

Ten things you need to know about the structure of the CRC:

- It is a treaty which creates binding rules of law. It is no mere statement of altruism.^{1.}
- Its effect would be binding on American families, courts, and policy-makers.^{2.}
- Children of other nations would not be impacted or helped in any direct way by our ratification.^{3.}
- The CRC would automatically override almost all American laws on children and families because of the U.S. Constitution's Supremacy Clause in Article VI.^{4.}
- The CRC has some elements that are self-executing, while others would require implementing legislation. Federal courts would have the power to determine which provisions were self-executing.^{5.}
- The courts would have the power to directly enforce the provisions that are self-executing.^{6.}
- Congress would have the power to directly legislate on all subjects necessary to comply with the treaty. This would constitute the most massive shift of power from the states to the federal government in American history.^{7.}
- A committee of 18 experts from other nations, sitting in Geneva, has the authority to issue official interpretations of the treaty which are entitled to binding weight in American courts and legislatures. This effectively transfers ultimate authority for all policies in this area to this foreign committee.^{8.}
- Under international law, the treaty overrides even our Constitution.^{9.}
- Reservations, declarations, or understandings intended to modify our duty to comply with this treaty will be void if they are determined to be inconsistent with the object and purpose of the treaty.^{10.}

Ten things you need to know about the substance of the CRC:

- Children would have the ability to choose their own religion while parents would only have the authority to give their children advice about religion.^{13.}
 - The best interest of the child principle would give the government the ability to override every decision made by every parent if a government worker disagreed with the parent's decision.^{14.}
 - A child's "right to be heard" would allow him (or her) to seek governmental review of every parental decision with which the child disagreed.^{15.}
 - According to existing interpretation, it would be illegal for a nation to spend more on national defense than it does on children's welfare.^{16.}
 - Children would acquire a legally enforceable right to leisure.^{17.}
 - Christian schools that refuse to teach "alternative worldviews" and teach that Christianity is the only true religion "fly in the face of article 29" of the treaty.^{18.}
 - Allowing parents to opt their children out of sex education has been held to be out of compliance with the CRC.^{19.}
 - Children would have the right to reproductive health information and services, including abortions, without parental knowledge or consent.^{20.}
 - Parents would no longer be able to administer reasonable spankings to their children.^{11.}
 - A murderer aged 17 years and 11 months and 29 days at the time of his crime could no longer be sentenced to life in prison.^{12.}
-

NOTES:

1. *-Vienna Convention on the Law of Treaties, Article 26 "Pacta sunt servanda"*:
"Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

United States Constitution, Article 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."

UNICEF "Convention on the Rights of the Child" says: "the Convention is a universally agreed set of non-negotiable standards and obligations." Available at <http://www.unicef.org/crc/> on 12/2/2008.

2. *-Vienna Convention Article 26 (supra)*;

United States Supreme Court, *Whitney v. Robertson*, 124 U.S. 190 (1888): "By the Constitution of the United States, a treaty and a statute are placed on the same footing, and if the two are inconsistent, the one last in date will control, provided the stipulation of the treaty on the subject is self-executing."
3. *-Vienna Convention (supra)* and Article 2 (g): "'party' means a State which has consented to be bound by the treaty and for which the treaty is in force"
4. *-United States Constitution, Article VI (supra, Note 1)*
5. *-Arlene Bowers Andrews, Implementing the U.N. Convention on the Rights of the Child*, 171 (Greenwood Publishing Group 1999): "The 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."
6. *-United States Supreme Court, Medellin v. Texas*, 552 U.S. ____ (2008), at 170 L.Ed. 2d 190, 219, "And whether the treaties underlying a judgment are self-executing so that the judgment is directly enforceable as domestic law in our courts is, of course, a matter for this Court to decide."
7. *-Inter-Agency Standing Committee Reference Group on Humanitarian Action and Human Rights, Frequently Asked Questions on International Humanitarian, Human Rights, and Refugee Law*, (2002), available at <http://www.icva.ch/doc00001023.html#24>:
"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."

United States Supreme Court, *Reid v. Covert*, 354 U.S. 1 (1957): "To the extent that the United States can validly make treaties, the people and the States have delegated their power to the National Government and the Tenth Amendment is no barrier."
8. *-United Nations Convention on the Rights of the Child, Articles 43 (amended) and 44*. Available at <http://www2.ohchr.org/english/law/crc.htm#art43>.

9. *Vienna Convention*, Article 27: " A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."
10. *Vienna Convention*, Article 19, available at <http://www.jus.uio.no/lm/un.law.of.treaties.convention.1969/19.html>; also

Louis Henkin, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, *The American Journal of International Law*, Vol 89 No 2, 343-344 (Apr. 1995):
"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."

11. *United Nations Convention on the Rights of the Child*, Article 37(a):
"No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age"

United Nations Committee on the Rights of the Child, *General Comment No. 8 (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)*, CRC/C/GC/8, (2006):
"The Committee is issuing this general comment to highlight the obligation of all State parties to move quickly to prohibit and eliminate all corporal punishment.... Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is ... an obligation of State parties under the Convention."

12. *United Nations Convention on the Rights of the Child*, Article 37(a), (supra)

13. *The UN Convention on the Rights of the Child: A Guide for Children and Young People* (April 2008), available at <http://www.scotland.gov.uk/Publications/2008/04/01081649/1>:
"You have the right to choose your own religion and beliefs. Your parents should help you think about this."

Geraldine Van Bueren, *International Rights of the Child, Section B*, University of London, 29-30 (2006):

"Unlike earlier treaties, the Convention on the Rights of the Child does not include a provision providing for parents to have their children educated in conformity with their parents' beliefs. In addition, the child's right to freedom of expression and the right of the parents to initially give direction and later only guidance, strengthens the argument that children are entitled to participate in decisions so that their education conforms to their own convictions.... The second question is whether a child has the right to choose a religion.

Under the Convention on the Rights of the Child, 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.

It can also be argued that the right to freedom of religion in the Convention on the Rights

of the Child ought to be read together with article 12 which gives the child the right to express his own views in the matter of choice of religion."

14. *United Nations Convention on the Rights of the Child*, Article 3(1): "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."

Geraldine Van Bueren, *International Rights of the Child*, Section D, University of London, 46 (2006):

"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."

15. *United Nations Convention on the Rights of the Child*, Article 12(1): "State 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."

Inter-Agency Standing Committee Reference Group: "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."

Geraldine Van Bueren, *International Rights of the Child*, Section D, 137: "State parties are obliged to 'assure' to children who are capable of forming views the rights to express those views 'in all matter 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."

16. *ibid.*, at 36: "[T]he United Nations Committee on the Rights of the Child, criticized Egypt and Indonesia on the proportion of their budget spent on defence, as compared to the proportion spent on children's social expenditure."

The Committee also criticized Austria, Australia, Denmark, the United Kingdom, and others failing to spend enough tax dollars on social welfare for children:

Paragraph 46, *Concluding Observations of the Committee on the Rights of the Child: Austria*, Committee on the Rights of the Child, 38th sess., U.N. Doc. CRC/C/15/Add.251 (2005).

Paragraph 17 and 18, *Concluding Observations of the Committee on the Rights of the Child: Australia*, Committee on the Rights of the Child, 40th sess., U.N. Doc. CRC/C/15/Add.268 (2005).

Paragraphs 18 and 19, *Concluding Observations of the Committee on the Rights of the Child: Denmark*, Committee on the Rights of the Child, 40th sess., U.N. Doc. CRC/C/DNK/CO/3 (2005).

Paragraph 10, *Concluding Observations of the Committee on the Rights of the Child:*

United Kingdom of Great Britain and Northern Ireland, Committee on the Rights of the Child, 31st sess., U.N. Doc. CRC/C/15/Add.188(2002).

17. *-United Nations Convention on the Rights of the Child, Article 31(1): "States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts."*

18. *-American Bar Association, Center on Children and the Law: Children's Rights in America: UN Convention on the Rights of the Child Compared with United States Law, p. 182.*

19. *-Paragraph 52, Concluding Observations of the Committee on the Rights of the Child: Ireland, Committee on the Rights of the Child, 43rd sess., U.N. Doc. CRC/C/IRL/CO/2 (2006):*

"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. The education is optional and parents can exempt their children."

Paragraph 14, Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland, Committee on the Rights of the Child, 8th sess., U.N. Doc. CRC/C/15/Add.34 (1995).

20. *-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, 202-203 (Spring 2007):*

*"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. [*203] 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 to ratify the treaty, the CRC could provide significant improvements in the outlook for reproductive freedom for minors."*

Paragraph 3, Concluding Observations of the Committee on the Rights of the Child: Columbia, Committee on the Rights of the Child, 42nd sess., U.N. Doc. CRC/C/COL/CO/3 (2006): "The Committee notes with appreciation...decisions of the Constitutional Court on...the partial decriminalization of abortion."

Paragraph 55, Concluding Observations of the Committee on the Rights of the Child: Chile, Committee on the Rights of the Child, 44th sess., U.N. Doc. CRC/C/CHL/CO/3 (2007): "The Committee...is concerned over the high rate of teenage pregnancies, the criminalization of the termination of pregnancies in all circumstances...."