

## The U.N. Convention on the Rights of the Child: Its Relevance for Social Scientists

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Although the U.N. Convention on the Rights of the Child (United Nations, 1989) has been in force for five years, social scientists know surprisingly little about it, considering its relevance to their interests. This report provides an in-depth introduction to the Convention and highlights its challenges to child development professionals. The Children's Convention, like other U.N. conventions, is hardly worth the paper it is written on unless it is implemented. A country, such as the U.S., that has yet to ratify the treaty and become a State Party or that fails to fully implement the Convention once it is a State Party suffers no sanctions from the international community. So, what, if any, promise does it hold for improving the lives of children in the U.S. and around the world?

The Children's Convention has been ratified by the vast majority of nations. It is the first international human rights treaty to recognize cultural, political, social, economic, and humanitarian rights for a large group of the world's population and to protect children's right to human dignity. Even though current implementation of the treaty leaves much to be desired, the Convention is already changing the lives of children worldwide. Although not a magic wand

to alter conditions overnight, it may be more comprehensive and thus a stronger instrument for change than other human rights treaties. It can provide significant arguments for those concerned with the status of children. Social scientists who are conducting research or working in the field have the opportunity to contribute toward children's well-being by

- demonstrating how the rights of the child relate to their own professional work, e.g., through the child's right to information or right to participate in the decision-making process of treatment;
- helping clarify key concepts within the Convention, such as "the best interest of the child" and "the evolving capacities of the child";
- helping monitor implementation of the principles of the Convention at local, state, and federal levels;
- assisting children to understand and express the rights enumerated in the Convention; and
- advocating for ratification of the Convention.

The first step toward ratification by the United States has been taken. In a quiet, closed ceremony in New York on February 16, 1995, Amba-

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sador Madeleine Albright signed the United Nations Convention on the Rights of the Child and brought the United States one step closer to ratifying this human rights treaty. With this signature on behalf of President Clinton, the U.S. joined the ranks of some 180 nations that are already States Parties. The States Parties occupy all corners of the globe and represent political regimes, religious backgrounds, and cultures as diverse as Japan, Kazakhstan, Cameroon, and the Holy See (the Vatican). For several years, the U.S. stood alone as the only Western industrialized country that had failed to act on the treaty. Today, only 11 nations in the world have neither signed nor ratified the Convention.

## **Background**

### ***Antecedents to the Convention***

The Convention on the Rights of the Child is ground breaking in that it is the first legally binding international document to recognize the civil, political, economic, social, and cultural rights of children. The roots of the Convention can be traced back nearly 50 years to the formation of a nongovernmental organization (NGO) called Save the Children International Union (SCIU). This NGO was established at the close of World War I by children's activist Eglantyne Jebb, who had witnessed and documented the effects of the war's horrors on its child victims (Cohen, 1983, 1990). In 1923 SCIU drafted and approved the Declaration of the Rights of the Child, an elegantly worded but largely aspirational document which asserted that children were entitled to special standards of care and protection (Bennett, 1987). This Declaration, later called the Geneva Declaration, received international attention one year later when the Assembly of the League of Nations in Geneva adopted it and passed a resolution inviting its members to follow its principles (Cantwell, 1992).

With the heightened attention to human rights in the years following the Second World War, the international community generated numerous human rights documents, a number of which made specific reference to children's rights and many of which arguably accorded rights to children by conferring rights upon "every human being" (e.g., the International Covenant on Economic, Social, and Cultural Rights; the International Covenant of Civil and Political Rights [Bennett, 1987]). In 1952 the United Nations adopted the Declaration of the Rights of the Child, the conceptual parent document to the Convention on the Rights of the Child. Like the Geneva Declaration on which it was based, the Declaration on the Rights of the Child was aspirational and, as it was a Declaration and not a Convention, not legally binding. It represented, however, the most comprehensive international statement on children's rights to that point (Bennett, 1987).

### ***Drafting of the Convention***

It was to take 20 more years before the international community was prepared to set down children's rights in the framework of a legally binding treaty (Cantwell, 1992). In 1978 the Polish government suggested that the United Nations adopt a children's rights convention as a means of celebrating the much-anticipated International Year of the Child in 1979. Poland submitted to the U.N. Commission on Human Rights a draft text containing 10 articles, which was essentially a reiteration of the 1959 Declaration plus implementing provisions. In response, the Commission solicited feedback on the Polish proposal from governments, nongovernmental organizations (NGOs), and other U.N. bodies; it also established an open-ended Working Group to synthesize comments and redraft the convention. Following the responses to the first Polish draft, the Polish government wrote an entirely new draft, which had 20 substantive articles and was subsequently used as

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the basis for the new Convention (United Nations, 1979).

The Working Group labored for 10 years to reshape the Polish text into its current form, a sweeping statement of children's rights containing 41 substantive articles and extensive implementing provisions. That the Working Group was able to accomplish this task at all is remarkable considering the fact that its delegates, who represented countries of every cultural, political, religious, and ethnic background, reached all decisions by consensus. Agreements were reached through extensive debate and compromise; any provisions that were not agreed upon by all Working Group participants were omitted (LeBlanc, 1995). Article 41 is important in this connection; it states that "nothing in the present Convention shall affect provisions which are more conducive to the realization of the rights of the child and which shall be contained in (a) the law of a State Party, or (b) international law in force for that State." This means that any standard set higher in a given country shall supersede the Convention. Thus, for example, article 38 sets age 15 as the lower age limit to service in armed forces, but any country with a *higher* age limit can apply its own standard. This allowed drafters to achieve consensus on this point.

Numerous NGOs working together as an organized group (including Defence for Children International, the International Catholic Child Bureau, and Human Rights Internet, among many others [see Cohen, 1990]), and several intergovernmental bodies (e.g., UNICEF) also played key roles in the drafting process. The "Informal Ad Hoc NGO Group on the Drafting of the Convention on the Rights of the Child" worked as a team, drafted its own proposals, and successfully reached out to Working Group members to secure inclusion of specific provisions in the Convention. The Group stimulated public awareness of the emerging Convention through worldwide conferences and symposia<sup>1</sup> (Cohen, 1990; LeBlanc, 1995). The Working Group also occasionally benefited from children's input. For example,

after hearing the concerns of a small group of Canadian children about the plight of indigenous children, delegates drafted an article (article 30) specifically designed to protect the rights of these children.

Although the drafting process was lengthy, delegates to the Working Group and proponents of the Convention agree that this long incubation was necessary to produce the landmark Convention. As Norway's representative to the Working Group, Per Miljeteig-Olssen, noted, "The drafting process turned out to be a global consciousness-raising process that would not have taken place without sufficient time to disseminate new ideas and elaborate the understanding of children's needs and interests" (1990, p. 151). Upon completion of the final draft, the Convention was presented to the U.N. General Assembly, which adopted it, without discussion, by acclamation on November 20, 1989, 10 years after the International Year of the Child and 30 years to the day after the adoption of the U.N. Declaration of the Rights of the Child. The Convention was opened for signature in January 1990, and within six months it had attracted 20 ratifications, enough to put it into force, which came about on September 1, 1990. By 1991 it had been ratified by nearly 100 countries. No other U.N. human rights treaty has enjoyed such a speedy ratification process.

## Content of the Convention

What are the elements of this Convention which has received such international acceptance and acclaim? Like all human rights treaties, the U.N. Convention on the Rights of the Child is a listing of States Parties' obligations both to undertake certain actions on behalf of protected individuals and to refrain from taking actions that might harm them. These obligations may be direct (e.g., providing educational facilities) or indirect (e.g., assisting the child's parents and family members to provide for the child's well-being [Cantwell, 1992]). Unlike any legally

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binding international instrument before it, however, the Convention on the Rights of the Child incorporates the full range of human rights—civil, political, economic, social, and cultural—into a single, legally binding treaty (Tagore, 1992; Wilcox & Naimark, 1991). Previous international instruments had considered civil and political rights, traditionally championed by Western nations, to be separate from economic, social, and cultural rights, traditionally favored by nations of the former Eastern Bloc. This wide range of substantive rights makes up more than 75% of the 54 articles of the Children's Convention (42 articles), while the remaining articles primarily detail its implementation and ratification processes.

### **Overarching Themes**

In order to understand the meaning of the Convention for children and families, one must view the document as a whole. To single out any specific article and attempt to gauge its meaning without considering it in context with the other substantive articles may be very misleading (Cantwell, 1992). It is particularly important to consider each article within the context of three overriding themes of the Convention, namely that “the best interests of the child” be a primary consideration in any actions concerning children (article 3), that states will provide children with rights “in a manner consistent with [their] evolving capacities” (article 5), and that children's dignity be respected (Preamble).<sup>2</sup> These themes are discussed briefly here, but will be addressed in more detail in the later section on additional rights enumerated in the Convention, particularly the right to participation.

*Best interest of the child.* In article 3(1), the Convention recognizes that “[i]n 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* [emphasis added] shall be a primary consideration.” According to one observer, “the notion of ‘the

best interest of the child’” was introduced around the turn of the 20th century. It “was even used against parents, or in other words, as something like a whip to guide parents in their responsibility (new moral task) for educating the child as per the dream of the Enlightened State” (Verhellen, 1993, p. 51). The standard had been used frequently by U.S. courts to decide issues of family law. Just as most courts have avoided defining “best interest,” the Working Group neither defined the principle nor prescribed how it applies to the other articles of the Convention.

*Evolving capacities of the child.* A second overarching theme that emerges in the Convention is that States Parties should approach children's rights developmentally. As described in article 5, ratifying nations “shall respect the responsibilities, rights, and duties of parents or, where applicable, the members of the extended family or community . . . to provide, *in a manner consistent with the evolving capacities of the child* [emphasis added], appropriate direction and guidance” in exercising his or her rights. Although the Convention does not regulate what happens within the family, it implies that States should encourage and assist parents and other adults to provide nurturing and supportive environments that will enhance children's cognitive and affective development. In doing so, the article may also, by implication, prevent States from interfering with parents' rights and duties in regard to the care of their children. Moreover, adults (but not specifically parents) may gradually empower children to fulfill their own rights in significantly broader ways (Garbarino, 1990).

*Respect for the human dignity of the child.* A third theme that emerges from the Convention is the need to respect and promote children's *dignity*. The reference to children's dignity appears seven times throughout the Convention in diverse contexts, emphasizing the drafters' concern that adults acknowledge the personhood of children and take seriously those aspects of life that are most important to children (Melton, 1991, in press). The Preamble of the Convention emphasizes that such respect for the dignity and

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worth of *all* human beings lies at the heart of the Charter of the United Nations. Moreover, the Convention specifically recognizes the duty of States Parties to ensure the dignity and respect for children who may be particularly vulnerable, notably those with mental and physical disabilities (article 23); children who receive discipline at school (article 28); children who have been arrested, detained, or imprisoned (article 37, article 39); and children who are exposed to abuse, neglect, or exploitation (article 39).

### ***Substantive Rights***

These principal themes serve as the foundation for all of the specific substantive rights enumerated in the Convention. For ease of discussion, we group these substantive rights into four broad categories: rights to survival, protection, development, and participation.<sup>3</sup>

*Survival rights.* Several articles in the Convention address children's right to survival. Article 6 affirms that "every child has the inherent right to life" and obligates States Parties to "ensure to the maximum extent possible the survival and development of the child." Related to this fundamental right to survival are rights that help to ensure the child's survival, such as the right to health care (articles 24 and 25). The principles embodying such rights to survival would appear to be beyond debate. Nevertheless, two potential conflicts are included: the determination of the point in time at which life begins and the question of when, if ever, children may be denied their right to life.<sup>4</sup>

Although the Convention defines a child as any "human being below the age of 18" (unless under the State law, majority is attained earlier [article 1]), it does not define a lower age limit of childhood, thus leaving deliberately unclear the question of whether the Convention protects the unborn child. The Preamble includes the following, that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth*

[emphasis added]," which satisfies those who consider conception the beginning of life. The Preamble is not binding, however, as are the articles, and the wording of this article was kept purposefully vague by drafters so that States Parties with widely discrepant views on abortion could agree to its provisions (Alston, 1990). This strategy has apparently proven successful, in that States Parties representing extreme opposing views have ratified the Convention, the Holy See representing one end of the continuum, perhaps the Nordic countries the other.

The issue of when, if ever, children may be denied their right to life also was addressed by the Convention's drafters. Article 37(a) declares that "neither capital punishment nor life imprisonment . . . shall be imposed for offenses committed by persons below 18 years of age." The U.S. delegate voiced concern that "persons below 18 years" was too arbitrary and proposed its deletion. Nevertheless, she agreed not to block consensus of the Working Group regarding this article, and the below-18 age limit was adopted.

*Protection rights.* Drafters of the Convention recognized that a seemingly endless list of perils threaten children's survival, well-being, and development. This concern is reflected in the numerous articles in the Convention that are oriented to shielding children from harm. Thus, under the Convention, States Parties must protect children from physical, sexual, and psychological abuse and neglect (article 19); sexual abuse (article 34); economic exploitation (article 32); abduction, sale, and trafficking (articles 11 and 35); "torture or other cruel, inhuman, or degrading treatment or punishment" (article 37); participation in armed conflict (article 38); use of illicit substances (article 33), and "all other forms of exploitation prejudicial to any aspects of the child's welfare" (article 36).

Of these rights, by far the most controversial concerned children's participation in armed conflicts. According to article 38, States Parties may not recruit into the armed forces any person under the age of 15, and they must take "all fea-

sible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.” Although initial drafts of this article did not include a lower age limit, thus implicitly setting the age of participation in armed conflicts at 18, a number of delegations (including the United States, Canada, the Soviet Union, and the United Kingdom) argued that the age be lowered to 15 to conform to existing international standards. Although many other delegations vehemently argued that the Convention should set a higher protection standard for children than had past conventions (e.g., the Geneva Convention), the age of 15 was retained in the final version of the Convention (LeBlanc, 1995). As mentioned above, however, it should be emphasized that the Convention sets the minimal acceptable standards for children’s rights. Thus, the age limit defined in article 38 does not affect the law of the land for the numerous States Parties that set higher age limits for participation in armed conflicts. A number of countries made statements when they ratified the Convention to the effect that they would interpret and apply article 38 at the age of 18.

*Development rights.* Members of the Working Group recognized that the Convention must not only require States Parties to shield children from harm, but that it must also encourage countries to support children’s positive development. Conditions that are necessary for children’s development include a family environment (Preamble), an adequate standard of living (article 27), an education (articles 28-29), and the opportunity to engage in play, leisure activities, and cultural events (article 31).

The Preamble to the Convention affirms that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment in an atmosphere of happiness, love, and understanding.” The phrase “family environment” originated in the second Polish draft. Why this term was chosen is uncertain, but its inclusion in the Convention is critical. Although a State Party

cannot guarantee every child the right to a biological family, it is reasonable to expect a State Party to create an environment to protect and facilitate those relationships that are most important to the child (Melton, in press).

Drafters of the Convention also recognized the rights of the child to “a standard of living that is adequate for the child’s physical, mental, spiritual, moral, and social development” (article 27[1]). Although the Convention states that parents are primarily responsible for providing for their children (article 27[2]), States Parties are obligated “within their means”<sup>5</sup> to provide assistance to parents in cases of need (article 27[3]).

The child’s right to education is detailed in two articles of the Convention which describe the nature of the right to education and the goals toward which education should be directed (LeBlanc, 1995; articles 28 and 29). The Convention obligates States Parties to provide free and compulsory primary education for all children and to “encourage the development of different forms of secondary education.” Higher education is to be available “by all appropriate means” for all children based upon their capacities. Drafters recognized that schools are key socializing institutions in the lives of children. After repeated discussions, they came to consensus about the goals of education, which include the development of the child’s intellect, physical abilities, and personality; respect for the child’s parents, homeland, other civilizations, and the natural environment; and preparation for “responsible life in a free society” (Detrick, 1992).

*Participation rights.* A final category of substantive rights that emerges in the Convention includes children’s rights to participation and self-determination. Participation rights appear most clearly in articles 12 to 16 of the Convention. They include the right of access to information (article 13); the rights of the child to express opinions and to have his or her opinions taken into account in any matter or procedure affecting the child (articles 12 and 13); the rights to freedom of association and assembly (article

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15); the right to freedom of thought, conscience, and religion subject to appropriate parental guidance and national law, and “in a manner consistent with the evolving capacities of the child” (article 14); the right to protection against interference with a child’s privacy, family, home, and correspondence; and the right to protection from libel and slander (article 16). Thus, the Convention gives the child the right, with increasing maturity, to participate in the decision making and activities of society.

Whereas the rights of the child to survival, protection, and development are, at least in principle, universally accepted, children’s participation rights seem to be considerably more controversial. In part, this uneasiness with participation rights may stem from their being perceived as more difficult to evaluate; but the greater part of the reluctance to afford children participation rights reflects the fear that children’s rights will conflict with those of adults—particularly parents (Hammarberg, 1990)—or that the exercise of such rights will be harmful to children who have not yet reached the requisite maturity to carry them out. Viewing children’s participation rights within the context of the other rights and themes identified in the Convention, however, should make them less threatening to adults and more positive in the service of children’s well-being.

As discussed in more detail below, U.S. opponents to ratification of the Convention have voiced concerns that children’s rights would supplant parental rights and give children “a state-guaranteed license to rebel” (D. W. Phillips, personal communication to members of Congress, October 20, 1993). Ironically, however, the rights to speech, religion, and association were included in the Convention at the insistence of the Bush administration, perhaps to ensure that the document would more closely parallel the rights guaranteed in the Bill of Rights. Far from attempting to supplant parents’ rights, the Convention recognizes the family as “the fundamental group of society and the natural environment for the growth and well-being

of all of its members and particularly children” (Preamble; see also articles 3 and 5). Concerned as it is with the relationship between the child and the State, and not between the child and the parents, the Convention affirms respect for family traditions and beliefs of parents. Some interpret article 24(3) on the abolishment of “traditional practices prejudicial to the health of children” (which, at least, refers to female circumcision) to include parental practices, but the target of this paragraph is community tradition, not individual family tradition.

Moreover, contrary to the claims of its detractors, the Convention does not promote children’s participation in activities that may be harmful to them. For example, although the Convention establishes the right of a child “to be heard in any judicial and administrative proceedings affecting the child” (article 12), this does not imply that the child take responsibility for choices and decisions that he or she cannot understand, cannot handle, or does not wish to make. To interpret this right otherwise would be inconsistent with the child’s best interest (which also implies protection when needed), would fail to respect the child’s dignity, and would be insensitive to the child’s evolving capacities.

Evidence suggests that successful decision making and respected opinion stating can be very important for the development of the child’s sense of self. The child’s sense of self, in turn, is a key determinant for successful outcomes for children in developing as well as industrialized countries. Children with positive feelings of self-esteem, mastery, and control are better at managing stressful experiences. They show initiative in task accomplishment and relationship formation (Rutter, 1979, 1987).

Clearly, there is a delicate balance between children’s rights to participation and their rights to protection from harm. As we will describe in more detail below, researchers in child development may be able to help policymakers identify those policies and procedures that encourage children’s active participation, to the extent that they are developmentally appropriate and in

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children's best interests, recognizing their capacities and dignity.

### **Monitoring**

To effectively monitor and implement its provisions, the Convention establishes a Committee on the Rights of the Child (hereinafter "Expert Committee") "[f]or the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention" (article 43[1]) in both protecting the substantive rights of the child and abiding by the Convention's procedural requirements. Since international human rights treaties such as the Children's Convention are not adjudicated in the World Court, compliance with the Convention depends on a dynamic, ongoing scrutiny by grassroots organizations, media, and governmental officials.

The Expert Committee consists of 10 members of "high moral standing and recognized competence in the field covered by this Convention" who are elected by secret ballot from a list of persons nominated by the States Parties. Within 2 years of a State Party's ratification of the Convention (and every 5 years thereafter), the State must submit to the Committee "reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights" (article 44[1]), including "factors and difficulties, if any, affecting the degree of fulfillment of the obligations" (article 44[2]). States Parties are also required to make these reports widely available to children and adults within their own countries (article 44[6]). The Committee reviews these reports and provides feedback to each State Party. When evaluating the States Parties' reports and as one step of the evaluation process, the Committee may invite expert advice from "specialized agencies, the United Nations Children's Fund, and other competent bodies" (article 45[a]). Thus, as in the drafting process, the NGOs are invited to pre-

sent reports supplementing the States Parties' reports.

The purpose of the Convention's reporting requirement is to create a cooperative, nonconfrontational atmosphere that will promote constructive dialogue among the Committee, official representatives of the States Parties, and other representatives in the country (including NGOs and children's rights organizations). Such a mechanism is well suited to the content of the Convention. In many countries, social and economic rights can only be implemented progressively, depending on the availability of resources and changing social conditions. Drafters were sensitive to these realities and noted that "[w]ith respect to economic, social, and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation" (article 4).

A monitoring system based on the threat of sanctions would be less facilitative than the mechanism adopted which acknowledges the unique circumstance of each State Party. The experience of previous conventions has shown that the positive dialogue established between oversight committees and States Parties can indeed lead to improved observance of human rights (Balston, 1990). Moreover, public pressure and attention from the media can encourage States Parties to comply with a treaty's provisions.

To date, more than 50 reports have been submitted to the Committee on the Rights of the Child. Although these reports vary widely in comprehensiveness, candidness, and completeness, most countries that have submitted reports have taken their obligations seriously. For example, as a result of the Committee's criticism of Jamaica's juvenile confinement practices, several of Jamaica's governmental ministries met with NGOs to discuss means of improving the country's juvenile justice system. Unfortunately, many of the States Parties required to submit reports have not done so. But problems of nonreporting are not unique to this Convention, nor are they



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unexpected, particularly in the case of poor, developing countries that may have difficulty identifying qualified local experts to compile data or that may not want to spend scarce resources to generate such a report (LeBlanc, 1995). In response, the Expert Committee has developed guidelines and offered technical assistance to States Parties, thus going beyond what monitoring committees of other conventions have offered.

## **The United States and the Convention**

Although the United States played a crucial role in drafting the Convention and supported its adoption by the U.N. General Assembly in 1989, this country has moved very slowly toward ratification. The treaty was bogged down for six years in lengthy reviews by two administrations before it was signed by Ambassador Albright—her signing coming in response to a letter sent to President Clinton from the death bed of James Grant (former director general of UNICEF). To join the 180 countries that are already States Parties to the Convention, the president must now send the Convention to the U.S. Senate for its “advise and consent.” (Approval by the House of Representatives is not required for ratification of an international treaty.) Once the document reaches the Senate, it must be first reported out of the Foreign Relations Committee, then approved by a two-thirds majority vote of the full Senate,<sup>6</sup> and finally signed by the president. The Convention goes into force when it is deposited with the secretary general of the United Nations.

### ***Historical Trends***

Historically, the United States has been extremely hesitant to ratify any international treaty, such as the Convention, which concerns human rights (Kaufman, 1990). In fact, the U.S. has ratified very few human rights treaties. The U.S. has been a State Party to the U.N. Covenant on Civil and Political Rights long enough to

submit its first report, which was examined by the Human Rights Committee in March 1995. The U.S. is also a State Party to the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide, and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Calciano, 1992). The Genocide Treaty was not ratified by the U.S. until 1986, some 40 years after it was approved by the United Nations at the close of World War II. In that international human rights treaties now number nearly 70 (Centre for Human Rights, 1987), the U.S.’s track record is not particularly strong.

Why has the U.S. been so reluctant to ratify the Convention on the Rights of the Child? The main reason lies in the Senate’s consistent concern with issues of sovereignty. And added to this historical reluctance to ratify conventions, the current political climate in the U.S. makes it unlikely that the Children’s Convention will be ratified in the near future.

### ***Political Considerations***

*Right-wing attacks.* Although a long list of professional, civic, and religious organizations have officially endorsed the Convention, its detractors have been extremely vocal and effective in generating grassroots opposition to the Convention (Limber & Wilcox, in press). Conservatives from groups such as the Eagle Forum, Concerned Women of America, the Christian Coalition, and the National Center for Home Education have successfully persuaded their supporters to barrage TV and radio talk shows and Senate offices with messages of opposition to the Convention. And most recently, the Convention has emerged as a target of the Christian Coalition’s Contract with the American Family. Opposition to the Convention has focused on the belief that its provisions undermine the rights of parents by “shift[ing] the burden of raising children from the family to the

state” (National Center for Home Education, 1993) and by recognizing children’s rights at the expense of parents and to the detriment of children. As explained above, however, this belief is unfounded in that the convention explicitly protects families and stresses parental responsibility.

*Left-wing criticism.* Commentators with more liberal leanings have complained that the Convention is not strong enough and that consequently it will do little to change the lives of children and their families. Because the Working Group represented a broad range of cultures, ideologies, and values, it was, at times, unable to reach consensus about seemingly critical rights for children. Despite the efforts of the Chinese delegation and NGOs, for example, the Convention does not explicitly provide protection to children born out of wedlock (Cohen, 1990; LeBlanc, 1995). Critics point to this and other omissions, such as the protection of children from medical experimentation and children’s right to preschool education. In some instances, the consensus that was reached by the Working Group does indeed seem inadequate to fully protect children’s rights. As noted above, the Convention fails to protect 15-, 16-, and 17-year olds from participating in combat (Hammarberg, 1990; LeBlanc, 1995). Nonetheless, these individual failings should not detract from the indisputable fact that the Convention recognizes more rights for children and sets higher standards for their realization than any international document to date (Cantwell, 1992).

Some doubt about the effectiveness of the Convention also stems from the fact that a number of totalitarian regimes have signed or ratified it with no intention of altering practices such as using children as soldiers or confining or torturing children in prisons. Such ratification would seem quite hypocritical, a window-dressing for the world community. It remains to be seen whether the Expert Committee or other international pressure can bring about change in these instances.

*Legal issues.* Political realities notwithstanding, no insurmountable *legal* obstacles stand in the way of U.S. ratification. Under the supremacy clause of the U.S. Constitution, treaties can be freely entered into by the U.S., and their provisions are considered to be the “supreme law of the land.” Treaty laws carry equal weight with federal laws: if a treaty provision conflicts with a state law, the treaty takes precedence; if a federal law conflicts with a treaty law, the most recently enacted prevails. Thus, if the Convention on the Rights of the Child is ratified by the U.S., its provisions will supersede any existing state or federal laws, unless such laws “are more conducive to the realization of rights of the child” (article 41). Under U.S. law, however, provisions of a treaty may not run counter to any rights provided under the U.S. Constitution. Recent reviews of the Convention by the American Bar Association Working Group (1993) and others (e.g., Limber & Wilcox, in press) suggest that several articles of the Convention may indeed conflict with the U.S. Constitution.

The United States, nevertheless, could address these legal discrepancies by ratifying the Convention with a limited number of “Reservations, Understandings, or Declarations” that would define and limit its scope with respect to U.S. law (American Bar Association Working Group, 1993; Limber & Wilcox, in press). The U.S. could take the position that the treaty is non-self-executing, which means that the Convention provisions cannot go into effect until legislation is passed to implement them.<sup>7</sup> Thus, ratification should not be a problem, because any conflicts can be dealt with beforehand.

As noted above, for example, some states have laws that run counter to article 37 of the Convention, which prohibits capital punishment or life imprisonment of children under 18 years of age. The U.S. Supreme Court has established that individuals who were between the ages of 15 and 18 at the time of the offense may be executed for committing murder (*Thompson*

v. *Oklahoma*, 1988; *Wilkins v. Missouri*, 1989). Given this clear conflict between the provisions of the Convention and the law of some states, the U.S. would likely ratify the Convention with a Reservation that would define the limits of capital punishment in keeping with Supreme Court opinion. Alternatively, the U.S. could use the Convention as an impetus to change current laws by adopting a Declaration or Understanding that asserts the intent to make progress toward the goal of eliminating the death penalty for minors (Limber & Wilcox, in press).

Other potential conflicts between U.S. law and the Convention could arise over the confinement of some violent juveniles to adult facilities (article 37[c]) and state regulation of educational institutions (article 29) [see Limber & Wilcox, in press]. Interpretation of articles 19 and 28(2) by the Expert Committee may lead to further conflict, because the Expert Committee holds the opinion that corporal punishment in general (article 19) or in schools (article 28[2]) is inconsistent with upholding the dignity and integrity of the child. However, none of these conflicts need bar ratification, because the U.S. can adopt Reservations, Understandings, and Declarations to clarify its interpretation of treaty provisions and limit the terms to comply with U.S. constitutional law.

### **Consequences for Children and Families**

Were it to be ratified, what significance will the treaty have for American children and their families? Arguably, the U.S. and many Western nations are already in compliance with the intent of most provisions of the treaty. But U.S. policy falls short of the total aspirations of the Convention—the ideals of providing the child with equal dignity and respect for integrity now accorded adults. Moreover, implementation of the standards for education, the right to be heard in legal and administrative proceedings, freedom of expression, and rights to asso-

ciation, among others (see Levesque, 1995) may prove quite challenging.

Given these discrepancies between the Convention and current U.S. policy, how might the Convention elicit change? While it is unlikely to have a *direct* effect on U.S. statutory and case law (Levesque, 1995), because most, if not all, of its provisions would likely require implementing legislation, the Convention still stands to exert a powerful *indirect* effect on U.S. law and policy in a number of ways. First, the provisions of the Convention may have an impact on both the administrative and executive branches of government. “Thousands of national and local decision makers who have discretion to enforce, interpret, and implement laws could be encouraged to administer laws in a more progressive manner consistent with the Convention” (Levesque, 1995). Such an obligation is described in article 4 of the Convention, which requires States Parties to “undertake all appropriate legislative, *administrative* [emphasis added], and other measures for the implementation of the rights recognized in this Convention.”

Moreover, a ratified Convention may significantly affect U.S. policies toward children through its requirement that States Parties assess, report on, and publicize the implementation of the Convention (articles 42, 44). Such a report should include data on the status of children’s rights in a wide range of contexts, supply a basis for developing national discussion of children’s rights, and distribute information to children and adults about children’s rights and about the nation’s compliance with the Convention. When taken seriously by ratifying countries, this reporting requirement helps raise national and international awareness of children’s rights abuses that otherwise may have been ignored. Further, it encourages a progression toward the fulfillment of the rights of children.

Even if the U.S. does not ratify the Convention, child advocates and policymakers at federal, state, and local levels can use the

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Convention as a guide in developing policies for children (Cohen & Naimark, 1991; Melton, in press). Moreover, its principles and provisions may be instructive for educators, health professionals, researchers, and others who regularly interact with children.

The individual family and even the individual child may find the Convention useful in supporting their demands for improved conditions for children and families. If, for example, education or health services are not sufficient to provide what the child needs, or if measures to strengthen the family could be (but are not) put into effect, the Convention sets standards to which families may refer. That so many other countries have already agreed to these standards (albeit as ideals) should strengthen the argument by children and families.

### Challenges for Social Scientists

Social scientists have been curiously absent from discussion of the Convention, before and since its adoption—in spite of their extensive knowledge about the issues. One simple reason may be that they traditionally know little about the law in general and international conventions in particular. But the Convention provides social scientists, especially specialists in child development, with the opportunity and responsibility not only to abide by its provisions, but to contribute their expertise to its implementation. In fact, the emphasis throughout the Convention on “the best interest of the child” and the “evolving capacities of the child” gives the developmentalist’s expertise a potential status in international law never before realized. Why then have we been so reluctant to join the discussion, particularly the debate over participation rights? There may be several reasons:

(1) Social scientists may be less willing than others to argue for children’s rights simply on common-sense grounds, but at the same time they may be more aware of the pitfalls of attempting to define and defend such constructs on the

basis of existing research findings.

(2) Participation rights may not be as obviously compelling as the rights to survival, protection, and development. Being more open to subjective interpretation and harder to assess may make them more difficult to defend.

(3) Social scientists themselves may be haunted by the same doubts that lead other groups to oppose certain provisions.

(4) Finally, many professionals (like many nonprofessionals) may confuse the issue of *having* these rights with the issue of *how*, *when*, *where*, and *in relation to whom* they are to be exercised.

The Convention nevertheless poses important challenges for social scientists. First, it stimulates the social scientist and practitioner to rethink how they interact with children in therapeutic, research, and educational settings (Wilcox & Naimark, 1991). The Convention’s emphasis on the best interest of the child and the child’s sense of dignity and integrity should reinforce efforts to safeguard and strengthen—or, at a minimum, not compromise—these goals. Further, experts in child development can help illuminate ways in which the rights enumerated in the Convention can best be fulfilled consistent with the “evolving capacities of children,” their “best interest,” and their dignity. Although such concepts are difficult to define, social scientists do have special relevant knowledge; for example they may help policymakers determine how children of different ages can best express their participation rights without causing them harm.

Second, the Convention challenges social scientists to use their expertise in helping monitor compliance with its provisions (Hart, 1991; Melton, 1991). Indeed, the Expert Committee may invite “competent bodies” to provide expert advice on the implementation of the Convention (article 45). The Expert Committee has interpreted this to include individuals as well as NGOs, thus opening the door to input from social scientists. Developmentalists should take seriously their potential role in monitoring the

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consistency of local, state, and federal policies with the provisions of the Convention—whether or not a legal mandate exists. It should be possible for social scientists, individually or through their professional organizations, to submit information to or meet with the Committee to help resolve problems.

Finally, social scientists may play a critical role in helping children understand and express the rights granted them under the Convention. Researchers can assess children's perceptions of their rights, at different ages and under varied circumstances (e.g., Melton, 1983; Melton & Limber, 1989). This knowledge base will assist social scientists and educators to develop effective means of teaching children about their rights and how to express them.

## Conclusion

The Convention on the Rights of the Child is a ground-breaking human rights treaty that promises to significantly improve the conditions of children worldwide. With its adoption by all but a handful of nations, an overwhelming international consensus has emerged that children are persons who are entitled to both protection and respect. For the first time, the international community has acknowledged the duty of nations to ensure that children's rights to survival, protection, development, and participation are fulfilled. Although proponents of the Convention currently face stiff political opposition to ratification within the U.S., policymakers, child advocates, and social scientists can nevertheless make important strides in implementing its principles at local, state, and federal levels. Experts in child development must recognize the unique contributions they can bring to the current international discussion of children's rights and effective implementation of the Convention on the Rights of the Child.

## Notes

<sup>1</sup>Through their national branches the international NGOs were able to spread information about the Convention to the grassroots level of many countries, thus preparing the ground for more rapid ratification than might otherwise have been possible.

<sup>2</sup>The Expert Committee has organized the articles under four primary themes: "the best interest of the child," "the child's right to survival and protection," "the right to be heard," and "the right to be protected from discrimination" (see Cohen, 1993).

<sup>3</sup>These categories, originally used by UNICEF, are admittedly somewhat artificial and do not represent clearly separated classes.

<sup>4</sup>Both of these issues have entered into the U.S. debate over ratification of the Convention.

<sup>5</sup>Under article 4, States Parties are obligated to undertake all appropriate measures to implement the rights recognized in the Convention. However, the article also notes that "[i]n regard to economic, social, and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources." Obviously it would not be possible to force States Parties to implement measures for which they lack resources. On the other hand, critics of the Convention point out that because each State Party can determine on its own what "maximum extent" is, this opens up the possibility that children will be made a low priority. This is an issue for the Expert Committee, however, because article 4 also points to possible assistance "within the framework of international cooperation."

<sup>6</sup>Senator Jesse Helms has a resolution before the Senate urging the president not to send the Convention to the Senate, because he contends it is a "flawed document."

<sup>7</sup>Thus, for example, although the Convention requires that States Parties "take all appropriate measures to ensure that the child is protected against all forms of discrimination" (article 2[2]), this provision would likely only become the law of the land if and when the U.S. enacted specific legislation defining the parameters of "appropriate measures."

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## Acknowledgments

We would like to thank Nancy Thomas for her thorough editing and extraordinary patience throughout the development of this report. We also are indebted to several reviewers who provided many insightful comments and careful corrections of previous drafts: Cynthia Price Cohen, Natalie Kaufman, Gary Melton, Hedwin Naimark, and Brian Wilcox.

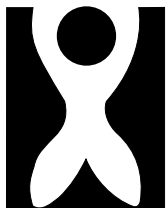
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