

Convention on the Rights of the Child

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Notes

Introduction

My name is Martin Scherr. I am director of the Child Welfare League of America's (CWLA) International Office. CWLA has 1,200 member organizations in the US, including every State Agency responsible for child protection as well as about 100 cities and counties. We have 27 in Missouri and nine members in Kansas (eight in KCK and KCMO) and we have 14 International Affiliates. CWLA is the oldest and largest membership organization in the US—and we think in the world—dedicated to the protection of children and ensuring their wellbeing.

One of the most important functions of our nearly 150 employees is to set standards for child protection. We do everything we can to help those that work directly with children to attain and adhere to those standards. Our member agencies employ about 350,000 people and utilize more volunteers than we can count. Our agencies serve millions of children and families every year.

It is an honor to be here today. This event, the second of its kind, I believe, has made a mark across the US. First hand I know that it has produced at least one local leader who has dedicated her time and energy to promoting action on a local level. Manny Pedram is to be congratulated and thanked for his efforts and foresight. Thank you for inviting me.

Although some don't think traveling is lucky, I do: I am one of those people fortunate enough to fly in lots of airplanes, be "wanded" more than you care to know about, but most importantly, meet with people whose main concerns are children. And for those of you who are afraid that airport security systems are useless, let me tell you, they work. Sad to say, that through my own carelessness my trusty and friendly Swiss Army knife neatly packed in a bag I had intended to check, not carry, was confiscated at an airport earlier this week.

Why am I here today?

I want to:

- Be sure that no one leaves this event without having taken what I refer to as CRC 101; basic exposure to the CRC—the good, the bad and the –well, there is no ugly in my view;
- Spur discussion about the CRC and about why the US has not (yet) ratified it; and

- Give you an idea of the wheels either already in motion towards implementation and ultimately ratification and explore whether there are ways you may associate with the battle.

In the US today, while hundreds of thousands of people work to protect children and prevent abuse, almost no one dedicates themselves to ensuring and protecting the *rights* of children. This observation includes long-time dedicated child advocates.

I have made an informal career of asking people “Why do you work with children?” “Why do we as a nation invest in protection of children?” The answers invariably revolve around a feeling of responsibility and of self-satisfaction. Some responses are less searching “I feel sorry for them; pity them and feel guilty if we don’t protect them.” Some recognize that we reap what we sow with children, and they want to sow and nurture well.

But, it is rare—I would say practically non-existent—to hear from people that they work with children *because they want to ensure that children have rights and that those rights are enforced.* They believe that children have human rights the same as do adults.

When is the last time you saw an article on the rights of children written in other than an academic journal or magazine? The concept of Rights for Children is rather arcane. Our history in the US has them more as property than as human beings. Only late in the last century did we start to focus on children as other than property.

What is the CRC?

What is the CRC?

The Convention on the Rights of the Child is the most widely ratified treaty in the world. It was adopted by the United Nations (UN) in November 1989, after many years of discussion, negotiation and compromise.

It is significant that although the US played an integral role in drafting the original document, except for Somalia, which set ratification wheels in motion in May 2002, the US remains the only UN member nation that has not ratified it. This is significant in and of itself.

Basic information

The CRC is simple yet elegant. It contains 42 articles that enumerate specific rights, responsibilities and obligations, and 12 articles on administration. I will not enumerate all 42 rights here, but will state a few. The CRC:

- Defines a child as under 18,
- Requires registration at birth,

- Ensures all rights regardless of gender, race, religion, language, national origin, property or other status,
- All actions must be taken in the best interests of the child,
- States (countries) must respect the rights, responsibilities and duties of the parents, and where applicable, the extended family,
- Every child has the right to life,
- Children shall not be separated from their parents, except on the basis of legal review,
- States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely, according to level of development and maturity; freedom of expression, information; freedom of religion, thought and conscience,
- Right to privacy,

There are, of course, many others—we can talk about them later if you want. While each is important, and it is difficult to determine which if any is more important than others, here is one I see as central:

- Article 18 says that States shall use their best efforts to ensure recognition of the principle that both parents have common responsibility for the upbringing and development of the child; that States parties shall *render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities, including development of institutions and services for the care of children*. This article also provides for support for working parents.

Other articles refer to conditions guiding removal of children from families, compulsory free education, protection of refugees, reuniting families, children with disabilities, high standards of health, standards of living, protection of indigenous minority cultures, time to rest and play, protection from economic exploitation and so forth. I could go on. This is indeed a comprehensive and scary document!

Bottom line on content: *everyone should have a copy of the CRC*. To be an effective advocate—OR CRITIC—you must know it and understand it! By the way, we have discovered, that like in some many arenas, the critics and opponents know the material far better than the advocates, and they don't hesitate to make their viewpoints known to their members of Congress and the Administration.

Many nations view the CRC as a blueprint for their own national action to ensure wellbeing and protection of children as a matter of right. Some nations have even taken the convention intact and made it the law of their land.

Jo and I will discuss this to some extent during the lunch time discussions. Nations also on some level pride themselves because they belong to the civilized family of man that places children first on their national agendas.

Process

In the ratification process in the United States, the President or Secretary of State signs a treaty. It is then forwarded to the Department of State for review, analysis and commentary. After that stage it is sent to the US Senate for review (advice and consent). The Senate may hold hearings and conduct other review processes. Such a review could, for example, include visits to other countries to inquire about and observe the CRC in action. If 67 Senators agree, ratification.

This is to say, to underscore, that ratification is a POLITICAL process. Ratification will occur in no other way besides having the Senate approve the document.

In this process, in 1995 then Secretary of State Madeleine Albright, under direction of President Clinton, signed the CRC and sent it to the Department of State. Because the Senate at that time made it abundantly clear that there would be neither hearings nor other consideration of the CRC, it has languished.

The Senate has changed leadership by a slim margin, giving us cause to believe that there would be greater acceptance of the CRC at this time. However, the Committee on Foreign Relations has its hands full at the moment, so that consideration is unlikely right now.

I repeat: the ratification of the CRC is dependent upon convincing 67 Senators that it is in their best political interests to vote in favor of ratification. Never lose sight of that fact.

Objections

So why hasn't this happened? It seems easy enough and we all love and honor children, right?

The current US administration has articulated objections to the CRC. As Jo explained, some of those objections emerged as matters of extreme contention during the UNGASS. There were a number of groups represented during the UNGASS that were able to keep the objections alive.

The process, by the way, allows for the US, and any other nation, to ratify the CRC yet to express

Reservations, Understandings and Disagreements (known as RUDs) to clarify its own position. Canada, for example, stated a Reservation on incarceration of children under 18 with people up to 21. Canada considers people *under 21* to be children, so it does not feel it is violating the CRC; article 42 essentially protects already established rights that are "better" than those in the CRC itself.

Here are a number of the issues that seem to militate against ratification. We think they warrant discussion because they are controversial and because they are hindering ratification:

- Here's a shocker: The CRC promotes abortion. Simply put, this is incorrect. No where in the CRC can anyone point to language that promotes abortion!
- Guaranteeing rights for children means taking rights away from parents. This implies that rights are a "zero-sum" game. If we say, for example, that a child has the right to information, to education or to express his or her opinion, does that mean his or her parents or anyone for that matter, has those same rights terminated? Defies logic! The question really is whether or not "rights" a zero-sum game?
- Is protecting children and providing for their wellbeing accomplished as a matter of *obligation* or a matter of *right*? The objection states is that when rights are assigned, they become enforceable under law. Imagine all of the things denied to children now that they might be able to secure if they could pursue legal action to secure them. Are children "human beings" from birth forward, or do they "grow into" their right to "rights?" Should a right be denied simply because it would be enforceable (and maybe either uncomfortable or expensive)?
- The US treats children better than the rest of the world, and we don't need the CRC. Just not so! Are no avenues open for improvement? What would change in the lives of children if the CRC were ratified? Implemented? Of course, it is true that children in the US for the most part are treated well—but there are many notable gaps.

When compared with a list of countries that do worse than we do on measurable comparisons, we look great. But when compared to those that do better than we do—and there are many—we do not look so good. My reference point for improvement would be to look up, not down. Would you rather be compared with Burkina Faso, Mozambique, and Laos or with Sweden, Canada, Finland, Italy or Switzerland?

- State's rights. Our system of government precludes the federal government from causing states to implement something without their own direct action. Some view the CRC as imposing requirements on the states without their concurrence. As with any treaty that affects the states, each state would have to develop its own implementing legislation or regulations.

It is notable that at least 19 states and other jurisdictions have endorsed the CRC on their own. It is remarkable to note, as well, that Canada's system of governance does not differ too greatly from our own, yet Canada is a world leader in implementation and promotion of the CRC.

- Death penalty. In America we permit the death penalty or prison without parole to be imposed upon people who are convicted of crimes committed before they became adults. The CRC would preclude such treatment. Enough people in the US believe such penalties are correct and this belief is one of the factors militating against the ratification of the CRC.

Michael Skakel just went to jail for up to life after being convicted of a crime committed while 13 years old—28 years ago.

- The US cannot ratify the treaty because we are not in a position to enforce and ensure all of the rights it confers.
- The CRC would not permit home schooling. Not so.
- The CRC is “new secular religion,” and we are not about to create such a religion in the US
- An outside “force” or enforcement mechanism would come into our homes to make sure we are complying with the CRC. Now just picture that.
- We just don’t like to UN and we don’t want to comply with anything it proposes.
- The US is not predisposed to ratification of treaties where there is no hope of implementation. Kind of a catch 22.

There may be other objections, but if the CRC is good enough for 191 other nations, one might ask, why is it not good enough for us?

Activities Planned

As I stated earlier, the ultimate ratification of the CRC is a political process. Consider that, but consider simultaneously a parallel process, one that may produce more direct and measurable results. Consider the concept, so eloquently described by Nancy Nye of the of Youth Advocacy Program, International several years ago: Implementation Without Ratification.

The outcome we seek is to ensure that children have rights, that they are well protected and their wellbeing is ensured. That done, ratification will be a mere formality. Consider getting involved in a number of activities such as these:

- Partly out of the UNGASS Child Rights Caucus, which is international, a group has formed in the US (we were, frankly, tired of being asked “what about the Americans?”). You can associate with that group by letting me know. For the moment, with assistance from the US Fund for UNICEF, my organization is taking on the responsibility for convening that group. While we do not have a corner on either strategies or action, we have tried to begin some thought and activities that could lead to ratification. We have an e-mail list of about 150, with an organizing core of about 15.
- We will—have already begun—making sure that our own CWLA board and staff understands the CRC. Through training materials, seminars, discussion groups and other venues, CWLA board and staff have become knowledgeable and comfortable with the ideas and concepts in the CRC. The expectation is that we will be sufficiently knowledgeable to explain and defend the CRC to agencies and to others. Some CWLA staff will be able to

incorporate reference to the CRC into their day-to-day work and into their public forums. I encourage those of you that are members of organizations to do the same.

- National Plan of Action. As Jo explained, and as we should talk about a little later on, the World Fit For Children agreement is that each country will produce a National Plan of Action by 2003. Find out about the NPA and offer to be involved with it. Don't let the US get off the hook and not produce such a plan.
- Find out where your politicians are; do a "map" of Congress and learn how your own members view the CRC. Begin to help them understand that most of the objections are based in myth. More importantly, let them understand that there are lots of people across the nation that support children's rights and that are tired of being left out of the world community.
- Secure additional local, county, state, regional and organizational endorsements. We—and Norma Keller—can provide models for such endorsements.
- Alternative Report. The NGOs in many nations have chose to research and draft reports as alternatives to those officially submitted by their countries' governments to the UN Committee on the Rights of the Child. We propose to generate such a report and submit it to the UN Committee on the Rights of the child, despite the fact that the US Government has not agreed to submit an "official Report."
- This one is tough and difficult to answer, but it must be done. We need more research on what would be different if implemented.
- Curriculums. We will take materials like those produced by Norma Keller of Center County, PA, and make them available across the nation. Let's face it; it is critical that we think on a global level, but nothing will happen if we do not act locally. We have already begun some discussions with the Council on Social Work Education, the American Bar Association, the NEA, NASW and a host of other organizations. The intent of these discussions is to encourage each of those institutions that the CRC—at least awareness of it—is important.

Of special importance, we think, are the NASW and the teacher's associations. They are the folks who work with large numbers of children professionally and they can help ensure that young people grow up knowing about the possibility that they may have rights. In other countries children are brought up learning the CRC from their earliest educational experiences. American children never heard of it.

- Get ourselves onto agendas of meetings such as this one. Coincidentally, I will be doing a similar session in Houston next week.
- KC a few years ago sponsored a "One Question" campaign. Where is that and can it be rejuvenated?
- Seek and promote endorsements by churches, civic groups.

- Look at your own organization's processes and policies. Can you in your Annual Reports, with a clear conscience, say that your organization is in full compliance with the CRC, based upon your mission and service area? If it isn't make it so. If it is, say so in your Annual Report.
- We have already created a CD-ROM, authored articles in *Children's Voice*, published a special edition of *Child Welfare* and created other materials about the CRC. We have also distributed materials produced by others, especially UNICEF.
- Raise the issue everywhere. Think beyond being here at this conference.
- CWLA has standards for virtually every aspect of child welfare. As standards are revised and updated they are being reviewed in light of the CRC. The outcome will be that CWLA standards will be expressly compatible with and supportive of the CRC. These impact every state, every child welfare agency in the US.
- Implementation of the CRC will be a long and broad process. We will work with other organizations to help them generate understanding and implementation of the CRC. Initial partnerships are being solidified work with The National Association of Social Workers, American Psychological Association, National Education Association and a few others. The universe of potential partners is extensive!
- It is important that we learn why and how other countries have ratified and are implementing the CRC. We collect materials from others, and to the extent possible visit with them and arrange for them to visit with us. The work of others can be models for the US. Relationships with others that have made the rights of children a priority are critical to our own understanding. One organization that comes to mind is the International Forum for Child Welfare, which has about 200 members from about 50 nations. The IFCW meets annually; this year in Hawaii in about three weeks (see me if you want to attend).

I encourage you to learn about how other countries implement the CRC. The Internet is loaded with references to the CRC, through UN, UNICEF, CRIN, HRW, CWLA and other organizations. We have begun to build a library of reference materials; you can do the same

Unless I am a terrible observer of the political climate in the US, ratification of the CRC is not on the near horizon. I suppose we could leave it at that and move on to other concerns, but most of us are just not like that. We are dissatisfied with "leaving things alone."

Lastly, why are we concerned about this?

You do not need a litany of all of the issues we have in the US regarding the care, protection and guarding of children and their rights. So, just for the record, a few thoughts: These things would be a matter of right, possibly enforceable matters of right:

- About 25 percent of America's children live in poverty. Children ought to have the right to be brought up not in poverty.

- Free education. I learned earlier this week about a four-year-old child of a friend who is being schooled at home. Why? He was in Head Start—free—until my friend secured a new, better paying job. His child was ousted from Head Start because his income exceed (by very little) the threshold. Yet he does not make enough to send his child to an equivalent private pre-school program.
- Housing: according to the Urban Institute, at least a million children will be homeless in the US over the course of any given year. 5.3 million households are paying more than half of their income for housing or they live in severely substandard housing. Remember those two members of the Harlem Little League Baseball Team. These kids almost were not permitted to play ball (a truly basic American right!) because they did not have an address. Homelessness hurts.
- Death penalty: Now here's a wonderful commentary on American society. In the past few years thirteen people convicted of capitol crimes committed while they were children (under 18) were executed, put to death. Eleven of these executions were in America. Fortunately, under federal law, children cannot be executed, but 22 states still kill kids. Perhaps this would be a real change if the CRC were ratified. This is not a lot of kids, just enough to make us an embarrassment in face of the rest of the world.
- Health: Last year in my home town, Washington, DC, nearly 30,000 young people were essentially ejected from school because they had not received their "required" immunizations. It took several months to track them all down (funny, they found them to tell them to not come to school) and inoculate them. I can't help but wonder whether this would have happened had provision of health care had been a RIGHT instead of a requirement. Speaking of health, how many thousands of children do not receive proper pre-natal care and how many babies are born without proper medical attention? Yes, low birth weight babies are on the decline, but many countries are ahead of us on natal care.

Now, folks, I am not delusional. I do not believe that if the CRC were ratified today that life would change overnight for anyone. We would hold a big party and then we would have to go to work. What we are proposing here is doing a good bit of the work in advance. Seek implementation of the rights; ratification may follow.

Wrap-up

Although CWLA and many of its member agencies would prefer that the goal of this initiative be US ratification of the CRC, this will not be our main effort. The energy and resources that a campaign for ratification would necessitate might be better used to foster implementation and to generate broad professional and public understanding of the CRC. We are confident that as the CRC is better understood, fears about it will be abated.

Other Relevant Factors

Some countries have taken it intact as the "law of the land"

- In Egypt, in June 2000, a coalition of 19 NGOs long-identified with advocacy for and service to children published a report. The group included young people who were interested in

representing their own concerns. The report entitled *The NGO Report on the Rights of Children* was created as an alternative to the official Egyptian Government Report to the UN Committee on The Rights of the Child.

While critical of official treatment of children in just about every area, the NGOs an important point and observation that “a lot has been done in the field of child rights since ratification of the CRC, and there is a strong political will in support of childhood.” They complimented the Egyptian government for significant progress made since that ratification. Laws enacted since ratification and based upon ratification are the new tools Egyptians have to promote—successfully—the increased protections for children and the resources to make it happen. Is everything perfect in Egypt? No. Is there hope? Yes! And it’s based largely on the CRC.

- Canada is promulgating a new child protection law that is clearly built upon the CRC; the UK does similar.
- Ireland has entirely built their child protection codes upon the CRC.
- Legal advocates in many countries use specific clauses of the CRC as components of their legal arguments.
- Advocates around the world see the CRC as supporting their ability and credibility in promoting child protection activities.
- It is frankly embarrassing for US “advocates” in face of other nations
- The arguments about “difficulty of implementation” and “we already do better than most” are empty. Burundi, Burkina Faso and Cambodia are not legitimate reference points for the US; better to look to countries that do better than we do.

I thank you for your time and attention. I would like to open discussion if we have time. And I would like to invite any and all of you, organizationally as well as individually, to unite with the growing group of people knowledgeable about the CRC. This is the core of the group that will make the CRC—implementation and ratification a reality.

Or maybe a phrase I always attribute to James Rodale, the agronomist:
Think Globally; Act locally.

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