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Cynthia Price Cohen

Per Miljeteig Olsen

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STATUS REPORT: UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

Cynthia Price Cohen*
and
Per Miljeteig-Olssen**

When the Convention on the Rights of the Child was adopted by the United Nations General Assembly on November 20, 1989,¹ it marked the culmination of a ten year drafting exercise which had been undertaken as part of the 1979 International Year of the Child.² Nevertheless, while 1979 had marked the twentieth anniversary of the Declaration of the Rights of the Child,³ 1989 marked the beginning of a new era in children's rights. The final text of the Convention is comprehensive and encompasses the full range of human rights protections: civil-political,

* B.A. (Hons.) 1975, The City College of New York; J.D. 1979, New York Law School; M. Phil. 1986, City University of New York Graduate Center. United Nations Representative for Human Rights Internet; Research Consultant, Defense for Children International-USA; Research Associate, Ralph Bunche Institute on the United Nations, City University of New York.

** M.A. Psychology, University of Oslo, 1977. Public Affairs Officer, Division of Public Affairs, UNICEF. Research Assistant, Institute of Applied Social Research, Oslo; Educational Guidance Counselor, City of Oslo School Board. Norwegian Representative to United Nations Working Group on the Question of a Convention on the Rights of the Child, 1984-89

1. *Convention on the Rights of the Child*, G.A. Res. 44/25, 1 U.N. GAOR Supp. (No. 49), U.N. Doc. A/44/49 (1989) [hereinafter *Convention*]; reprinted in Cohen, Introductory Note, *United Nations: Convention on the Rights of the Child*, 28 I.L.M. 1148 (1989).

2. For annual reports of the United Nations Working Group which drafted the Convention on the Rights of the Child, see U.N. Doc. E/CN.4/1468 (1979); U.N. Doc. E/CN.4/L.1542 (1980); U.N. Doc. E/CN.4/1981/L.1575 (1981); U.N. Doc. E/CN.4/1982/L.41 (1982); U.N. Doc. E/CN.4/1983/62 (1983); U.N. Doc. E/CN.4/1984/78 (1984); U.N. Doc. E/CN.4/1985/64 (1985); U.N. Doc. E/CN.4/1986/39 (1986); U.N. Doc. E/CN.4/1987/25 (1987); U.N. Doc. E/CN.4/1988/28 (1988); U.N. Doc. E/CN.4/1989/48 (1989) [hereinafter *Working Group Reports*].

3. See G.A. Res. 31/169, 31 U.N. GAOR Supp. (No. 39) at 74, U.N. Doc. A/31/39 (1976). See also *Declaration of the Rights of the Child*, G.A. Res. 1386 (XIV), 14 U.N. GAOR Supp. (No.16) at 19, U.N. Doc. A/4354 (1959).

economic-social-cultural and humanitarian rights.⁴ It significantly changed previous approaches to children's rights by placing a strong emphasis on the child as an individual with inalienable human rights.⁵ The rights enshrined are assertive, rather than merely protective, and are rights that affirm the individual child's human dignity.⁶

I. STATUS: SIGNATURES, RATIFICATIONS AND ACCESSIONS

In retrospect, it is probably safe to say that, as the drafting of the Convention of the Rights of the Child was taking place, none of the drafting participants could have fully understood the long-range impact of the process in which they were engaged. The Convention is the end result of a series of complex negotiations and compromises among government delegations which often had conflicting social, political, legal, economic and religious orientations.⁷ During the drafting, the original twenty-eight article model convention—presented to the Commission on Human Rights in 1979 by Poland, the Convention's sponsor—almost doubled in length as governmental delegations and non-governmental organizations (NGOs) pressed to have their particular interests reflected in the Convention's text.⁸ Nevertheless, even after the second reading review, which resolved most of the shortcomings of the Convention's first reading text, there were critics of the Convention who predicted that it would ultimately have little importance as an international human rights instrument.⁹

To the amazement of almost all observers, the Convention has been embraced with enthusiasm by the entire world community.¹⁰ At the time of opening for signature and ratification, a record number of sixty-one Member States of the United Nations signed the Convention and

4. See *Convention*, *supra* note 1; Cohen & Naimark, *The United Nations Convention on the Rights of the Child: Individual Rights Concepts and Their Significance for Social Scientists*, 46 AM. PSYCHOLOGIST 60, 62 (1991).

5. See generally *Convention*, *supra* note 1; Cohen & Naimark, *supra* note 4.

6. See *Convention*, *supra* note 1.

7. Cohen, *supra* note 1, at 1449.

8. *Id.* at 1448-49.

9. See Barsh, *The Convention on the Rights of the Child: A Reassessment of the Final Text*, 7 N.Y.L. SCH. J. HUM. RTS. 142 (1989); see also Cohen, *The Human Rights of Children*, 12 CAP. U.L. REV. 319 (1983).

10. Lardner, *World Summit for Children*, U.N. Chronicle, Dec. 1990, at 64, col. 1.

thereby pledged themselves to work toward its eventual ratification.¹¹ The Convention easily obtained more than the required twenty ratifications or accessions by August 3, 1990; a period of nine months after its adoption.¹² This is an astonishing success record for any international human rights treaty. Even the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment took more than two years to compile the number of ratifications necessary to make it legally binding on States Parties.¹³ On the first anniversary of the Convention's signing ceremony, the number of signatories to the Convention had risen to 130 and there were sixty-four States Parties, representing all geographic regions, as well as levels of development.¹⁴

Anyone who has been concerned about maintaining the momentum that successfully brought the Convention through to its adoption by the General Assembly can find encouragement in the increasingly broad and strong support for the Convention.¹⁵ This support includes demands for effective measures to implement the Convention's provisions into actual improvements of the situation for children all over the world.¹⁶ One example of this was the World Summit for Children, held in New York on September 29 and 30, 1990 and attended by 71 Heads of State or Government who adopted a World Declaration on the Survival, Protection and Development of Children which included a Plan of Action.¹⁷ The World Declaration is, in effect, a political commitment to reach a number of goals for children and development in the next decade.¹⁸ These goals have been framed with

11. *World Summit For Children*, U.N. Chronicle, June 1990, at 76, col. 1.

12. MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL, U.N. Doc. ST/LEG/SER.E/8/Add.1.

13. MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL, STATUS AS AT 31 DECEMBER 1989, U.N. Doc. ST/LEG/SER.E/8., U.N. Sales No. 90.V.6 (1989).

14. For update see UPDATE: CHART OF RATIFICATION, HUMAN RIGHTS - STATUS OF INTERNATIONAL INSTRUMENTS, U.N. Doc. ST/HR/5, U.N. Sales No. E.87.XIV.2 (1990). As this issue of the New York Law School Journal of Human Rights goes to press, there are ninety-one State Parties to the Convention.

15. *World Summit For Children*, *supra* note 11.

16. One example of this support would be the World Summit for Children, *id.*; U.N. Press Release, HR/3514, March 1, 1991.

17. Lardner, *supra* note 10; U.N. Press Release, HR/3514, March 1, 1991.

18. Lardner, *supra* note 10.

reference to the Convention on the Rights of the Child.¹⁹

Additionally, the Forty-Fifth Session of the United Nations General Assembly unanimously adopted a resolution on the implementation of the Convention that calls on those "[s]tates that have not done so to sign, ratify or accede to the Convention as a matter of priority," and emphasizes "the importance of the strictest compliance by States Parties with their obligations under the Convention."²⁰ Approaching the Convention as a matter of concern for the entire international community and the need for international cooperation for its effective implementation, the resolution encourages the United Nations, as well as intergovernmental and non-governmental organizations, to intensify their efforts to disseminate information on the Convention and to promote its understanding.²¹

II. STATUS: IMPLEMENTATION

Now that the Convention on the Rights of the Child has entered into force, the focus will be on its implementation. Technically, thirty days after a State's instrument of ratification has been deposited with the Secretary-General of the United Nations, the Convention becomes binding on that State.²² Two years after that date a State Party must submit its first reports to the Committee on the Rights of the Child, which, in turn, will evaluate its compliance with the Convention's requirements.²³

A. *Innovations in the Monitoring Committee Model*

Some version of this monitoring committee model is present in the implementation mechanisms of all United Nations human rights treaties.²⁴ What makes the Convention on the Rights of the Child unique is the fact that its implementation provides for the Committee to receive

19. *Convention, supra* note 1; *Summit For Children Approves Big Program*, The Diplomatic World Bulletin, Oct. 8-15, 1990, at 1, col.3.

20. Implementation of the Convention on the Rights of the Child, 45 U.N. ESCOR (Agenda Item 97) at 4, U.N. Doc. A/45/753 (1990).

21. *Id.*

22. *Convention, supra* note 1, art. 49.

23. *Convention, supra* note 1, art. 44.

24. See P. SIEGHART, THE INTERNATIONAL LAW OF HUMAN RIGHTS 16, 381, 430 (1983); Cohen & Naimark, *supra* note 4, at 62.

information from sources other than the States Parties themselves.²⁵ Technicalities of the Convention's implementation are covered in articles 43-45.²⁶ Article 43 specifies such matters as how the Committee on the Rights of the Child is to be elected, how its expenses are to be paid and the frequency of its meetings.²⁷ Article 44 outlines procedures that are similar to those usually taken by human rights treaty monitoring committees.²⁸ It lists the frequency of States Parties' reports, gives some idea of the requirements for the report and sets forth the powers of the Committee on the Rights of the Child relative to the reports of States Parties.²⁹ One unique requirement of article 44 is that State's Parties must make their reports "widely available to the public in their own countries."³⁰

It is article 45, however, which makes implementation of the Convention different from that of other human rights treaties. The article, which begins with the words "[i]n order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention. . . ," then outlines four processes to be followed by the Committee to foster such implementation and cooperation.³¹ Paragraph (a) lists those who are "entitled" to be represented at the "consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate."³² It also authorizes the Committee to get expert advice from the "specialized agencies, United Nations Children's Fund and other competent bodies as it may consider appropriate," in addition to the information obtained from States Parties.³³

Paragraph (b) allows the Committee to transmit to those specified

25. *Convention*, *supra* note 1. For example, Article 43(2) mandates that the Committee on the Rights of the Child consist of ten experts in a field covered by the Convention and Article 45 entitles the Committee to receive comments, advice, or assistance from various NGOs regarding implementation of the Convention. *Id.*

26. *Id.* at arts. 43-45.

27. *Id.* at art. 43.

28. *Id.* at art. 44.

29. *Id.*; see also *Question of a Convention on the Rights of the Child: Report of the Working Group on the Question of a Convention of the Rights of the Child*, 45 U.N. ESCOR (Agenda Item 13), U.N. Doc. E/CN.4/1989/48 (1989) [hereinafter *Question of a Convention*].

30. *Convention*, *supra* note 1, art. 44(6).

31. *Id.* at art. 45; see also *Question of a Convention*, *supra* note 29.

32. *Convention*, *supra* note 1, art. 45.

33. *Id.*

"any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance" ³⁴ Paragraph (c) empowers the Committee to "recommend to the General Assembly that it request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child." ³⁵ Finally, paragraph (d) allows the Committee to "make suggestions and general recommendations" to States Parties concerning their treaty compliance and provides for that information, along with comments from States Parties to be reported to the General Assembly. ³⁶

The emphasis of the implementation mechanism of the Convention on the Rights of the Child is, noticeably, on cooperation and assistance rather than on approbation. One interesting innovation of the Convention's implementation mechanism is the fact that hidden in the language "other competent bodies" of paragraphs (a) and (b) is a role for NGOs. ³⁷ While one of the original drafts of this article did refer specifically to NGOs, complications during the drafting process resulted in a compromise. ³⁸ Thus, the language "other competent bodies" was chosen. ³⁹

While the Convention's *travaux préparatoires* do not detail any specific interpretation for this phrase, it was the agreement of the drafters that it should refer to any international organization or group with recognized competence in a field relevant to the implementation of the Convention. ⁴⁰ Although the original intent was to provide access to the Committee by NGOs having consultative status with the United Nations Economic and Social Council, ⁴¹ the open-endedness of the final text

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* at art. 45 (a), (b).

38. *Question of a Convention on the Rights of the Child: Report of the Working Group on a Draft Convention on the Rights of the Child*, 42 U.N. ESCOR (Agenda item 13), U.N. Doc. E/CN.4/1986/39 (1986).

39. *Id.*; *Convention*, *supra* note 1, art 45.

40. *See Draft Convention on the Rights of the Child*, 44 U.N. ESCOR C.4 (28th Mtg.), U.N. Doc. E/CN.4/1988/28 (1988) [hereinafter *Draft Convention*]; *see also* Cohen, *A Guide to Linguistic Interpretation of the Convention on the Rights of the Child, Articles 1, 4, 41 and 45* [hereinafter *Cohen A Guide*], in *CHILDREN'S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD COMPARED WITH UNITED STATES LAW* (C.P. Cohen & H.A. Davidson eds. 1990) [hereinafter *CHILDREN'S RIGHTS IN AMERICA*].

41. *CHILDREN'S RIGHTS IN AMERICA*, *supra* note 40, at 33.

allows for an even broader interpretation as to those who may submit information to the Committee.⁴²

B. Election of Members of the Committee

The election of the Committee on the Rights of the Child took place in New York on February 27 and March 1, 1991.⁴³ The seventy states which had become parties prior to January 27 were eligible to nominate Committee members and to vote in the election of the Committee.⁴⁴ According to article 43, the ten members of the Committee are to be experts, with recognized competence in the field of the Convention.⁴⁵ They are to act in their personal capacities and not as government representatives.⁴⁶ As specified by article 43, States Parties made nominations from among their own nationals and circulated their credentials prior to the election.⁴⁷ When voting, States Parties followed the suggestion of article 43 that the membership of the Committee should be reflective of the principal legal systems and should allow for equitable geographic diversity.⁴⁸

Although there was no formal election procedure which would guarantee the requirements of diversity, the first election produced a committee which was satisfactorily balanced.⁴⁹ The nine candidates elected on the first day were the nominees from Brazil, Burkina Faso, Egypt, Peru, the Philippines, Portugal, the U.S.S.R., Sweden, and Zimbabwe.⁵⁰ The final nominee, from Barbados, was elected on the second day on the third ballot, after many States Parties had withdrawn the names of their candidates.⁵¹ In addition to having geographic, economic and legal diversity, members of the newly-elected first Committee on the Rights of the Child come from a variety of backgrounds which include social work, journalism, medicine and religion, as well as

42. *Convention, supra* note 1, art. 45(a) and (b).

43. *U.N. Press Release*, HR/3513, Feb. 27, 1991; *U.N. Press Release*, HR/3512/Rev. 1, Feb. 27, 1991.

44. *Convention, supra* note 1, art. 43(4).

45. *Id.* at art. 43(2).

46. *Id.*

47. *Id.* at art. 43(2), 43(4).

48. *Id.* at art. 43(2).

49. U.N. Doc. CRC/SP/2 and Add. 1, 2, 3 (1991).

50. *Id.*

51. *U.N. Press Release*, HR/3514, March 1, 1991.

law.⁵²

C. Rules of Procedure

Despite the fact that, technically, the Rules of Procedure for the Committee on the Rights of the Child are to be drafted by the Committee itself,⁵³ the Committee members will be assisted in this endeavor by the United Nations Centre for Human Rights, which is already in the process of drafting a model set of rules for the Committee to take into consideration at its first meeting.⁵⁴ Appropriately, based on articles 45(a), (c) and (d), the Centre for Human Rights has indicated its intention to include in its model special provisions giving non-governmental organizations the right to submit information to the Committee.⁵⁵ Exactly what these provisions will be and whether they will also include the right to make oral statements at the meetings of the Committee is still to be decided.⁵⁶

It is expected that the Committee on the Rights of the Child will hold its first meeting sometime during the latter part of 1991.⁵⁷ At that time its first task will be to adopt its rules of procedure, and other guidelines or general procedures for its work.⁵⁸ Since report obligations commence two years after the Convention has entered into force for a State Party, actual review of States Parties' reports by the Committee will not begin until after September 2, 1992, when the first reports will be

52. An informal meeting of Committee members to acquaint them with the various branches of the United Nations, as referred to in article 45, took place in May 1991, and the first formal meetings of the Committee are to take place in September of the same year. *U.N. Press Releases*, HR/3514, March 1, 1991; HR/3513, Feb. 27, 1991; HR/3512/Rev.1, Feb. 27, 1991.

53. *Convention*, *supra* note 1, art. 43(8).

54. Meeting of the NGO Group for the Convention on the Rights of the Child, Geneva, Switzerland (October 1990). At this meeting a representative of the Centre for Human Rights met with the NGO Group to explain measures being taken by the Centre and the extent to which the Group would be allowed to make suggestions. *Id.*

55. *Id.*

56. The NGO Group is in the process of drafting model rules of procedure for submission to the Centre for Human Rights. *Id.*

57. *U.N. Press Releases*, HR/3514, March 1, 1991; HR/3513, Feb. 27, 1991; HR/3512/Rev.1, Feb. 27, 1991. Committee meetings are to be held annually. *Convention*, *supra* note 1, art. 43(10).

58. *U.N. Press Release*, HR/3512/Rev.1, Feb. 27, 1991; *Convention*, *supra* note 1, art. 43.

due.⁵⁹

D. Functions of the Committee on the Rights of the Child

While the main task of the Committee on the Rights of the Child is to review reports from States Parties on their compliance with the Convention, this task involves more than merely reading the reports from States Parties and giving them a stamp of approval. To meaningfully evaluate compliance, the Committee must first, of necessity, interpret the language of the Convention's text.

As a general rule, a monitoring body, such as the Committee on the Rights of the Child, will look to precedent or to legislative intent when struggling with the interpretation of a treaty's text. An indication of how the Committee on the Rights of the Child might proceed in its interpretation of the Convention's provisions could be obtained by reading the reports of the Human Rights Committee, which is the monitoring body for the International Covenant on Civil and Political Rights.⁶⁰ One of the practices of the Human Rights Committee, in addition to applying the language of the Covenant to States Parties' reports, has been the drafting of general comments on various articles of the Covenant, explaining the Committee's interpretation of those articles in their broadest sense.⁶¹ Many of the Covenant's rights have been duplicated, with minor modifications, in the Convention on the Rights of the Child.⁶²

The interpretation of those portions of the Convention which to some degree replicate human rights treaties, other than the Covenant, may also be affected by prior interpretations of those treaties' monitoring committees. On the other hand, for those rights which have never previously been interpreted, such as the right to identity, the rules applying to children under criminal law and the guidelines on intercountry adoption, the Committee will have only the *travaux preparatoires* to use

59. U.N. Press Release, HR/3514, March 1, 1991; *Convention*, *supra* note 1, art. 44(1)(a).

60. See Cohen, *General Comments of the Human Rights Committee Regarding Articles of the International Covenant on Civil and Political Rights Which May Be Applicable to Draft Convention on the Rights of the Child* [hereinafter Cohen, *General Comments*], in INDEPENDENT COMMENTARY: UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (C.P. Cohen ed. 1988).

61. See Cohen, *General Comments*, *supra* note 60.

62. See *Draft Convention*, *supra* note 40; Cohen, *General Comments*, *supra* note 60; *Convention*, *supra* note 1.

as a guide.⁶³ Here, the input of non-governmental organizations can be crucial. Suggestions for textual interpretation from experts in the fields relating to specific articles could do much to ensure that the interpretation of the text reflects the most modern thinking in children's rights and child development, especially as it is reflected in the daily work of the NGOs.⁶⁴

III. STATUS: NATIONAL DEVELOPMENTS REGARDING CHILDREN'S RIGHTS

As a standard setting instrument, the Convention on the Rights of the Child is already making an impact on how nations view the rights of their children. It is probably safe to say that, in becoming parties to the Convention, most states have subjected their national legislation to careful scrutiny.⁶⁵ Fortunately, few States Parties have been forced to make reservations, thus far, although some have found it necessary to draft additional statutes on children's rights as a consequence of ratification of the Convention.⁶⁶

While activities of national non-governmental organizations often play an important role in urging a State's ratification of the Convention,⁶⁷ their future role in supporting the Convention's effective implementation will be even more important. It is not enough for a state

63. Cohen, *A Guide*, *supra* note 40. "Undoubtedly, the intent of the drafters contained in the Convention's legislative history, known as the "*travaux préparatoires*," will be of singular importance in guiding the work of the Committee on the Rights of the Child." *Id.* at 34.

64. Article 43(2) of the Convention on the Rights of the Child requires that the Committee, which will be responsible for carrying out the functions of the Convention, and, therefore, the interpretation, will "consist of ten experts of high moral standing and recognized competence in the field covered by this Convention." Convention, *supra* note 1, art. 43(2).

65. See Cohen & Naimark, *supra* note 4, at 62-63. Also of importance in setting standards which may influence the future interpretation of the Convention are the establishment of international study groups to discuss these issues. This trend is typified by the meetings held in Jerusalem and Haifa December 9-14, 1990 by The First International Interdisciplinary Study-Group on Ideologies of Children's Rights.

66. *Multilateral Treaties Deposited with the Secretary-General*, U.N. Doc. ST/LEG/SER.E/8/Add.1 (1989) [hereinafter *Multilateral Treaties*].

67. Cohen, *Role of Non-Governmental Organizations in the Drafting of the Convention on the Rights of the Child*, 12 HUM. RTS. Q. 137 (1990); Cohen & Naimark, *supra* note 4, at 64.

to pass laws protecting and promoting the rights of children. What is necessary is for national and international NGOs and child advocates to work together to ensure that (1) once a State becomes a Party to the Convention it does everything in its power to carry out the Convention's requirements, and (2) that the State's domestic children's rights statutes are actively put into effect.⁶⁸ To this end, there appears to be a spontaneous worldwide movement toward the establishment of national children's rights committees to monitor State compliance with the Convention's standards, regardless of whether or not the particular state has ratified it. Such a national committee, usually made up of NGOs, already exists in a number of countries such as Zambia, Sweden, Canada, Chile and several other Latin American countries.⁶⁹ Discussions are under way among international NGOs to examine the feasibility of strengthening the work of national committees through the formation of an international coalition for the purpose of sharing experiences and information.⁷⁰

The role of NGOs and child advocates is not limited to pressing for ratification and then working to ensure compliance in ratifying states. They may also assist in the process of creating *customary* international law by demanding that non-ratifying states also conform their children's legislation to the standards of the Convention.⁷¹ When the majority of the world's states adhere to certain standards, such as the prohibitions against torture and genocide, those standards are said to become part of *customary* international law, law based on custom, which is applicable to all States without regard to their treaty ratification.⁷² Finally, the strong support which the Convention has thus far received from the international community raises the hope that it will have a major effect on improving the lives of children in all countries of the world regardless of whether they have become States Parties to the Convention.

68. Article 45 sets out the procedure designed to ensure effective implementation of the Convention. *Convention, supra* note 1, art. 45.

69. Meeting of the NGO Group for the Convention on the Rights of the Child, Geneva, Switzerland, March 11-12, 1991.

70. *Id.*

71. L. HENKIN, R.L. PUGH, O. SCHACHTER & H. SMITH, *INTERNATIONAL LAW* 37 (1980).

72. Cohen & Naimark, *supra* note 4, at 63; *see also* L. HENKIN, R.L. PUGH, O. SCHACHTER & H. SMITH, *INTERNATIONAL LAW* 37 (1980).

IV. STATUS: UNITED STATES POSITION ON RATIFICATION

Although the United States was an active participant throughout the drafting of the Convention on the Rights of the Child, it remains one of approximately thirty countries in the world which have not yet signed the Convention.⁷³ Until the President takes this step and sends the Convention to the Senate for advice and consent, the process for the United States' ratification will remain at a standstill.⁷⁴ This is unfortunate, since the United States was active in drafting the Convention and was to a large extent responsible for the Convention's strong focus on the civil and political rights of children.⁷⁵ The Polish model convention, used as the basis for the Convention's drafting, mirrored earlier approaches to children's rights, placing its emphasis on the child's need for protection.⁷⁶ That is, the child's right to health, education and social security.⁷⁷ It was the United States government, supported by other Western delegations, which was ultimately responsible for inclusion in the Convention of such civil-political rights as the child's right to freedom of thought, conscience and religion, to freedom of expression, to freedom of association and of assembly, as well as the child's right to privacy.⁷⁸

At the time of this writing there appears to be a strong interest in the Convention on Capitol Hill. Both the Senate and the House of Representatives have passed resolutions urging the President and the Administration to sign the Convention and send it to the Senate for its advice and consent.⁷⁹ Republican Senator Richard Lugar of Indiana recently asserted that one of the main issues he would be pressing in the coming year would be ratification of the Convention of the Rights of the

73. *Multilateral Treaties*, *supra* note 66. As of July 1, 1991, states which are neither States Parties to the convention nor have signed it are: Bahrain, Botswana, Brunei, Darussalam, Cambodia, Cape Verde, Congo, Equatorial Guinea, Fiji, India, Iran, Iraq, Kinbati, Libyan Arab Jamahiriya, Malaysia, Monaco, Myanmar, Nauru, Oman, Qatar, St. Vincent and the Grenadines, San Marino, Saudi Arabia, Singapore, Solomon Islands, Somalia, South Africa, Thailand, Tonga, Tuvalu, United Arab Emirates, and the United States of America.

74. See U.S. CONST. art. II, § 2(2).

75. See *Working Group Reports*, *supra* note 2.

76. *Id.*; see also Cohen & Naimark, *supra* note 4.

77. See *Working Group Reports*, *supra* note 2.

78. *Id.*

79. CHILDREN'S RIGHTS IN AMERICA, *supra* note 40, at iv.

Child.⁸⁰

At the same time, general public awareness in the United States regarding the Convention is growing. For example, the concluding paragraph of a New York Times editorial praising the Senate's advice and consent to ratification of the Convention Against Torture concluded with a call for the Senate to prod the administration "to sign and submit for ratification the U.N. Convention on the Rights of the Child."⁸¹ This call not only reflects the view of the newsmedia, but also that of an expanding constituency of NGOs, children's rights advocates and professional organizations, such as the American Bar Association.⁸² These organizations are lobbying the President and Congress to take action towards ratification by asserting how embarrassing and unacceptable it is that the leadership of one of the richest nations of the world is not willing to make such a commitment to its children.⁸³

Unfortunately, once the United States ratification process has begun, one possible road block to speedy ratification could be the fact that many of the rights set forth in the Convention traditionally fall within the jurisdiction of the states, rather than that of the federal government.⁸⁴ Rights protected by the Bill of Rights of the U.S. Constitution⁸⁵ are national standards which fall within the powers of the federal government and thus present no obstacles to treaty ratification. However, other rights, such as the right to education, are not constitutionally protected.⁸⁶ In fact, economic, social and cultural rights, in general, are not considered

80. Senator Richard Lugar, Remarks at Values, Rights and Responsibilities in the International Community: Moral Education for the New Millennium - Fifteenth Annual Conference Association for Moral Education, Notre Dame University, South Bend, Indiana (Nov. 8, 1990).

81. N.Y. Times, Nov. 19, 1990, at A18, col. 1.

82. Resolution of the House of Delegates of the American Bar Association, adopted Feb. 12, 1991.

83. See 136 CONG. REC. H7685-7689 (daily ed. Sept. 17, 1990); 136 CONG. REC. S12784-12811 (daily ed. Sept. 11, 1990).

84. Stentzel II, *Federal-State Implications of the Convention*, in CHILDREN'S RIGHTS IN AMERICA, *supra* note 40, at 57.

85. Rights such as freedom of expression, religion, association, assembly and the rights of juvenile criminal defendants are protected by the Bill of Rights. U.S. CONST. AMEND. I-X.

86. Bitensky, *Educating the Child for a Productive Life*, in CHILDREN'S RIGHTS IN AMERICA, *supra* note 40, at 169.

by the United States to be rights at all.⁸⁷ This position is often reiterated by the United States delegate at annual sessions of the U.N. Commission on Human Rights.

As for the United States' ability to comply with standards of the Convention, the majority of authors writing for the book *Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law*,⁸⁸ appear to have concluded that for the most part United States law, both state and federal, is already in compliance with the Convention's standards.⁸⁹ However, what is needed in their view is a more effective system of implementation.⁹⁰ One important exception is the United States' future inability to comply with the Convention's prohibition against the death penalty for crimes committed by persons under the age of 18.⁹¹ Sadly, because state death penalty statutes differ so widely,⁹² without either major changes in state legislation or the enactment of a federal death penalty statute, it is unlikely that the United States would be able to ratify the Convention without taking a reservation on this matter. This puts the United States in the position of being one of the few countries in the world where such a reservation would have to be contemplated.

One step which could minimize the federal-state problem would be for states to independently affirm their intent to adhere to the standards of the Convention. An action of this type was taken by the City of New York on November 21, 1989, when the City Council passed a resolution stating that the Convention on the Rights of the Child would be put into effect in New York City.⁹³ Several other cities have also passed similar

87. See, e.g., *San Antonio Indep. Dist. v. Rodriguez*, 411 U.S. 1, 29-39 (1973) (no fundamental right to education); *Plyer v. Doe*, 457 U.S. 202 (1982) (reiterating no fundamental right to education); *Papasan v. Allain*, 478 U.S. 265, 285 (1985) (it has been left undecided whether there exists a right to a minimally adequate education); *Goss v. Lopez*, 419 U.S. 565, 573 (1975) (entitlement to a public education under state law); *Dandridge v. Williams*, 397 U.S. 471, 484 (1970) (court rejects the idea that welfare is a fundamental right); *Goldberg v. Kelly*, 397 U.S. 297 (1980) (entitled to welfare under state law).

88. See *supra* note 40.

89. *CHILDREN'S RIGHTS IN AMERICA*, *supra* note 40, at iii-v.

90. *Id.*

91. *Convention*, *supra* note 1, art. 37(a). See also *Thompson v. California*, 487 U.S. 815 (1988) (death penalty is cruel and unusual punishment only if defendant is under sixteen years of age when crime was committed).

92. J. HALL, R. FORCE & B.J. GEORGE JR., *CRIMINAL LAW* 727 (4th ed. 1983).

93. Resolution of the City of New York, dated November 21, 1989.

resolutions which will affect the interpretation of their local legislation.⁹⁴ Such affirmative support for the Convention on a state level would minimize the Senate's concern that its advice and consent to ratification would tread on states' rights. Alternatively, as has been the previous practice in ratifying human rights treaties, the United States could attach a federal reservation clause to its ratification of the Convention, outlining the differences in responsibilities between the federal government and the states.⁹⁵

V. CONCLUSION

The Convention on the Rights of the Child provides an excellent working tool for all who are engaged in any form of child advocacy, because it contains a comprehensive set of norms, which have been embraced by the entire world community.⁹⁶ Consequently, the Convention's standards for child care, protection and individual dignity have been imbued with a powerful moral persuasion which makes them useful to child advocates whether or not the particular country in which they operate has become a State Party to the Convention.

Although it will take some time before the whole international machinery to monitor the Convention can be put into action — establishment of the Committee, reporting to the Committee and the activities of the Committee and its reports — the Convention on the Rights of the Child is already actively influencing the world's thinking about children and, hopefully, also beginning to guide the policy-making and resource allocations relevant to the child. This rapid and enthusiastic acceptance of the new treaty can only be understood in light of the developing, widespread and strong popular movement for children's rights.

It was primarily NGOs, along with other international organizations, that actively pushed for the finalization of the drafting of the Convention and for its adoption by the United Nations.⁹⁷ Similarly,

94. Resolution of the City of Cambridge, dated November 5, 1990; Resolution of the City of Minneapolis, dated December 28, 1990; Resolution of the City of Savannah, dated January 10, 1991.

95. Stentzel II, *Federal-State Implications of the Convention*, in CHILDREN'S RIGHTS IN AMERICA, *supra* note 40, at 58.

96. Cohen & Naimark, *supra* note 4, at 61. *Multilateral Treaties*, *supra* note 66. See also M. Miljeteig-Olssen, *Advocacy of Children's Rights - The Convention as More Than a Legal Document*, 12 HUM. RTS. Q. 148 (1990).

97. U.N. Press Release, HR/3512/Rev.1, Feb. 27, 1991.

NGOs and governments have now begun working together on both the national and international level to find ways and means of effective implementation of the Convention and creating respect for its provisions.⁹⁸ Already a large number of countries have carried out extensive reviews of their legal and administrative frameworks for children's policies to assure that they reflect the rights spelled out in the Convention.⁹⁹ There is strong interest among NGOs on the national level to find appropriate ways to evaluate implementation of the Convention by responsible national authorities.

Even before the Committee on the Rights of the Child was established, there is wide interest in its work. If this momentum is maintained, the enormous social mobilization around the Convention will resemble a genuine "court of public opinion." As past international experience has shown, mass public outcry is the most effective way to enforce respect for human rights. In this case, it will be respect for the human rights of children.

98. *Id.*

99. *U.N. Press Release*, HR/3514/March 1, 1991.