



Convention on the Rights of Persons with Disabilities

GENERAL CONCERNS

The U.N. Convention on the Rights of Persons with Disabilities (CRPD) addresses a desperate problem for many countries where having a disability can isolate a person and destroy any hope for gainful employment, interaction with others or basic living conditions for survival. Thankfully, the U.S. has strong ethics and laws based on a commitment to care for the vulnerable.

The U.S. leads the world on disability rights – without having ratified the CRPD. The Americans with Disabilities Act is model legislation around the world, and the U.S. advises and gives grants to help countries live up to their duties to people with disabilities. In its short existence, the U.N. committee for the treaty has validated concerns that it will intrude on national sovereignty. Ratifying the CRPD, and subjecting the U.S. to the capricious opinions of a U.N. committee, will not enhance America’s laws or require other countries to accommodate persons with disabilities.

Proponents claim the Supreme Court settled questions about the Disabilities Treaty in a decision with bearing on U.S. foreign relations in June 2014. In fact, the Supreme Court has done nothing to allay fears that the U.N. treaty will compromise U.S. sovereignty.

1. The CRPD’s vague and broad language jeopardizes American standards and rights.

The CRPD does not define “disability,” stating it is an “evolving concept.” It replaces parental rights with “the best interests of the child” standard, making government actors ultimately responsible for final decisions in the care of a child with a disability. Its phrasing has been used to promote abortion, thus opening the door to exterminate disabled unborn babies.

Ratifying the CRPD would subject the U.S. to pressure from evolving foreign jurisprudence and processes within the U.N. system that are ripe for political abuse.

Treaty proponents argue that ratifying the CRPD will place no obligations on the U.S., while other countries will have to change to make travel easier for U.S. citizens abroad. Yet U.S. ratification of the treaty will not – and cannot – place any obligation on other countries, least of all to accommodate U.S. citizens. Nor is it compassionate to expect poor countries to spend resources on assisting traveling Americans rather than basic needs for their disabled citizens.

The reasons put forth by the Obama administration and treaty proponents do not justify binding the U.S. to international legal obligations that will curtail the power of Americans to legislate freely and as they see fit both at the State and Federal levels.

2. The U.S. already assists other countries, and is the undisputed leader on disability rights.

Treaty proponents claim the U.S. must ratify the CRPD to not jeopardize its standing as the leader on disability rights, to help other countries, or to participate in U.N. discussions on

rights. The State Department has a high-level position of Special Advisor for International Disability Rights whose focus is helping other countries. U.S. officials regularly participate in U.N. meetings and hold special events to promote disability rights. Secretary Kerry spoke at a meeting of the U.N. General Assembly on Disability and Development and— perhaps inadvertently — made the case the U.S. is advancing the rights of persons with disabilities both in the U.S. and abroad.

In addition to previous aid to assist people with disabilities in other countries, the State Department is issuing \$1 million in grants to U.S. and foreign organizations for “Strengthening Implementation of the Convention on the Rights of Persons with Disabilities.” The 2014 request for proposals seeks to fund programs to provide assistance to civil society and governments, using U.S. experience, the ADA and U.S. websites as the basis for guidance.¹

3. *Bond v United States* did not abolish concerns that ratifying the CRPD can expand Federal Power.

Ratifying the CRPD could plausibly expand the powers of the federal government on disability issues and upset the balance and distribution of power set out in the U.S. Constitution.

The *Bond* case involved the domestic use of international law, and whether treaties can expand the federal government’s power beyond that assigned to it in the Constitution as the Supreme Court held in *Missouri v. Holland*. The Court’s ruling in *Bond*, while chastising the misuse of a treaty, allows *Missouri v. Holland* to stand.

Despite this, Senator Robert Menendez immediately issued a press release the day the *Bond* ruling came down stating the decision “removes any fears” that the Disabilities Treaty could be used to expand federal authority, undermine state sovereignty, or allow lawsuits in U.S. courts. Yet the fact that *Missouri v. Holland* still stands plainly contradicts this statement.

4. The ADA may not be enough to comply with the treaty.

Secretary of State John Kerry testified at a Senate Foreign Relations Committee hearing in 2013 on the CRPD, “Our ratification doesn’t require a single change to American law, and it won’t add a penny to our budget.” In his press release, Senator Menendez also stated the treaty “places no obligation” on the U.S. and “requires no change to U.S. law.” But this view was refuted by expert testimony given at the Senate hearings on the treaty.

Prof. Jeremy Rabkin told senators, “Ratifying this convention would commit the United States to obligations we cannot now foresee.” Other experts testified the U.S. cannot control the way international law is interpreted by foreign authorities and the U.S. does not have a final say on the development of international norms.

Even if the Americans with Disabilities Act (ADA) might be enough to comply with the treaty as a matter of law, it may not be enough in the eyes of the rest of the world, and would almost certainly not satisfy the CRPD committee.

5. Reservations to the treaty will not be respected by the CRPD committee.

The CRPD committee, which monitors countries’ implementation of the treaty, is displaying the same proclivities for expansive and intrusive legal interpretation as other U.N. human rights compliance committees. It has asked countries to remove all reservations to the treaty, even where their only reservation preserves the priority of their national constitution over the treaty — a reservation the U.S. commonly makes to almost all international agreements it enters into.

At the 2013 senate hearing, Prof. Curtis Bradley testified that when the U.S. complained against the Human Rights Committee questioning that very reservation from the U.S. to the International Covenant on Civil and Political Rights—one of few U.N. human rights treaties the U.S. has been

International Law Commission sided with the Human Rights Committee.

Other experts who testified agreed that reservations and understandings could be helpful in safeguarding U.S. sovereignty, but explained that the President might be able to remove them unilaterally without the Senate. Secretary Kerry's testimony was troubling on this point. When asked if the U.S. President could nullify reservations and understandings attached to a treaty by the Senate, he said he was not sure and would have to check.

6. Ratification would subject the U.S. to political accusations, irrespective of reservations.

While the committee's disregard for reservations may not modify U.S. legal obligations as a matter of law, it does have implications for U.S. foreign relations. The issue of human rights is frequently politicized at the U.N., often to the detriment of the U.S. and its allies, like Israel.

Reservations and understandings to preserve the separation of powers in our federal system or the priority of the U.S. Constitution over the CRPD will be disregarded by the committee and treated as an attempt by the U.S. to evade human rights obligations. Foreign governments and organizations may also use the reporting process to harass the U.S. with similar arguments.

7. Reasons given for ratification misunderstand international law and embarrass the U.S.

In the November 2013 hearing Secretary Kerry emphasized that joining the treaty would lead to other countries installing such things as "curb cuts, ramps, bus lifts, accessible bathrooms, tactile strips, fire alarms with flashing lights and all of the other advancements" to make it easier for Americans who work, study, and travel abroad.

So far 153 countries have ratified the CRPD, but few have undertaken any of the measures Kerry said they would. U.S. ratification will not change countries' actions or understanding of their obligations under the treaty. Even wealthy countries that could afford all those accessibility measures are not going to change their laws just to make U.S. citizens traveling abroad more comfortable. They each have different conceptions of what the treaty requires them to do.

Some proponents say U.S. businesses will benefit from demand for know-how, goods and services to assist disabled persons.

Jeremy Rabkin suggested these reasons would reflect poorly on the U.S.

"Do we really want to insist that convenience for traveling Americans (and U.S. businesses) must take priority over basic human needs in developing countries," Rabkin asked. It might make things worse for persons with disabilities. "Money for this purpose may mean less money for schools in countries with limited literacy, less money for inoculation programs in countries still facing epidemic disease, less money for food programs in countries with mass malnutrition."

8. The U.S. does not need an expert on the CRPD committee in order to lead the world.

U.S. money and experience makes U.S. influence abroad significant, much more than ratifying a U.N. treaty or having a say on who sits on the CRPD committee. The United States already works at the U.N., with other international organizations, bilaterally with foreign governments and in partnership with organizations throughout the world. As long as the U.S. has money to influence policy abroad, others will want to know what Americans say.

Getting a U.S. expert on the CRPD committee requires considerable diplomatic efforts, and there is no guarantee the expert will represent U.S. interests and values. Experts are part-time, unaccountable, and rely on U.N. staff for research and information.

9. If the U.S. ratifies the CRPD, claims that the ADA is the gold standard will ring hollow.

The world will look to the CRPD as the measure of the U.S.'s legal obligations if the U.S. ratifies the treaty, and will no longer need to look to the ADA as the highest standard of protections for disabled persons.

Even in U.S. law the ADA would be considered merely the implementing legislation of the U.S.'s expanded obligations under the CRPD. In the U.S. Constitution treaties have a higher place in the hierarchy of laws than congressional legislation.

10. The CRPD goes beyond civil and political rights to include social and economic rights.

The United States has been cautious in ratifying U.N. human rights treaties like the International Covenant on Economic, Social and Cultural Rights, where states promise to provide a panoply of goods and services to their citizens. This is rooted in U.S. principles of self-government and the U.S.'s commitment to promoting civil and political rights.

The CRPD could limit the legislative prerogative of Americans. Precisely because the U.S. takes its international legal obligations seriously, it does not want to place a straight-jacket on Americans with regard to what laws we can enact on social and economic matters.

The U.S. has traditionally maintained the best way to secure the economic and social rights of individuals is to provide strong protections to civil and political rights. This is why the U.S. has ratified the International Covenant on Civil and Political Rights and not other U.N. treaties where states undertake to provide their citizens with goods and services they may or may not be able to afford.

PRO-LIFE CONCERNS

1. The CRPD includes the controversial term “sexual and reproductive health.”

This is the first time the term occurs in binding international law. The U.S. sounded a note of warning when the U.N. adopted the CRPD that it “cannot be interpreted to constitute support, endorsement, or promotion of abortion.”

U.N. human rights treaty bodies and U.N. agencies, chiefly the World Health Organization, interpret and define the term “sexual and reproductive health” to include abortion, often denying the sovereign prerogative of countries to regulate and prohibit abortion. Consequently, the CRPD, a treaty to protect people with disabilities, will be – and has been – interpreted to allow the extermination of one class of people.

The Holy See explained why it will not support the CRPD: “It is surely tragic that . . . the same Convention created to protect persons with disabilities from all discrimination in the exercise of their rights, may be used to deny the very basic right to life of disabled unborn persons.”

2. If CRPD does not address abortion, why did senators reject amendments clarifying this?

The Senate Foreign Relations Committee has twice rejected an amendment stating the treaty does not endorse or promote abortion. If proponents are sincere that this treaty has nothing to do with abortion, such an amendment should not be controversial.

A series of amendments voted on in 2014 confirmed the concerns raised by C-FAM and four-dozen groups, ranging from disability rights to legal and international norms experts.

The committee unanimously passed three amendments, validating the need to protect Americans from the treaty encroaching on parents' right to homeschool children, on U.S. sovereignty, and to declare the UN treaty committee's recommendations have no authority over U.S. laws.

treaty was adopted at the U.N. – was quite revealing when it was defeated along party lines by pro-abortion senators. Chairman Robert Menendez's stated opposition that it may restrict services in the U.S. validated worries that this treaty is not toothless but could impact America's laws and culture. This defeat, alongside the passage of the other amendments, raises alarms that abortion advocates hope to use the CRPD to push unlimited abortion as a right.

3. The CRPD committee has pressured countries on abortion.

In its brief existence, the CRPD committee has told two countries, Spain and Hungary, that disabled babies may be aborted at any gestational age so long as other non-disabled babies may be aborted in the same time period. According to the committee, non-discrimination only means that abortion has to be meted out equally, not protecting the innocent lives of disabled persons while in the womb.

The committee did not express concern for unborn babies who are capable of feeling pain. It has acted with neglect and disregard for the right to life of unborn disabled individuals.

Other U.N. committees that monitor the implementation of U.N. human rights treaties have pressured more than 90 nations over 120 times to liberalize abortion laws by referring to the term "sexual and reproductive health" even though the term appears nowhere in the treaties they are charged with monitoring.ⁱⁱ Far from being coincidental, this is the result of a deliberate manipulation of the treaty bodies by a group of U.N. agencies and non-governmental organizations that includes UNFPA and International Planned Parenthood Federation.ⁱⁱⁱ

4. The term was illegitimately railroaded in, over objections from 23 nations.

Fifteen countries made statements in the U.N. General Assembly when the CRPD was adopted that the term did not include abortion or that it did not create any new rights. Four countries also made statements to that effect at the time of signature or accession.

These countries were dissatisfied with assurances in a footnote to a draft of the treaty that the term implied no new rights. That footnote is not part of the materials provided by President Obama for CRPD's ratification by the Senate.

5. The term is not defined in the treaty.

In 2009 former U.S. Secretary of State Hillary Clinton stated that "reproductive health includes abortion" in congressional testimony.^{iv} She repeated the same before G8 ministers the next year.^v

The only time the term has been defined by U.N. member states was at the 1994 International Conference on Population and Development in Cairo.^{vi} That definition is ambiguous. While the Cairo agreement recognizes that states may regulate and even prohibit abortion, abortion is understood to be part of sexual and reproductive health.

UNICEF interpreted the CRPD as giving children as young as 10 years of age the "right" to sexual and reproductive health services without any knowledge or consent from their parents.^{vii}

The committee that monitors the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) told all states parties in 2013 that they are obligated to make sure "that sexual and reproductive health care includes access to . . . safe abortion services."^{viii}

6. CRPD may threaten Americans' right to protect babies and mothers.

The Pain-Capable Unborn Child Protection Act, introduced in the Senate, would limit abortions nationwide after 20 weeks based on the child's ability to feel pain. The CRPD committee's opinions that abortion is legitimate as long as applied indiscriminately would be used to deny U.S. legislation to protect unborn babies and their mothers.

ⁱ Bureau of Democracy, Human Rights and Labor Requests for Proposals: Strengthening Implementation of the Convention on the Rights of Persons with Disabilities (January 9, 2014). <http://www.state.gov/j/drl/p/219515.htm> (accessed June 10, 2014)

ⁱⁱ The treaty bodies that have pressured nations to repeal restrictions and prohibitions on abortion include the 1359 committees that monitor the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR), and even the Convention Against Torture (CAT). They do so on the basis of non-binding agreements like the 1994 Cairo and the 1995 Beijing conference outcomes.

ⁱⁱⁱ "[Rights by Stealth: the Role of UN Human Rights Treaty Bodies in the Campaign for an International Right to Abortion](#)," *National Catholic Bioethics Quarterly*, vol.7, no.1 (Spring 2007). <http://c-fam.org/en/white-papers/6581-rights-by-stealth-the-role-of-un-human-rights-treaty-bodies-in-the-campaign-for-an-international-right-to-abortion>

^{iv} Prolifeinformation, *2009 U.S. Policy to Export Abortion (Rep. Chris Smith and Sec. Clinton)*, YOUTUBE (Apr. 22, 2009), <http://www.youtube.com/watch?v=-gEA97EnxE4>; *Hillary Clinton Attempts to Redefine U.N. Agreement by Adding Abortion, Experts Charge*, CATH. NEWS AGENCY, (Jan. 15, 2010, 5:14 AM), http://www.catholicnewsagency.com/news/hillary_clinton_attempts_to_redefine_u.n._agreement_by_adding_abortion_experts_charge. Cited in Susan Yoshihara, "Lost in Translation: The Failure of the International Reproductive Rights Norm," *Ave Maria Law Review*, 11:2, footnote 39, page 375. <http://c-fam.org/images/Staff/AveMariaLawReviewv11i2.Yoshihara.final.pdf>

^v Addressing the Canadian government in March 2010 regarding its maternal and child health initiative for the G8, Hillary Clinton stated, "You cannot have maternal health without reproductive health. And reproductive health includes contraception and family planning and access to legal, safe abortion." Jessica Arons & Shira Saperstein, *At G8, Obama, Clinton Must Speak with one Voice for Abortion Access*, THE NATION, June 25, 2010, <http://www.thenation.com/article/36667/g8-obama-clinton-must-speak-one-voice-safe-abortion-access#>. Cited in Susan Yoshihara, "Lost in Translation: The Failure of the International Reproductive Rights Norm," footnote 117, page 392.

^{vi} International Conference on Population and Development Program of Action paragraphs 7.6 and 8.25. <http://www.unfpa.org/public/cache/offonnce/home/sitemap/icpd/International-Conference-on-Population-and-Development/ICPD-Summary.jsessionid=601A58E091A75BA2A74F1ADBD79C0589.jahia01>

^{vii} UNICEF director Tony Lake asserted in the agency's May 2013 report, "Under the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD), all children have the right to the highest attainable standard of health. It follows that children with disabilities are equally entitled to the full spectrum of care – from immunization in infancy to proper nutrition and treatment for the ailments and injuries of childhood, to *confidential sexual and reproductive health information and services during adolescence and into early adulthood*. Equally critical are such basic services as water, sanitation and hygiene." UNICEF, *State of the World's Children 2013*, page 23. Emphasis added.

http://www.unicef.org/sowc2013/files/SWCR2013_ENG_Lo_res_24_Apr_2013.pdf

^{viii} <http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf>