the child should be at the center of any decision-making. If the child is capable of articulating a perspective, the child should have client-directed counsel to get that voice before the court and the court should seriously consider it. Even if the child is unable to articulate a view, the child's attorney can offer a child-focused assessment of the child's needs. Because the child's best interests may be different than one or both of the parent's interests, the child should have a voice. Giving the child a voice, however, does not necessarily "conflict." Listening to the child does not mean not listening to the parents or others involved in the dispute. The key is to add the child's voice to the voice of others being presented.¹²⁴

It does not matter whether a child has the capacity to file some form of civil action directly against his or her parents. A child can complain to a social worker or other official. Such officials have the authority to file actions challenging the decisions of the parents. A guardian *ad litem* is appointed to represent the child. And, if ratified, the CRC would be the substantive law which would control the outcome of such a challenge. It is child versus parent in substance if slightly disguised in form.

Fifth, the Children's Rights Campaign website asserts as myth the idea that "[r]atification will encourage children to have abortions."¹²⁵ Katie Hatziavramidis clearly asserts the opposite hope with regard to ratification of the CRC:

The unmistakable trend in the United States is to consistently increase anti-choice legislation, particularly with respect to minors. Ratification of the U.N. Convention on the Rights of the Child by the United States holds a strong possibility of assisting minors who seek abortions without parental interference. The Convention may offer the best hope for securing adolescent reproductive freedoms on a global level. If enough diplomatic pressure were exerted on the United States to compel it

124. Linda D. Elrod, *Client-Directed Lawyers for Children: It is the "Right" Thing to Do*, 27 PACE L. REV. 869, 882-83, 894 (Summer 2007).

125. Campaign, *supra* note 84.

to ratify the treaty, the CRC could provide significant improvements in the outlook for reproductive freedom for minors.¹²⁶

Other nations that have ratified the CRC have been respectively approved or criticized by the United Nations Committee on the Rights of the Child for encouraging or discouraging abortion through national laws. For instance, the official report on Columbia in 2006 states that “[t]he Committee notes with appreciation . . . decisions of the Constitutional Court on . . . the partial decriminalization of abortion.”¹²⁷ But, in the official report on Chile in 2006, the Committee commented that it “[was] concerned over the high rate of teenage pregnancies[] [and] the criminalization of the termination of pregnancies in all circumstances.”¹²⁸

These excerpts present a very different view from that claimed by the website. Based on ratification in other countries and the review of subsequent implementation, it appears that parties to the CRC will be encouraged to permit children to have abortions at will, subject only to the State’s opinion on whether it is in the best interests of the child.

Sixth, the Children’s Rights Campaign website claims as myth that the CRC allows children to participate in any religion of their choosing.¹²⁹ At least one country that ratified the CRC seems to believe differently. The government of Scotland published the following to help youth understand their rights under the CRC: “You have the right to choose your own religion and beliefs. Your parents should help you think about this.”¹³⁰ Thus, based on this implementation of the

126. Katie Hatzivramidis, *Parental Involvement Laws for Abortion in the United States and the United Nations Conventions on the Rights of the Child: Can International Law Secure the Right to Choose for Minors?*, 16 TEX. J. WOMEN & L. 185, 202–03 (Spring 2007).

127. Comm. on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Columbia*, ¶ 3(c), U.N. Doc. CRC/C/COL/CO/3 (June 8, 2006).

128. Comm. on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Chile*, ¶ 55, U.N. Doc. CRC/C/CHL/CO/3 (Apr. 23, 2007).

129. Campaign, *supra* note 84.

130. THE SCOTTISH GOVERNMENT, THE UN CONVENTION ON THE RIGHTS OF THE CHILD: A GUIDE FOR CHILDREN AND YOUNG PEOPLE (Apr. 2008), available at <http://www.scotland.gov.uk/library/documents-w9/rotc-01.pdf>.

CRC in other countries, it is reasonable to infer that children have the right to choose their own religion under the CRC.

Seventh, the Children's Rights Campaign website asserts as myth the idea that "[r]atification will allow children to join gangs and racist organizations. Parents will not be able to oversee children's interactions with others."¹³¹ Again, the recommendation of the United Nations Committee in its official report on Honduras in 2007 is enlightening: "The Committee recommends that the State party ensure that no restrictions are placed on the right of the child to freedom of association other than those imposed in conformity with Article 15 of the Convention."¹³² CRC Article 15(2) states:

No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.¹³³

According to the text of the CRC, imposing restrictions on the child's association other than those authorized by Article 15 is a violation of the treaty.¹³⁴ Article 15 says that a precondition of any limitation on the child's right of association is that it must be in conformity with the nation's law, and it must be necessary for national security or public safety.¹³⁵ Article 15 does not recognize parents' rights to impose restrictions on association beyond those authorized by law. Interestingly, in the United States, it is not illegal to join racist organizations or cults.¹³⁶ Thus, presumably, parents have no authority to prevent their children from joining cults or racist organizations unless the law was changed to make these associations illegal.

131. Campaign, *supra* note 84.

132. Comm. on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Honduras*, ¶ 42, UN Doc. CRC/C/HND/CO/3 (May 3, 2007).

133. CRC, *supra* note 1, art. 15.

134. *Id.*

135. *Id.*

136. See generally Jarrod B. Bazemore, *Warrior Mercenaries or Toy Soldiers: The Rise of Militias in the United States*, 22 *LAW & PSYCHOL. REV.* 219 (Spring 1998).

Eighth, the Children's Rights Campaign website states as myth that "[t]he Convention provides children with an 'unrestricted' right to access any information they want, including pornography."¹³⁷ However, Laurel A. Clyde of the World Library and Information Congress argues that the CRC should give children access to at least some sexually explicit material:

[T]he school library's collection and services should support gay, lesbian and bisexual students; it should also support the children of gay or lesbian parents or children with other gay/lesbian relatives. In addition, the provision of titles with gay, lesbian or bisexual content and/or characters is important in helping straight students to develop a view of the world that includes families and lifestyles that are different from their own.

Freedom of access to information and literature for young people, freedom of expression, access to information and books reflecting a diversity of views and lifestyles, censorship—these rights, enshrined in the Universal Declaration of Human Rights *and the Convention on the Rights of the Child*, and in important professional documents, are beyond the experience of many (perhaps most) users of school libraries.¹³⁸

CONCLUSION

The Children's Rights Campaign did not quote any critic of the CRC in formulating its various myths.¹³⁹ Thus, they have created a series of classic straw men—easy targets that they attempt to knock down.

Some of the "myths," as formulated by the Campaign, were not precisely accurate. But, in every case, one could validly critique the Convention in relation to the "myth" statement. In some cases, the so-called "myth" is clearly true. In short, it is very clear that the proponents of the CRC leave much to be

137. Campaign, *supra* note 84.

138. Laurel A. Clyde, *School Libraries and Social Responsibility: Support for Special Groups and Issues—The Case of Homosexuality*, WORLD LIBR. AND INFO. CONG.: 69TH IFLA GEN. CONF. AND COUNCIL, 7–8 (Aug. 2003), available at <http://ifla.queenslibrary.org/TV/ifla69/papers/192e-Clyde.pdf> (emphasis added).

139. See generally Campaign, *supra* note 84.

desired in accuracy and analysis of international and domestic law.

The CRC is legally binding upon the State Parties.¹⁴⁰ It has meaning. It can be enforced in domestic courts.¹⁴¹ Nations that ratify it are obligated under international law to comply with its terms.¹⁴²

CRC advocates reject all criticism of the Convention with a peremptory wave of the hand. But, in fact, it is evident that the arguments of CRC opponents are substantially validated by the actual decisions and reports of the official United Nations Committee on the Rights of the Child and by the writings of other pro-CRC experts like Professor Van Bueren. The American advocates of the CRC appear to be heavily reliant on a bold bluff. The opponents of the CRC only hope that the Senate asks to see their cards.

140. CRC, *supra* note 1, art. 2.

141. *Id.* art. 3.

142. Curtis A Bradley, *Unratified Treaties, Domestic Politics, and the U.S. Constitution*, 48 HARV. INT'L L.J. 307, 307-08 (2007).