



Ratification of the UN Convention on the Rights of the Child by the United States of America Research

September 2016



● **NautaDutilh**

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1. Introduction

1.1 KidsRights

NautaDutilh has received a request from KidsRights to study the United States of America ('U.S.A.')

's attitude regarding the Convention on the Rights of the Child ("CRC").

Each year, KidsRights publishes the annual global KidsRights Index, which ranks how countries adhere to and are equipped to improve children's rights. The KidsRights Index is an initiative of the KidsRights Foundation, in cooperation with Erasmus University Rotterdam; Erasmus School of Economics and the International Institute of Social Studies. According to the Index, there is the only country in the world that has not ratified the CRC. This means that the U.S.A. has not committed itself to incorporate the rights of the child into its national laws. In 2014, Neha Gupta, an American, won the Children's Peace Prize. Neha and KidsRights received questions from the Netherlands and other countries asking why the U.S.A. had signed the CRC, but has not ratified it. The U.S.A.'s population includes no fewer than 95 million children. The question now is how their rights are being safeguarded in the U.S.A.

1.2 KidsRights' request

In order to be able to answer this question, KidsRights has requested NautaDutilh to perform desk research into the following questions:

1. **Why** has the U.S.A. not ratified the CRC?
 - a) What are the formal and informal reasons given?
 - b) What is needed for the ratification? What processes are followed for the ratification of a convention or treaty in general?
 - c) To what extent can the U.S.A.'s failure to ratify the treaty be explained by its federal structure?
2. **How** are children's rights safeguarded in the U.S.A.?
 - a) Does the U.S.A. have federal and/or state laws that are modelled on - or formulated similarly to - the CRC that could still safeguard children's rights in the U.S.A.?
 - b) If so, are there significant differences between those laws and the CRC and, in that case, what are the reasons for these differences?
3. **What** about the future?
 - a) Is there a lobby in the U.S.A. that advocates the country's ratification of the CRC?
 - b) If so, what associations are behind this lobby?
 - c) What are the reasonable expectations for the future?

1.3 NautaDutilh's Study

NautaDutilh found several colleagues **enthusiastic** to perform this desk study of which this brochure is the result. It was decided to keep the brochure short, clear and simple, but to also include hyperlinks to background information.

For more information on KidsRights please click [here](#).

For more information on NautaDutilh please click [here](#).

2. Executive Summary

The Convention on the Rights of the Child ("CRC") is an **international treaty** adopted within the framework of the United Nations. It develops a comprehensive approach to children's rights, in all areas of life.

The **U.S.A.** is the last country in the world still not bound by the CRC. There is no official statement which explains why the U.S.A. has not ratified the CRC. Apparently, it would be **difficult** for the U.S.A. **to comply with, implement and enforce the CRC** effectively. Ratification of the CRC would erode the American sovereignty, some say. In addition, according to some opponents, if the U.S.A. were bound by the CRC, it would **conflict with the federal structure** of the U.S.A. In addition to the constitutional objections to the ratification of the CRC mentioned above, some obstacles to the ratification of the CRC can be found in the public opinion on the issue of parental rights.

Our analysis shows that none of the constitutional or substantive law issues advanced by opponents of the ratification are self-sufficient to explain the failure of the U.S.A. to ratify the CRC. The real reasons for the U.S.A.'s lack of ratification of the CRC seem to be more **political, philosophical and sociological** than they are legal.

The future is **hard to predict**. Already in back 2000, **more than 300 non-governmental organizations** supporting the ratification of the CRC by the USA were identified.

Nevertheless, in the current political climate, in which over two thirds of Senators are publicly opposed to the ratification and a substantial part of the public opinion, supported by strongly influential lobbies, sees the CRC as a threat for American families, it is unlikely that the President will submit the CRC to the Senate any time soon.

If the U.S.A. was able to overcome the political objections and ratify the CRC, this would send a **strong signal** to the international community. Indeed, the CRC would become the first ever universally ratified human rights treaty, a "**law of the world**", to the benefit of all children.¹

Let us see what happens after the next Presidential election in November 2016...

¹ S. ALMOG & A. L. BENDOR, "The UN Convention on the Rights of the Child meets the American Constitution: Towards a supreme law of the world", 11 *Int'l J. Child. Rts.* 284, 2003-2004.

3. What is the CRC?

The CRC is an **international treaty** adopted within the framework of the United Nations. It develops a comprehensive approach to children's rights, in all areas of life. The CRC was adopted by the General Assembly of the United Nations on 20 November 1989 and entered into force in 1990. To this date, the CRC is the most widely ratified human rights instrument in the world, with 196 States Parties.

The CRC consists of 54 Articles and provides children with civil and political, but also social and cultural, rights. The CRC defines the child as "*every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier*".

Please find the text of the CRC [here](#).

In addition to the CRC, **two optional protocols** were adopted in 2000 and entered into force in 2002: the Optional Protocol on the Involvement of Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. The two protocols are independent multilateral agreements under international law and can therefore be ratified separately from the CRC itself. As their name suggests, these protocols contain an additional set of rights intended to protect children from trafficking, prostitution and pornography, as well as in situations of armed conflict.

Please find the text of the two optional protocols [here](#) and [here](#).

Since its entry into force in 2014, a **third optional protocol** provides for an individual complaints mechanism, which means that children whose rights protected by the CRC are infringed upon may directly petition the Committee on the Rights of the Child, the treaty body set up by the CRC, in order to obtain redress in individual cases.

Please find the text of the third optional protocol [here](#).

4. Why has the U.S.A. not ratified the CRC?

President Obama declared during his election campaign that *"it is embarrassing to find ourselves [the United States] in the company of Somalia, a lawless land. I will review this [treaty] and other treaties to ensure that the United States resumes its global leadership in human rights."*

But whereas Somalia has ratified the CRC meanwhile, the U.S.A. is the last country in the world still not bound by the CRC, although it played an important role in the drafting process and ratified the two optional protocols to the CRC in 2002. What are the reasons for this?

Please find president Obama's statement [here](#).

4.1 Constitutional reasons

There is no official statement which explains why the U.S.A. has not ratified the CRC. We were able to find several statements and sources that provide some insight into the reasons given by government officials:

1. Apparently, it would be difficult for the U.S.A. to comply with, implement and enforce the CRC effectively.

According to one argument quoted by Amnesty International U.S.A. against the ratification, the rights guaranteed by the CRC are far-reaching and it would therefore require a significant effort of the authorities of the U.S.A to implement the CRC. Amnesty's information on the CRC can be found [here](#). A report of the U.S.A. Congressional Research Service mentions that many aspects of the CRC would need to be implemented by state authorities and that it is a source of concern that states would not implement the CRC correctly. Please find the CRS report [here](#) (page 7).

Furthermore, the most important enforcement mechanism of the CRC consists of reporting on the measures taken by the State Party, for which reason opponents of ratification contend effectuation of the Convention would be complicated. For example, countries such as China, Congo and Sudan - all bound by the CRC - do not have a good reputation in the field of children's rights, according to the opponents. These arguments are discussed in the mentioned [CRS report](#) (page 15).

In addition, some expect that the ratification of the CRC would increase the number of lawsuits, at the cost of public resources. This argument is, for instance, named in an article of The Economist, which can be found [here](#).

2. Ratification of the CRC would erode the American sovereignty, some politicians say.

The CRC would infringe on the competency of both the federal and the state legislators and could therefore affect the sovereignty of the U.S.A. Opponents of the ratification often refer to [Article 6](#) of the Constitution which provides for supremacy of international treaties. This argument is discussed in the article of [The Economist](#) and in the [CRS report](#) (pages 8-9).

3. In addition, according to some opponents, if the U.S.A. were bound by the CRC, it would **conflict with the federal structure** of the U.S.A.

Some rights guaranteed by the CRC could have effect on matters which are primarily within the competencies of the states, such as education, child labour, parental custody or juvenile criminal law. The CRS report mentions these arguments [here](#) (pages 8-9). For example, if the CRC were in force in the U.S.A., life imprisonment for minors would not be possible anymore. This can be read [here](#) on the website of the Centre for the Human Rights of Children of Loyola University Chicago. Furthermore, some fear that the ratification of the CRC would increase the power of the federal state and would violate the [10th amendment](#) of the Constitution. This is discussed in the [CRS report](#) (page 7) as well.

4.2 Alternative reasons

In addition to the constitutional objections to the ratification of the CRC mentioned above, some obstacles to the ratification of the CRC can be found in the public opinion on the issue of parental rights.

1. In American society a strong **fear** seems to exist that the CRC would **undermine parental authority**. For example, the right to freedom of expression (Article 13 of the CRC) would give children the right to access television programmes, pornography or music, in contradiction to the wish of their parents. Bruce Lesley, President of First Focus & First Focus Campaign for Children discusses these arguments in The Huffington Post and cites opponents of the ratification. The article can be found [here](#). It is illustrative that **amendments to the constitution** were proposed to guarantee "*the liberty of parents to direct the upbringing, education, and care of their children*", which would, according to Lesley, be diametrically opposed to the children's rights laid down in the CRC. Please find the proposed amendments [here](#) and [here](#). The argument is also used by ParentalRights.org, an organization that campaigns in favour of the proposed amendments and against ratifying the CRC. More information about this organization can be found on their [website](#).
2. Furthermore, the opponents argue that the CRC would guarantee children a **right to abortion**, although this would be inconsistent with the prevalent public opinion in American society. They base this supposed right to abortion on Article 16 of the CRC which lays down a right to privacy. The issue of abortion in relation the CRC is discussed in the [CRS report](#) as well (pages 12-13).
3. In addition, some fear that the CRC would give children the possibility to **choose their own religion**, even if this religion is different from the one they were brought up in. The argument is also used by ParentalRights.org and is discussed in an article of [The Washington Post](#), as well as in the [CRS report](#) (page 10).

As a result of these arguments, Alison Dundes Renteln, Associate Professor of Political Science at the University of Southern California concludes that the CRC has an **'anti-family' and 'anti-parent' image** in the American society. Please find Renteln's article [here](#) (page 635).

However advocates of the ratification consider that these arguments against the ratification of the CRC are based on misunderstandings as the rights guaranteed by the CRC are **not meant to undermine parental custody** or family structures, but to protect children. As a result of these misconceptions, a strong opposition against ratifying the CRC exists in American society. These conclusions of the proponents of the ratification of the CRC can be found [here](#) in the CRS report (pages 11 and 13).

According to the proponents, the same applies to the constitutional objections discussed above. It is said by the supporters of the ratification that American law is already largely in line with the provisions of the CRC. For this reason, the ratification of the CRC would not change much and would not constitute any real threat to the sovereignty of the U.S.A. Please find their reasoning in the [CRS report](#) (page 9). Furthermore, advocates contend that experiences in other countries have shown that the CRC has brought further improvements, for example by raising the age of capital punishment. Please find this argument on the [website](#) of the Centre for the Human Rights of Children of Loyola University Chicago. Other human rights conventions would have improved American law as well, as can be read in the [article](#) of The Economist.

With regard to the federalism and sovereignty arguments, it is contended that the U.S.A. generally ratify human rights conventions under the condition that they do not overrule the American laws in force. Ratifying a treaty can be accompanied by reservations, understandings and declarations that address the objections against the CRC. This is explained further in the [CRS report](#) (page 8). In addition, according to Child Rights Campaign, other human rights treaties did not erode the American sovereignty or federal structure either, since human rights conventions are generally non-self-executing. This means that implementation by federal or state laws is required to give the convention effect in the American legal system. Please find the information of Child Rights Campaign, an organization in favour of the ratification of the CRC, [here](#). Moreover, for other federal countries comparable to the U.S.A., such as Australia or Canada for example, ratification of the CRC has not been a problem, the advocates say. This argument is discussed in the [CRS report](#) (page 8).

5. The U.S.A.'s federal structure as a cause of failure?

The constitutional reasons invoked by the U.S.A. not to ratify the CRC (i.e. enforcement issues, sovereignty and federalism) are all to a certain extent related to the political **structure of the U.S.A** and the division of powers between the federal government (at the level of the entire U.S.A.) and state governments (the governments of the 50 constituent states of the U.S.A.)

Some opponents of the ratification of the CRC fear that the ratification could give too many powers to Congress (the legislature of the Federal government), on the one hand, and to federal courts, on the other hand, thereby violating the U.S.A constitutional tradition.

In order to assess to what extent these reasons can effectively explain the U.S.A's failure to ratify the CRC, it is necessary to further examine the ratification process and the constitutional allocation of powers under U.S.A law.

5.1 Ratification and implementation of the CRC into U.S.A. law

Within the ratification process, in a broad sense, the ratification as such must be distinguished from the effective implementation of the treaty into national law.

5.1.1 Ratification

Ratification is the legal act by which a national State becomes party to a treaty and hence legally bound by its provisions.

Before ratifying an international treaty national States usually sign the final text of the treaty, which is accomplished by the executive branch. The **signature of a treaty** does not make it legally binding for the signing State as a treaty only acquires binding force upon ratification. Nevertheless, the signature normally implies that the State endorses the principles of the convention and will not take any action that goes against its objectives.²

The CRC was signed by the Clinton administration back in 1995. Paradoxically, the U.S.A. was very active in the drafting of the CRC under the Reagan administration.³ Many authors even point out that some of the most important articles of the CRC were initiated by the U.S.A delegation (those provisions are listed in an IPS article, available [here](#).⁴)

Once a treaty is signed, national States generally contemplate ratifying it, even if they are not compelled to do so within a specific time frame.

Regarding **ratification** in the U.S.A., a treaty can only be ratified by the President, if the Senate, one of the two legislative assemblies made up of State representatives (two per State), has given its approval to ratification, what is called "advice and consent". This requires a qualified majority of **two thirds of the**

² J.C. PHILLIPS, Children's Rights to Health Care and Participation: United States Implementation of the UN Convention on the Rights of the Child, 30: *Cap. U. L. Review* 694, 2002.

³ H. DAVIDSON, "Does the U.N. Convention on the rights of the child make a difference?", *Michigan State International law Review*, Vol. 22.2 498, 2014.

⁴ R.G. WILKINS, A. BECKER, J. HARRIS, D. THAYER, "Why the United States should not ratify the Convention on the rights of the Child, 22, *St. Louis U. Pub. L. Rev.* 425, 2003.

Senate's members, pursuant to Article II, para. 2, of the Constitution (available [here](#)). Up to now, no President has ever submitted the CRC to the Senate, given the open hostility of many republicans to the CRC and the fact that, as late as 2011, more than a third of the Senators expressed their opposition to the CRC in a resolution (see the Senate resolution [here](#))⁵.

In practice, the State Department for Foreign Affairs prepares the documents to be transmitted to the Senate for its approval. Those documents include a suggestion of possible declarations, reservations and understandings that could be attached to the treaty (RUD's).⁶ Reservations are statements from national States meant to exclude or modify the legal effect of some provisions of the Treaty, whereas the objective of understandings is rather to clarify the scope of a provision.⁷ For instance, the U.S.A. attached [several RUD's](#) to the ratification of the International Covenant on Civil and Political Rights

The U.S.A typically makes two types of reservations and understandings upon ratification:

- A "non-execution reservation", by which the U.S.A. specifies that the treaty requires implementing legislation in order to be enforceable.⁸ The issue of implementation of treaty is further discussed in section 4.1.2.
- "Federalism understandings", according to which the treaty will not supersede the division of powers as set forth in the Constitution, meaning that its implementation would be the responsibility of the States or of the Federal State depending on their respective internal competencies.⁹

5.1.2 Implementation

When a treaty is ratified, its effect in national States will depend on whether the treaty is **self-executing** or not. Even non-self-executing treaties have legal force. These two issues will now be developed with regard to the CRC in particular.

Legal force of the CRC

The CRC is a **legally binding instrument** even if it does not include any strong enforcement mechanism.¹⁰ In other words, it is compulsory for States Parties to abide by it, although infringements do not (strictly speaking) entail any penalty. The Committee on the Rights of the Child's interpretations of the CRC have no authority as such since the Committee is not competent to impose any sanctions on States Parties that are deemed to have violated the CRC.

Even though the third Protocol to the CRC - allowing individual complains to be filed against a State in front of the Committee - entered into force in 2014, its ratification remains optional. So far, only 27 States have ratified this Protocol.

⁵ H. DAVIDSON, "Does the U.N. Convention on the rights of the child make a difference?", *Michigan State International law Review*, Vol. 22.2 505, 2014.

⁶ H. DAVIDSON, "Does the U.N. Convention on the rights of the child make a difference?", *Michigan State International law Review*, Vol. 22.2 507, 2014.

⁷ S. ALMOG & A. L. BENDOR, "The UN Convention on the Rights of the Child meets the American Constitution: Towards a supreme law of the world", 11 *Int'l J. Child. Rts.* 282, 2003-2004.

⁸ H. DAVIDSON, "Does the U.N. Convention on the rights of the child make a difference?", *Michigan State International law Review*, Vol. 22.2 524, 2014). The self-execution issue will be further discussed hereunder (point 4.1.2, section 1).

⁹ E. BARTHOLET, "Ratification by the United States of the Convention on the Rights of the Child: Pros and Cons from a Child's Right Perspective", *AAPSS* 633, 4, 2011.

¹⁰ H. DAVIDSON, "Does the U.N. Convention on the rights of the child make a difference?", *Michigan State International law Review*, Vol. 22.2 512, 2014.

As a consequence, the CRC remains one of the weakest international human rights instruments, which likely explains the high number of ratifications it has received.¹¹

Despite this conclusion it should be noted that the reporting obligation and the recommendations of the Committee can play an important political role and sometimes result in legislative reforms. Please find [here](#), an overview of legal reforms stemming from the Committee's recommendations.

The question as to whether the CRC is **self-executing** is much more debatable.

Self-executing character of the CRC

A self-executing treaty is a "self-sufficient" treaty in the sense that, once ratified, the State parties' nationals directly enjoys the rights and obligations deriving from the treaty and can rely on its provisions before national courts. On the contrary, a non-self-executing treaty is not binding unless national implementing legislation has been adopted and cannot, as such, be enforced in courts by private parties.¹²

It is common that within a Treaty, some provisions are self-executing whereas others are not. According to the general principle of international law, a provision is not self-executing when its wording reflects an intention of becoming effective only after the adoption of implementing legislation.¹³ As an illustration, the wording of Article 37, (a) of the CRC can be compared to the wording of Article 32:

Article 37 CRC	Article 32 CRC
<p>States Parties shall ensure that:</p> <p>(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;</p>	<ol style="list-style-type: none"> 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. 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

It flows from Article 32 CRC that States Parties have to determine how to effectively implement the rights set forth in this article by, for example, creating specialised public services, providing for discounted rates to access cultural institutions such as museum on basis of the age, etc.

Should a States Party fail to implement this provision into national law, it will be held responsible from an international law point of view, even though we have seen that no clear sanction is provided.

¹¹ Y. M. DUTTON, "Commitment to international human rights treaties : the role of enforcement mechanisms, 34 *U. Pa. J. Int'l L.* 6, 28 and 34, 2013.

¹² M. J. GARCIA, International Law and Agreements: Their Effect Upon U.S. Law, www.crs.gov, 18 February 2015, p. 12.

¹³ M. J. GARCIA, International Law and Agreements: Their Effect Upon U.S. Law, www.crs.gov, 18 February 2015, p. 12.

On the contrary, Article 37, (a) of the CRC, and especially the second sentence regarding capital punishment and life imprisonment, appears clear and precise enough to have direct effect in national law. Nevertheless, even this article can be subject to discussions. For example one could argue that States Parties still have to determine what exactly should be considered a degrading treatment and how the prohibition of degrading treatments conflicts with the freedom to take decisions regarding one's own body, etc. This demonstrates that self-execution is a sensitive issue that often leads to heated debates at an international level.

Indeed, according to some authors and lobbies some of the CRC provisions would have a self-executing character upon ratification.¹⁴ This is the point of view of ParentalRights, an organization strongly opposed to the ratification of the CRC by the U.S.A (Please find arguments of ParentalRights against the CRC [here](#)).

Others argue that none of the CRC's provisions would be enforceable without further national implementation.¹⁵ These arguments stems from the wording of Article 4 of the CRC according to which "*States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention*".

According to a third and somewhat different argument, the CRC would in no case have a self-executing character as the U.S.A would necessarily make a so-called "non-execution reservation" according to which the CRC must be implemented into U.S.A law (see [here](#) the opinion of the Child rights international network, a pro-CRC organization). In other words, by attaching such a reservation, the U.S.A. would ensure that the CRC would not have any effect internally, as long as no national legislation would "translate" the content of the treaty into national law. One must however be careful with such a statement as it is by no means certain that the U.S.A could unilaterally decide on the self-executing character of a UN convention. It remains that, as mentioned above, there is no legal body likely to sanction a State that would fail to comply with treaty provisions considered as self-executing at an international level. The self-execution issue will be further discussed below with regard to the issue of jurisdiction of the courts.

The competency to implement the CRC

Working on the assumption that the CRC does have to be implemented into U.S.A law, another difficulty lies in determining what legal entity within the U.S.A. would be entitled to adopt implementing legislation, thereby granting the CRC real effectiveness.

According to the constitutional division of legislative powers between the state level and the federal level, **the competency of the federal Congress is limited** to the subjects listed in Article I, section 8, of the U.S.A. Constitution. Consequently, states' governments can legislate on any subjects not included in this list: the Tenth amendment grants to the States what is called "**residual powers**".

Nevertheless, pursuant to Article IV of the U.S.A Constitution (the "supremacy clause"), the Constitution, federal laws and treaties take precedence over state law, meaning the law of a particular state interfering with a federal legislation could be held unconstitutional.¹⁶

¹⁴ M. P. FARRIS, Nannies in Blue Berets: understanding the United Nations Convention on the Rights of the Child: a legal analysis", <https://www.hslda.org>, 2009, p. 106.

¹⁵ E. BARTHOLET, "Ratification by the United States of the Convention on the Rights of the Child: Pros and Cons from a Child's Right Perspective", *AAPSS* 633, 4, 2011.

¹⁶ G. P. McALINN, P. ROSEN and J.P. STERN, An introduction to American law, *Carolina Academic Press*, 2010, p. 12 and 15.

Family, children and education are typically subject-matters falling outside the scope of the Congress' competency (see the Supreme Court's ruling in *United States v. Lopez*.)¹⁷ Children's rights depend on a wide array of legislations that vary from State to State, as there is no such thing as a "Bills of Rights of Children" in the U.S.A Constitution.¹⁸ One could think that the competency to implement the CRC would accordingly belong to each of the 50 States of the United States.

Despite this clear-cut distinction between powers in the federal system, the power to enact relevant legislation to implement the CRC would still, according to some authors, rest with the Congress.

This opinion draws on the *Missouri v. Holland* case, in which the Supreme Court held that the Congress had the power to pass legislation to comply with an international treaty regarding migratory birds even though the subject-matter of the treaty itself fell out of the scope of the powers attributed to the federal state by the Constitution. The Supreme Court based its reasoning on the "necessary and proper clause" referred to in Article I, section 8, of the U.S.A. Constitution, according to which the Congress has the power to make all laws necessary for carrying into execution its enumerated powers.¹⁹ In other words, since Congress (and more specifically the Senate) has the power to ratify treaties, it should "necessarily" have the power to implement them.

Citing *Missouri v. Holland*, some scholars argue that the implementing legislation of the CRC would have to be enacted by the Congress.²⁰ Others similarly rely on Article 4 of the CRC that places the responsibility to implement the CRC on States Parties (and not on internal legal entities). These additional powers that would potentially be granted to Congress upon ratification of the CRC are one of the major obstacles to its ratification.

In our opinion, this argument must however be qualified for three major reasons:

- It is not certain that the ruling in *Missouri v. Holland*, regarding migratory birds, can actually be transposed to any treaty, regardless of its subject-matter.²¹ Family law (in a broad sense) - and therefore the provisions of the CRC - is indeed a particularly sensitive matter that does not *per se* have cross-border implications.²²
- One should not confuse the responsibility of the U.S.A. (as a State Party) to comply with a treaty, from an international law perspective, with the issues of which legal entity is effectively competent to adopt implementing legislation under domestic law.²³ Difficulties arising from the co-existence of these two different legal orders could be met by the "federalism understandings" mentioned above (according to which the Convention will be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction and otherwise by the state and local governments. That would prevent the Congress from encroaching on states' competencies.

¹⁷ S. KILBOURNE, "The wayward Americans - why the USA has not ratifies the UN Convention on the Rights of the Child", 10 *Child & Fam. L. Q.* 245 1998.

¹⁸ H. DAVIDSON, "Does the U.N. Convention on the rights of the child make a difference?", *Michigan State International law Review*, Vol. 22.2 524, 2014.

¹⁹ S. KILBOURNE, "The wayward Americans - why the USA has not ratifies the UN Convention on the Rights of the Child", 10 *Child & Fam. L. Q.* 246 1998.

²⁰ S. KILBOURNE, "The wayward Americans - why the USA has not ratifies the UN Convention on the Rights of the Child", 10 *Child & Fam. L. Q.* 246 1998.

²¹ M. J. GARCIA, International Law and Agreement: Their Effect Upon U.S. Law, www.crs.gov, 18 February 2015, p. 13)

²² S. KILBOURNE, "The wayward Americans - why the USA has not ratifies the UN Convention on the Rights of the Child", 10 *Child & Fam. L. Q.* 246 1998.

²³ M. J. GARCIA International Law and Agreements: Their Effect Upon U.S. Law, www.crs.gov, 18 February 2015, p. 13)

- In a subsequent case, *Reid v. Covert*, the Supreme Court held that treaties must comply with the Constitution, meaning that **the Congress cannot circumvent constitutional limitations of powers by ratifying a treaty**.²⁴ This argument is put forward by Child Rights Campaign, an organization supporting the ratification of the CRC, available [here](#).

The competency to enforce the CRC

The U.S.A. judicial system is characterized by a **horizontal federalism**, i.e. the existence of a dual court system, at federal and state level.

Federal courts have **limited jurisdiction**, meaning that they can hear lawsuits only in two situations: diversity jurisdiction (controversies between citizens from different States) and **Federal questions**, i.e. cases arising under the Constitution, the laws of United States and Treaties.

State courts have jurisdiction in all other subject matters, it being understood that lawsuits involving a federal question can also be brought before a state court.²⁵ Moreover, state courts must also comply with the Constitution, the Treaties and all laws passed by the Congress.²⁶

This means that regardless of which legislative body is deemed competent to implement the CRC, cases would also be able to be brought before state courts, and state courts would have to set aside state laws contrary to the CRC and/or its implementing legislation.

5.2 The U.S.A.'s federal structure, a real cause of failure?

Given the above, should the U.S.A.'s federal structure really be considered as an obstacle to the ratification of the CRC?

On the one hand, it is true that power to ratify the CRC lies on the Senate which is made up of **State representatives**. Since family and child law is a competency of the U.S.A.'s individual states, the existence of **state laws potentially conflicting with the CRC** could explain reluctance of the some senators to give their "advice and consent" to the President regarding the ratification. Differences between the CRC and U.S.A. substantive law are further examined in section 5.2.

On the other hand, as explained in Part 6 of this report, U.S.A. law should not necessarily be considered as fundamentally in contradiction with the provisions of the CRC.

It is also said the Senate is reluctant to give its "advice and consent" on the ground that legislative implementation and judicial enforcement of the CRC are likely to happen exclusively at the **federal level, to the detriment of individual states**.²⁷

According to this argument (to be found mainly on [ParentalRights website](#)):

- the Congress would be able to pass legislation falling outside its enumerated powers and preempt (potentially conflicting) state law and ;

²⁴ R.G. WILKINS, A. BECKER, J. HARRIS, D. THAYER, "Why the United States should not ratify the Convention on the rights of the Child, 22, *St. Louis U. Pub. L. Rev.* 433, 2003.

²⁵ G. P. McALINN, P. ROSEN and J.P. STERN, An introduction to American law, *Carolina Academic Press*, 2010, p. 150.

²⁶ G. P. McALINN, P. ROSEN and J.P. STERN, An introduction to American law, *Carolina Academic Press*, 2010, p. 26.

²⁷ M. P. FARRIS, Nannies in Blue Berets: understanding the United Nations Convention on the Rights of the Child: a legal analysis", <https://www.hslda.org>, 2009, p. 95 and 96.

- federal courts would have the power to decide whether a provision of the CRC is self-executing and could enforce those rights.

Regarding the question of **court competency**, we have seen that this argument is not entirely correct. Even though federal courts do have jurisdiction on "federal questions" - which, in principle, covers questions arising from a treaty - this competency does not prevent state courts from hearing such cases.

Moreover, in case of a non-execution reservation, none of the CRC provisions would be considered as self-executing, with no court being able to hold differently.

Legislative implementation of the CRC is much more unclear under current U.S.A case law. A doctrine indeed tends to recognize that the Congress would have the power to legislate even in the area of family law, when it comes to implementing a treaty. In any case, a "federalist understanding" (in the sense explained above) could tackle this issue, allowing federal and state governments to retain their respective internal competence.²⁸

It should nevertheless be noted that a failure to implement the CRC resulting from the lack of implementing legislation at a state level would entail the **international liability of the U.S.A** as a whole, pursuant to Article 27 of the Vienna Convention.²⁹

To avoid international liability, the U.S.A. could also make declarations, reservations and/or understandings (RUD's) in order to **exclude some problematic provisions** of the CRC with regard to U.S.A law. For example, when the U.S.A. ratified the International Covenant on Civil and Political Rights in 1978, the "advice and consent" was given by the Senate with a reservation to Article 6.5 allowing the U.S.A to impose the death penalty on underage offenders (Please find all reservations made by the U.S.A with respect to this treaty [here](#)).³⁰ The same mechanism could therefore be used with regard to Article 37 of the CRC, which is almost identical to Article 6.5 of the ICCPR. Capital punishment for underage offenders in the U.S.A. is further analysed in section 6 of Part 6.

In any event, reservations are not capable of resolving any conflict between the provisions of the CRC and U.S.A. law. Indeed, Article 51.2 of the CRC provides that "*A reservation incompatible with the object and purpose of the present Convention shall not be permitted*", thereby recalling a general principle of international law. Therefore, reservations affecting too many and/or essential provisions of the CRC would be considered as invalid, even if history shows that other States Parties very rarely denounce reservations of another States Parties, for both political and practical reasons.³¹

Of course, the need for any RUD's depends on the U.S.A substantial law, which is briefly discussed hereunder in Part 6.

²⁸ E. BARTHOLET, "Ratification by the United States of the Convention on the Rights of the Child: Pros and Cons from a Child's Right Perspective", *AAPSS* 633, 4, 2014.

²⁹ M. P. FARRIS, Nannies in Blue Berets: understanding the United Nations Convention on the Rights of the Child: a legal analysis", <https://www.hslda.org>, 2009, p. 104.

³⁰ S. ALMOG & A. L. BENDOR, "The UN Convention on the Rights of the Child meets the American Constitution: Towards a supreme law of the world", 11 *Int'l J. Child. Rts.* 279, 2003-2004.

³¹ S. ALMOG & A. L. BENDOR, "The UN Convention on the Rights of the Child meets the American Constitution: Towards a supreme law of the world", 11 *Int'l J. Child. Rts.* 283, 2003-2004.

6. Safeguarding children's rights in the U.S.A.

6.1 The U.S.A.'s. legal structure for safeguarding children's rights

As the U.S.A. has not ratified the CRC the question arises whether there are **any federal and/or state laws** that are modelled on - or formulated similarly to - the CRC that could still safeguard children's rights in the U.S.A. In short, the answer to this question is **yes**.

Even if there is no evidence of legislators in the U.S.A. using the rights laid out in the CRC directly, as a basis for adopting national or state legislation, there is a large array of legislation protecting the rights of the child in the U.S.A.

The main difference with the CRC is that the U.S.A. has never developed a unified approach to children's rights. The rights of the child are not contained in a single legal instrument but rather in **an intricate web of social legislation**.³² The result is that it is not entirely clear what the scope of children's rights in the U.S.A is and whether children's rights are protected more or less effectively under U.S.A. law than under the CRC.

Starting in the 19th Century, the State has had an increasingly important role in protecting the rights of the child in the U.S.A. and there are now an **uncountable number of provisions**, at federal and at state level, protecting children's rights. One landmark piece of legislation which may be mentioned in this regard is the Child Abuse Prevention and Treatment Act 1974.

The rights of children in the U.S.A. are not only protected by federal and state legislation *per se* but also by the Constitution, as interpreted by the **Supreme Court of the U.S.A.** For example, in the Supreme Court's well-known decision in *Tinker v. Des Moines Independent Community School District*, the Court held that children are persons under the Constitution and have fundamental rights, including the right to freedom of expression.

Please find the ruling by the Supreme Court [here](#).

In any event, it is apparent that children in the U.S.A. are by no means (totally) unprotected due to the lack of ratification of the CRC. There are many **points of similarity** between U.S.A. law on the rights of the child and the CRC. Amongst others, both U.S.A. law and the CRC provide that children have the right to be provided with proper shelter, subsistence, education and medical care.³³

³² R. LAWRENCE-KARSKI, "Legal rights of the child: the United States and the United Nations Convention on the Right of the Child", *The International Journal of Children's Rights* 4: 19, 1996.

³³ S. ALMOG & A. L. BENDOR, "The UN Convention on the Rights of the Child meets the American Constitution: Towards a supreme law of the world", 11 *Int' J. Child. Rts.* 280, 2003-2004.

6.2 Differences with the CRC

Notwithstanding the similarities between the rights of the child under the laws of the U.S.A. and under the CRC, there are also **some significant points of departure**, not the least because of the CRC's unified, systematic, approach to the protection of children's rights.³⁴

The main difference between the U.S.A. law and the CRC is generally attributed to the presence of a number of **guiding concepts** and principles in the CRC, as well as to a limited number of more **specific provisions** that are allegedly incompatible with U.S.A. law.

Hereunder, we will briefly examine the main concepts used by the CRC before analysing two specific issues that are often mentioned in discussions regarding the ratification of the CRC by the U.S.A.: the prohibition of capital punishment for juvenile offenders and the right to abortion.

The concepts of "best interests" and "evolving capacities" of the child

Article 3 of the CRC states that "*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*". Articles 9, 18, 20, 21, 37 and 40 of the CRC also refer to the "best interests of the child" and thereby recognise the child "*as an individual, apart from his or her family context*".³⁵

Articles 5 and 14 of the CRC, on the other hand, refer to the concept of "**evolving capacities**" of the child. According to the CRC, these evolving capacities should be taken into account in order to determine what is appropriate for the care, freedom and protection of the child at each age.³⁶

Both concepts are fundamental to understanding the philosophy of the CRC and have been criticised by opponents of the ratification, which consider that they are contrary to U.S.A. law.

Although the concept of the "best interests of the child" has in fact been used in U.S.A. law for a long time in a number of matters such as adoption, divorce custody, delinquency, education, etc., there is **no uniformity among states** as to whether this concept is the standard in these areas or not.³⁷ Under current U.S.A. law, situations could therefore arise where the best interests of the child are not taken into account.

In other words, the differences between U.S.A. law and the CRC should not be over-exaggerated but **U.S.A. law would likely have to be amended** in some areas if the CRC was ratified in order to ensure

³⁴ R. LAWRENCE-KARSKI, "Legal rights of the child: the United States and the United Nations Convention on the Right of the Child", *The International Journal of Children's Rights* 4: 34, 1996.

³⁵ R. LAWRENCE-KARSKI, "Legal rights of the child: the United States and the United Nations Convention on the Right of the Child", *The International Journal of Children's Rights* 4: 35, 1996.

³⁶ R. LAWRENCE-KARSKI, "Legal rights of the child: the United States and the United Nations Convention on the Right of the Child", *The International Journal of Children's Rights* 4: 35, 1996.

³⁷ R. LAWRENCE-KARSKI, "Legal rights of the child: the United States and the United Nations Convention on the Right of the Child", *The International Journal of Children's Rights* 4: 36, 1996.

that the best interests of the child are taken into account in all areas of law regarding children, in all 50 states.

Contrary to the opinion of some critics of the CRC, the latter does not require the best interests of the child to be the **only consideration** in decisions concerning the child. Indeed, Article 3 of the CRC only states that the best interests of the child must be "*a primary consideration*" in all actions concerning children. This means that States parties are in no way precluded from taking into account, for instance, the interests of the parents and the wider family.

The same applies to the concept of "evolving capacities" of the child, which is not alien to U.S.A. law but is not (yet) used consistently, as a standard, in all areas of law. U.S.A. law has however increasingly granted children participation rights and self-determination rights depending on the age of the child even if not in such a broad manner as required by the CRC.

While the CRC tries to carefully balance both protection and participation rights, U.S.A. law is still currently more focused on protection. In the U.S.A., the latter is traditionally ensured by the parents. As examined in the following section, critics of the CRC consider that the concepts of the "best interests of the child" and the "evolving capacities" of the child are contrary to U.S.A. law and risk undermining the role of parents in making decisions for their children.

The role of parents vs. the State with regard to the child

As mentioned above, many opponents of the ratification of the CRC consider that the CRC is anti-family and that ratification would reduce parental control over children in favour of **government control**.³⁸ Some critics have even expressed concern that ratification would give the Committee on the Rights of the Child or the U.S.A. government authority over the family structure and how parents chose to raise their children, or that children could be encouraged to disregard parental authority (see the CRS report [here](#), page 9).

In actual fact, the CRC's acknowledgment of the role of parents and the family is **relatively consistent** with that of U.S.A. law.³⁹ Many provisions of the CRC explicitly refer to the rights and duties of the parents with respect to their child (see, amongst others, Articles 3, 5, 14, 17, 18, 19, 20, 21 of the CRC) and the family is "*recognised as the main mechanism for the upbringing of children*".⁴⁰

Similarly, it can be noted that the **comments made by the Committee on the Rights of the Child** when interpreting the CRC "*have been consistently supportive of parents and the importance of family*".⁴¹

For instance, with regard to the **right of the child to freedom of thought, conscience and religion**, the fears expressed by the opponents of the CRC that its ratification might lead to the government under-

³⁸ H. DAVIDSON, "Does the U.N. Convention on the rights of the child make a difference?", *Michigan State International Law Review*, Vol. 22.2 522, 2014.

³⁹ H. DAVIDSON, "Does the U.N. Convention on the rights of the child make a difference?", *Michigan State International Law Review*, Vol. 22.2 526, 2014.

⁴⁰ R. LAWRENCE-KARSKI, "Legal rights of the child: the United States and the United Nations Convention on the Right of the Child", *The International Journal of Children's Rights* 4: 38, 1996.

⁴¹ S. KILBOURNE, "The wayward Americans - why the USA has not ratified the UN Convention on the Rights of the Child", 10 *Child & Fam. L. Q.* 254 1998.

mining parents' attempts to raise their child in their own religions tradition do not appear to be founded: *"In its twenty plus year history, the Committee has only commented on religion when governments, especially through their educational systems, have tried to limit religious freedom or have engaged in practices that discriminate against certain religious groups."*⁴²

However, in some cases, the Committee has adopted recommendations that set certain limits to parents' rights, for example in the field of **corporal punishment**. In its concluding observation for Canada in 2003, the Committee for instance recommended that States Parties prohibit all forms of violence against children, even within the family (see the CRS report [here](#), page 10). **Generally**, the provisions of the CRC have nonetheless been interpreted as protecting the child against intrusion and abuse by the State rather than by the parents or the family (see the CRS report [here](#), page 11).

Given the above, it can be said that the CRC does not, as such, undermine the rights of parents with regard to their children. As mentioned previously, the CRC does however contain a number of principles and **concepts such as the "best interests of the child" and the "evolving capacities"** of the child which, if the CRC was ratified, could lead to certain changes in the applicable law and to parents' rights receiving a narrower interpretation than presently.

In particular, the **participation rights** granted to children in many areas of law by the CRC could mean that parents no longer have the final say in decisions regarding their children: Depending on their age, the children may also be required to take part in the decision-making process.

In addition, the need to consider the "best interests of the child" at all times could potentially lead to the adoption of more uniform policies in the field of children's rights and/or the **adoption policies, at national level**, that are controversial in the U.S.A., such as universal healthcare and paid maternity leave. This would probably imply a greater role of the federal state with regard to family issues in the U.S.A.

In summary, it can be said that the role of parents in the CRC and in U.S.A. law are **not fundamentally different**. Rather than a legal issue due to any fundamental contradictions between the provisions of the CRC and U.S.A. law, the (alleged) conflict between the CRC and U.S.A. law is more political and philosophical in nature. If the CRC was ratified, the role of parents would likely not change significantly but certain provisions of U.S.A. law might have to be amended to allow for greater participation of children in decision-making, as well as a more unified approach to children's rights, based on the concepts of the "best interests of the child" and the "evolving capacities" of the child.

The prohibition of the death penalty and life imprisonment without parole for juvenile offenders

One of the most obvious points of contrast between U.S.A. law and the CRC is the prohibition of the death penalty and of life imprisonment without parole for juvenile offenders.

Article 37(a) of the CRC provides that *"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"*.

⁴² H. DAVIDSON, "Does the U.N. Convention on the rights of the child make a difference?" *Michigan State International law Review*, Vol. 22.2 527 2014.

Under the Constitution of the U.S.A., **capital punishment** for underage offenders was not prohibited until the Supreme Court rendered its landmark decision in the *Roper v. Simmons case*, in 2005. In its ruling, the Supreme Court held for the first time that the execution of juvenile offenders amounted to cruel and unusual punishment within the meaning of the Eighth Amendment. At the time, 25 states still had statutes providing that persons under the age of eighteen at the time of committing a crime could be subject to the capital punishment.

Please find the ruling of the Supreme Court in *Roper v. Simmons* [here](#).

The *Roper v. Simmons* case did not however put an end to the controversy surrounding Article 37(a) of the CRC as the latter does not only prohibit capital punishment but also **life imprisonment** without possibility of parole for juvenile offenders.

In 2012, the Supreme Court took another step towards bringing U.S.A. law in line with the CRC when it rendered its decision in the *Miller v. Alabama case*. In this case, the Supreme Court held that mandatory life imprisonment without possibility of parole also violated the Eighth Amendment. According to the Court, a judge or jury must have the opportunity to consider mitigating circumstances before imposing the "*harshest possible penalty for juveniles*".

Please find the ruling of the Supreme Court in *Miller v. Alabama* [here](#).

Although the Supreme Court's decision in *Miller v. Alabama* has undoubtedly brought U.S.A. law closer to complying with the standards laid out in the CRC, juvenile offenders in the U.S.A. may still be sentenced to life imprisonment after judicial consideration of their individual circumstances. This means that, to this day, **U.S.A. law remains incompatible with the CRC** and would, in principle, need to be amended if the U.S.A. was to ratify the CRC.

The issue of abortion

Although the Supreme Court of the U.S.A. ruled that abortion is a fundamental right in the *Roe v. Wade* case, abortion remains a very **sensitive issue** in the U.S.A. and many states still have statutes in place that limit the right of abortion.

Please find the ruling of the Supreme Court in *Roe v. Wade* [here](#).

As previously mentioned, some opponents of the ratification of the CRC believe that the CRC contains a broad right of abortion, incompatible with U.S.A. law, as well as with the general feelings of the American population. As mentioned previously, this argument is partially based on the right to privacy contained in Article 16 of the CRC. Some opponents of the ratification consider that this provision could be construed in such a way as to give children the right to have an abortion without their parents being informed or being able to give guidance.

Upon closer consideration this argument does not however seem to be founded as it is widely admitted that the **CRC is in fact "abortion neutral"** (see the CRS report [here](#), page 13) and leaves States Parties free not only to limit the right of children to have an abortion but also, more generally, to determine when life begins and should be protected.

The absence of any "pro-abortion bias" in the CRC is confirmed by the CRC's drafting history which shows that different conceptions of life among States lead them to intentionally leave the text of the CRC vague on the issue of abortion in order to allow for each State to interpret the CRC as being in line with its domestic law (see the CRS report [here](#), page 13). The liberty of States to enact legislation limiting or, in certain cases, even prohibiting abortion is further confirmed when reading Article 1 of the CRC in conjunction with Article 6.

Indeed, Article 6 of the CRC states that "*every child has the inherent right to life*", whereas Article 1 states that "*a child means every human being below the age of eighteen years*". This means that the right to life is protected by the CRC without any lower age limit being set, States Parties remaining free to protect the rights of the child before birth.

7. What about the future?

7.1 Lobbies

7.1.1 Lobbies opposed to the ratification of the CRC

Most of the organizations that strongly oppose the ratification of the CRC are conservative religious rights organizations, as reflected in a [report](#) by Amnesty International:

- the Christian Coalition
- Concerned Women for America
- Eagle Forum
- Family Research Council
- Focus on the Family : for more information, click [here](#)
- the John Birch Society
- the National Centre for Home Education

The following organizations are also be pointed out :

- ParentalRights.org : for more information, click [here](#)
- Family Watch International : for more information, click [here](#)
- the Home School Legal Defence Association : for more information, click [here](#)

Some of these organizations are also know to oppose UN treaties in general (see [here](#) for an example).

These organisations are really active in encouraging state senators to approve resolutions voting against the submission of the CRC to the Senate for its advice and consent. Please find an example of such a campaign [here](#).

7.2 Lobbies in favour of the ratification of the CRC

Already in back 2000, more than 300 non-governmental organizations supporting the ratification of the CRC by the USA were identified.⁴³

Among the organizations that are active at national or international level (and which include international organizations active in the fields of human rights, professional organizations, labour unions, etc.), the following can be identified:

- the Campaign for US Ratification of the Convention on the Rights of the Child : for more information, click [here](#)
- Human Rights Watch : for more information, click [here](#)
- the Carnegie Council for Ethics in International Affairs : for more information, click [here](#)
- the American Bar Association : for more information, click [here](#)
- the National Education Association : for more information, click [here](#)
- Youth Advocate Program International : for more information, click [here](#)
- First Focus : for more information, click [here](#)

⁴³ KILBOURNE, SUSAN "Closing Remarks," *Journal of Civil Rights and Economic Development: Vol. 14: Iss. 3, Article 17, (2000) p. 468.*

- the National Council of Juvenile and Family Court Judges : for more information, click [here](#)
- the American Psychological Association : for more information, click [here](#)
- the Child Welfare League of America : for more information, click [here](#)

What is the relative strength of those organizations? In 2000, Susan Kilbourne wrote that "*Senators' aides have reported they receive tremendous volumes of anti-Convention mail, sometimes at a ratio of 100 anti-Convention letters for every one pro-Convention letter*".⁴⁴

Ten years later, Bruce Lesley, President of First Focus & First Focus Campaign for Children, wrote that, according to an opinion poll, **62% of the Americans were in favour of ratification**⁴⁵.

In reaction to the "anti-CRC" Senate resolutions, other Senate resolutions urging for the U.S.A to ratify the CRC were also introduced in Congress.

7.3 The future

The future is **hard to predict**. The final text of the CRC took 10 years to be drafted, with the substantial help of the U.S.A. delegation. It was adopted back in 1989. The U.S.A. signed the CRC in 1995 but has not ratify it more than 20 years later, even if the ratification of the two additional Protocols in 2002 raised the hope of an upcoming ratification of the CRC itself.

Our analysis shows that none of the constitutional or substantive law issues advanced by opponents of the ratification are self-sufficient to explain the failure of the U.S.A. to ratify the CRC.

Nevertheless, in the current political climate, in which over two thirds of Senators are publicly opposed to the ratification and a substantial part of the public opinion, supported by strongly influential lobbies, sees the CRC as a threat for American families, it is unlikely that the President will submit the CRC to the Senate any time soon.

The real reasons for the U.S.A.'s lack of ratification of the CRC seem to be more **political, philosophical and sociological** than they are legal.

Moreover, as pointed out by [Unicef](#), the U.S.A. typically consider the ratification of one human right treaty at the time, the current priority being the Convention on the Elimination of All Forms of Discrimination against Women.

This does not mean that American children enjoy no legal protection at all. In most areas, U.S.A. law is actually moving in the direction of the CRC, as in the case [Roper v. Simmons](#), where the Supreme Court declared juvenile death penalty unconstitutional, relying on Article 37 of the CRC and its **universally accepted principle**.

Nevertheless, there remain certain important differences between U.S.A law and the CRC.⁴⁶ If the CRC was ratified by the U.S.A., there would need to be a more uniform protection of the rights of the child in the U.S.A., notably in order to abide by the "best interests" of the child standard.

⁴⁴ KILBOURNE, SUSAN, "Closing Remarks," *Journal of Civil Rights and Economic Development: Vol. 14: Iss. 3, Article 17*, p. 464, 2000.

⁴⁵ B. LESLEY, "A Peaceful Revolution: U.S. Should Ratify the U.N.'s Convention on the Rights of the Child" in The [Huffington Post](#)

⁴⁶ R. LAWRENCE-KARSKI, "Legal rights of the child: the United States and the United Nations Convention on the Right of the Child", *The International Journal of Children's Rights* 4: 40, 1996.

If the U.S.A. was able to overcome the political objections and ratify the CRC, this would send a strong signal to the international community. Indeed, the CRC would become the first ever universally ratified human rights treaty, a "law of the world", to the benefit of all children.⁴⁷

Let us see what happens after the next Presidential election in November 2016...

⁴⁷ S. ALMOG & A. L. BENDOR, "The UN Convention on the Rights of the Child meets the American Constitution: Towards a supreme law of the world", 11 *Int'l J. Child. Rts.* 284, 2003-2004.

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