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The United Nations Convention on the Rights of Persons with Disabilities: Issues in the U.S. Ratification Debate

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Summary

During the 114th Congress, the Senate might consider providing its advice and consent to ratification of the U.N. Convention on the Rights of Persons with Disabilities (CRPD, or the Convention). CRPD, which has been ratified or acceded to by 151 countries, is a multilateral agreement that addresses the rights of disabled persons. Its purpose is to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities.

Administration and Senate Actions

Many U.S. policy makers, including President Obama and some Members of Congress, agree that existing U.S. laws and policies are compatible with CRPD. In fact, some CRPD provisions appear to be modeled after U.S. disability laws. The United States has historically recognized the rights of individuals with disabilities through various laws and policies, including the Americans with Disabilities Act.

In July 2009, President Obama signed CRPD. The Administration transmitted it to the Senate for advice and consent to ratification in May 2012. Since then, Members of the Senate have taken several actions related to CRPD:

- The Senate Committee on Foreign Relations (SFRC) held a hearing on the Convention in July 2012 and later that month reported the treaty favorably to the full Senate by a vote of 13 in favor and 6 against, subject to certain conditions.
- In December 2012, the Senate voted against providing advice and consent to ratification of CRPD by a vote of 61 to 38. The treaty was automatically returned to SFRC at the end of the 112th Congress.
- In July 2014, SFRC reported the treaty favorably by a vote of 12 in favor and 6 against, subject to certain conditions.
- The full Senate did not consider providing its advice and consent to ratification. The treaty was automatically returned to SFRC at the end of the 113th Congress.

Key Issues in the Ratification Debate

In debates regarding U.S. ratification of CRPD, the treaty's possible impact on U.S. sovereignty has been a key area of concern. Critics of the Convention maintain that treaties are the "supreme Law of the Land" under the Constitution, and that U.S. ratification of CRPD could supersede federal, state, and local laws. Supporters assert that CRPD is a non-discrimination treaty that does not create new obligations. They contend that U.S. laws meet, and in some cases exceed, CRPD requirements. Debate may also center on the following issues:

- **Role of the CPRD committee**. Critics are concerned that recommendations of the Committee on the Rights of Persons with Disabilities, the Convention's monitoring body, could deem U.S. laws to be in violation of CRPD and presume authority over the private lives of U.S. citizens. Supporters, including the Obama Administration, emphasize that committee decisions are non-binding under international and domestic law.
- **Possible impact on U.S. citizens and businesses abroad.** Some CRPD proponents contend that U.S. ratification may (1) improve the lives of U.S. citizens with disabilities living, working, or traveling abroad, and (2) "level the playing field" for U.S. companies that, unlike many of their foreign counterparts, already comply with higher disability standards. The extent to which U.S.

ratification of CRPD may positively affect U.S. businesses or disabled U.S. citizens living or traveling abroad remains unclear.

- **Role in U.S. foreign policy.** Supporters contend that U.S. ratification may enhance U.S. credibility as it advocates the rights of persons with disabilities globally. Opponents argue that existing U.S. laws and policies are robust enough examples of U.S. commitment to the issue.
- **Abortion.** Some critics worry that the term "sexual and reproductive health" in CRPD could be a euphemism for abortion. Supporters note that the word "abortion" is never mentioned in the Convention and contend that no U.S laws related to abortion would be created as a result of U.S. ratification.
- **Parental rights.** Some are concerned that the U.S. ratification may give governments, and not U.S. parents, the right to make educational and treatment-related decisions for their disabled children. Others, including the Obama Administration, hold that existing federal, state, and local laws protect parental rights.

Other issues that Senators may wish to consider include challenges to evaluating CRPD's effectiveness, obstacles to CRPD implementation, and the role and participation of civil society in CRPD mechanisms.

For information on U.S. efforts to address the rights of persons with disabilities domestically, see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by Cynthia Brown. An overview of treaty process is available in CRS Report 98-384, *Senate Consideration of Treaties*, by Valerie Heitshusen.

This report will be updated as events warrant.

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Introduction

The Senate may consider providing its advice and consent to U.S. ratification of the United Nations (U.N.) Convention on the Rights of Persons with Disabilities (CRPD, or the Convention) during the 114th Congress. CRPD is the only multilateral treaty that specifically aims to protect the rights of those who are disabled. To date, 151 countries have ratified or acceded to the Convention. It has been signed by 159 countries, including the United States.

President Barack Obama signed CRPD on behalf of the United States on July 30, 2009. He transmitted it to the Senate for advice and consent to ratification in May 2012, where it was received and referred to the Committee on Foreign Relations (SFRC). The committee reported the Convention favorably to the full Senate on July 31, 2012, by a vote of 13 in favor and 6 against, subject to three reservations, eight understandings and two declarations. On December 4, the full Senate voted against providing advice and consent to ratification of CRPD by a vote of 61 to 38. When the 112th Congress adjourned, the treaty was automatically returned to SFRC.

Most recently, on July 28, 2014, SFRC favorably reported CRPD to the full Senate by a vote of 12 in favor and 6 against, subject to three reservations, nine understandings and two declarations. The full Senate did not consider the treaty. CRPD was automatically returned to SFRC at the end of the 113th Congress.

Generally, issues related to disability rights have received bipartisan agreement in Congress, and there has been support for CRPD among some Senators from both parties. Many policy makers—including those in the Obama Administration—agree that existing U.S. laws are generally in line with CRPD's provisions, and that no U.S. laws or policies would change as a result of U.S. ratification of the Convention. At the same time, other policy makers contend that ratification of CRPD would adversely affect U.S. sovereignty and interests.

During Senate debates on CRPD ratification, a number of issues were discussed and may continue to be points of contention during the 114th Congress. For example, some policy makers have expressed concern regarding the Convention's possible impact on existing U.S. laws and policies, particularly the role and authority of CRPD's monitoring body, the Committee on the Rights of Persons with Disabilities. (The committee makes non-binding recommendations and has no authority over U.S. law.) Senators may also debate the potential benefits to U.S. ratification, such as the ability of the United States to advocate and share its experiences regarding the rights of disabled persons in global fora, and improved disability rights for U.S. citizens living and traveling abroad.

U.S. Process for Making Multilateral Treaties

The making of multilateral treaties for the United States generally involves a series of steps in the following order: (1) negotiation and conclusion; (2) signing by the President; (3) transmittal to the Senate by the President, which may include any proposed reservations, declarations, and understandings; (4) referral to the Senate Committee on Foreign Relations; (5) committee consideration and report to the Senate recommending approval and a proposed resolution of ratification, which may include reservations, declarations, or understandings; (6) Senate approval of advice and consent to ratification by a two-thirds majority; (7) ratification by the President; (8) deposit of instrument of ratification; and (9) proclamation.

While the House of Representatives does not participate in the treaty-making process, legislation implementing any treaties requires action by both houses of Congress.[1]

[1] For more information, see U.S. Congress, Senate Committee on Foreign Relations, *Treaties and Other International Agreements: The Role of the United States Senate*, committee print, prepared by the Congressional Research Service, 106th Cong., 2nd sess., January 2001, S. Prt. 106-71 (Washington: GPO, 2001). Also see CRS Report 98-384, *Senate Consideration of Treaties*, by Valerie Heitshusen.

Another key area of debate includes the impact of U.S. ratification, if any, on parental rights, particularly regarding decisions related to the education of disabled children. Some policy makers have also raised questions about CRPD's possible impact on healthcare—including the extent to which, if any, the Convention addresses existing laws and policies related to abortion.[2]

Objectives and Structure

CRPD and its Optional Protocol were adopted by the U.N. General Assembly in December 2006.[3] The treaty was opened for signature on March 30, 2007, and entered into force on May 3, 2008. Many experts view CRPD's adoption as the culmination of a gradual shift in international perceptions toward persons with disabilities from "objects" of charity, medical treatment, and social protection to "subjects" with fundamental rights who are able to make life decisions based on free and informed consent and as active members of society.[4]

The overall purpose of CRPD is to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. States Parties agree to "undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability."[5]

The Convention sets broad goals of autonomy, equality, acceptance, and accessibility for individuals with disabilities. It does not provide a definition of "disability." It acknowledges that the term is an "evolving concept" that results from "the interaction between persons with impairments and attitudinal and environmental barriers that hinders full and effective participation in society on an equal basis with others." (For example, a person in a wheelchair might fail to gain employment not because he or she uses a wheelchair, but because environmental barriers—such as stairs, lack of ramps, or insufficient transportation—impede access to the work place.)

CRPD Timeline: Key Dates

2002-2006: The Convention text was negotiated during eight sessions of an Ad Hoc Committee of the U.N. General Assembly. The United States observed and/or participated in these sessions.

December 2006: CRPD was adopted as General Assembly resolution 66/229. The Bush Administration joined the consensus adopting the resolution, but indicated it would not sign or ratify the treaty due to concerns over U.S. sovereignty.

March 2007: CRPD was opened for signature.

May 2008: CRPD entered into force.

July 2009: President Barack Obama signed CRPD on behalf of the United States, stating that it would benefit disabled persons worldwide, including U.S. citizens.

May 2012: The President transmitted CRPD to the Senate for advice and consent to ratification, where it was received and referred to SFRC.

July 2012: SFRC reported CRPD favorably to the full Senate by a vote of 13 in favor and 6 against, subject to three reservations, eight understandings, and two declarations.

December 2012: The full Senate voted against providing advice and consent to ratification of CRPD by a vote of 61 to 38.

July 2014: SFRC favorably reported CRPD to the full Senate by a vote of 12 in favor and 6 against, subject to three reservations, nine understandings, and two declarations. The full Senate did not consider providing its advice and consent to ratification.

[2] For further discussion of these and other subjects, see the "Policy Issues" section.

[3] U.N. General Assembly Resolution 66/229, adopted December 13, 2006. The Convention was negotiated during eight sessions of an Ad Hoc Committee of the General Assembly from 2002-2006. The negotiating history of the Ad Hoc Committee is available at http://www.un.org/disabilities/default.asp?id=1423. For information on the U.S. position, see the "Obama Administration Actions" section.

[4] Drawn from "United Nations (U.N.) Enable: Convention on the Rights of Persons with Disabilities," at http://www.un.org/disabilities/default.asp?navid=14&pid=150. For additional information on the history of the Convention and U.N. efforts to address disability issues, see "U.N. Enable: History of the United Nations and Disability" at http://www.un.org/disabilities/default.asp?id=121.

[5] CRPD, Article (art.) 4(1).

Parties to CRPD agree to take appropriate measures to carry out a range of policies, laws, and administrative measures. The Convention's provisions can grouped into five general themes:

- **Equality and non-discrimination**—CRPD prohibits discrimination and requires States Parties to recognize that "all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law."[6]Accordingly, States Parties are required to take steps to ensure that reasonable accommodations are provided to persons with disabilities.[7]
- **Accessibility and personal mobility**—States Parties must take measures to ensure that persons with disabilities have equal access to the physical environment, to transportation, to information and communications, and to other facilities open or provided to the public.[8] States Parties also must ensure "liberty of movement" and freedom of disabled persons to choose their nationality and residence on an equal basis with others.
- **Education**—States Parties are required to "ensure an inclusive education system at all levels."[9] Persons with disabilities must be offered the same opportunities for free primary and secondary education as others in their communities, and their individual requirements must be reasonably accommodated. Within the general education system, persons with disabilities shall receive the support required "to facilitate their effective education."[10]
- **Work and employment**—CRPD recognizes the right of disabled persons to work on an equal basis with others in an environment that is "open, inclusive and accessible to persons with disabilities."[11] Parties agree to prohibit employee discrimination against disabled persons and, if necessary, to adopt laws barring such discrimination in the employment process, including recruitment, hiring, retention, promotion, and termination.[12]
- **Health**—The Convention calls on States Parties to ensure that persons with disabilities have equal access to the same range, quality, and standard of free or affordable health care and programs as provided to other persons—including in the areas of sexual and reproductive health.[13] Under the Convention, health care professionals must provide equal care to persons with disabilities.

CRPD offers other broad legal protections, such as ensuring that persons with disabilities are not deprived of liberty, either unlawfully or arbitrarily.[14] In addition, States Parties are required to

[6] CRPD, art. 5.

[7] CRPD, art. 10. CRPD also reaffirms that every human being has the "inherent right to life and its effective enjoyment by persons with disabilities on a equal basis with others." It further states that Parties must provide equal access to justice systems and prevent abuse in accordance with international human right laws. The Convention also recognizes the rights of women and children with disabilities.

[8] CPRD, art. 9.

[9] CRPD, art. 24.

[10] Ibid. CRPD also requires Parties to facilitate the use of sign language, Braille, and other modes of communication to assist students with disabilities in fully participating in the educational process.

[11] CRPD, art. 27. Under art. 27, employees with disabilities must also be reasonably accommodated and have access to training and union benefits.

[12] Ibid.

[13] CRPD, art. 25.

[14] For a detailed account of how these provisions apply to U.S. laws and policies, see the "U.S. Laws Protecting the Rights of Individuals with Disabilities" section.

take measures to protect disabled persons from exploitation and violence and abuse, as well as in emergency situations such as armed conflict, humanitarian crises, and natural disasters. States Parties must also take steps to ensure that persons with disabilities are able to attain and maintain maximum independence through comprehensive habilitation and rehabilitation services. Parties must also guarantee equal political rights for disabled persons, including voting protection and political participation.

Selected Activities Undertaken by States Parties to CRPD

Reports on the status of CRPD by U.N. Secretary-General Ban Ki-moon in 2012 and 2014 highlighted States Parties' efforts to implement the Convention's provisions.[15] For example,

- **Brazil** established a National Human Rights Office under the Office of the President to monitor CRPD's implementation;
- **Indonesia** is implementing a national plan of action on persons with disabilities for 2004-2013, and reported that it improved accessibility for persons with disabilities in public buildings and facilities, including those related to its parliamentary elections.
- **Jordan** is preparing a five-year plan to improve the inclusion of persons with physical, hearing, visual, and intellectual disabilities in its education and learning system;
- **Mexico** adopted a general law in May 2011 on the social inclusion of persons with disabilities, and launched a national mechanism to implement and monitor national policies and actions plans for the rights of persons with disabilities;
- **Paraguay** adopted a law that requires public institutions to reserve at least 5% of staff positions for persons with disabilities; and
- **Spain** approved a regulation regarding basic conditions for the participation of persons with disabilities in the political and electoral process.

Optional Protocol

The Optional Protocol to the CRPD establishes two procedures aimed at strengthening implementation and monitoring of the Convention.[16] The first is an individual communications procedure that allows individuals or groups of individuals from States Parties to bring petitions to the committee claiming breaches of their rights. The second is an inquiry procedure that authorizes the committee to undertake inquiries of grave or systematic violations of the Convention. The Optional Protocol, which entered into force on May 3, 2008, has been signed by 92 countries and ratified or acceded to by 85 countries. The United States has not signed or ratified the Optional Protocol.

Conference of States Parties

Under Article 40 of CRPD, the Conference of States Parties—composed of States Parties to the Convention—has the authority to consider any matter with regard to implementation of the Convention. The Conference has met four times since CRPD entered into force in 2008. Participants have discussed issues ranging from accessibility and reasonable accommodation to CRPD's role in achieving the Millennium Development Goals.[17]

[15] U.N. documents A/67/281 (August 9, 2012) and A/69/284 (August 7, 2014), both entitled *Status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto—Report of the Secretary-General*.

[16] Optional Protocols sometimes accompany treaties. They are stand-alone agreements that can be signed and ratified by countries that are not party to the main treaty.

[17] The Millennium Development Goals are a group of measurable development targets agreed to by 189 U.N. member

Committee on the Rights of Persons with Disabilities

The Committee on the Rights of Persons with Disabilities, established under Article 34 of CRPD, is the monitoring body of the Convention. It is composed of 18 independent experts elected by the Conference of States Parties, taking into account geographic distribution. States Parties are required to submit periodic reports to the committee on their implementation of CRPD, including an initial report within the first two years of ratification or accession and regular reports every four years. The committee examines each report and makes suggestions and general recommendations to the concerned States Parties. Under the CRPD Optional Protocol, the committee may examine individual complaints regarding alleged violation of the Convention by States Parties to the Protocol. The committee meets about twice a year in Geneva, and to date has held 12 sessions.[18]

Obama Administration Actions

On July 30, 2009, President Obama signed the Convention. The Administration transmitted it to the Senate for advice and consent to ratification on May 17, 2012, where it was received, referred to the Committee on Foreign Relations (SFRC), and placed on the committee calendar. In his letter of transmittal, the President expressed his support for U.S. ratification of CRPD, stating that it would "position the United States to occupy the global leadership role to which our domestic record already attests."[19] The Administration proposed three reservations, five understandings, and one declaration to accompany the treaty:

- a **federalism reservation**, which states that U.S. obligations under CRPD are limited to those measures appropriate to the federal system, such as the enforcement of the Americans with Disabilities Act;[20]
- a **private conduct reservation**, which states that the United States does not accept CRPD provisions that address private conduct, except as mandated by U.S. law;
- a **torture or cruel, inhuman, or degrading treatment reservation**, which states that persons with disabilities are protected against torture and other degrading treatment consistent with U.S. obligations under the U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights;

states, including the United States, as part of the 2000 Millennium Declaration. Examples include eradicating extreme hunger and poverty; achieving universal primary education; and reducing child and maternal mortality rates.

[18] For more information on committee procedures, membership, and sessions, see http://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx. The committee's monitoring role is further discussed in the "The Role of the Disabilities Committee" section.

[19] U.S. Congress, Senate Committee on Foreign Relations, *Convention on the Rights of Persons with Disabilities*, Message from the President of the United States Transmitting The Convention on the Rights of Persons With Disabilities, Adopted by the United Nations General Assembly on December 13, 2006, and Signed by the United States of America on June 30, 2009, prepared by Office of the President, 112th Congress, 2nd session, May 17, 2012, Treaty Doc. 112-7 (Washington: GPO, 2012) (hereinafter *Treaty Doc. 112-7*).

[20] For a more detailed discussion of the federalism reservation, see the "U.S. Laws Protecting the Rights of Individuals with Disabilities" section. For more information on the ADA, see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by Cynthia Brown.

- a **first amendment understanding**, which says that the United States understands that CRPD does not authorize or require actions restricting speech, expression, or association that are protected by the Constitution;
- an **economic, social, and cultural rights understanding**, which says the United States understands that CRPD prevents disability discrimination with respect to economic, social and cultural rights, insofar as such rights are recognized and implemented under U.S. law;
- an **equal employment opportunity understanding**, which states that the United States understands that U.S. law protects disabled persons against unequal pay, and that CRPD does not require the adoption of a comparable framework for persons with disabilities;
- a **uniformed military employee hiring understanding**, which states that the United States does not recognize rights in the Convention that exceed those under U.S. law in regards to military hiring, promotion, and other employment-related issues;
- a **definition of disability understanding**, which states that CRPD does not define "disability" or "persons with disabilities," and that the United States understands the definitions of these terms to be consistent with U.S. law;[21] and
- a **non-self executing declaration**, which states that no new laws would be required as a result of U.S. ratification of CRPD.

The federalism reservation and non-self executing declaration are standard RUDs that have accompanied nearly every treaty transmitted to the Senate by the President in modern times. Policy makers have also proposed private conduct reservations for several human rights treaties because of the potential impact on the private lives of U.S. citizens. Other RUDs proposed by the Administration, including the understanding addressing the definition of disability, are tailored to specific CRPD provisions.

The Obama Administration's support for the Convention is a marked departure from President George W. Bush's policy toward the Convention. During CRPD negotiations between 2003 and 2006, the Bush Administration indicated that because disability issues were in the purview of domestic policy and law, "the United States had no intention of becoming party to the

Reservations, Understandings, and Declarations that may Accompany U.S. Ratification of Treaties

The Senate Committee on Foreign Relations may recommend that the Senate approve a treaty conditionally, granting its advice and consent subject to certain stipulations that the President must accept before proceeding to ratification. These stipulations are generally referred to as "Reservations, Understandings, and Declarations" (RUDs). The President may also propose RUDs at the time he transmits the treaty to the Senate or during the Senate's consideration of the treaty.

"***Reservations***" are specific qualifications or stipulations that modify U.S. obligations without necessarily changing the treaty language.

"***Understandings***" are interpretive statements that clarify or elaborate, rather than change, the provisions of a treaty. They are generally deemed to be consistent with the obligations imposed by the treaty.

"***Declarations***" are statements of purpose, policy, or position related to matters raised by the treaty in question but not altering or limiting any of its provisions.[22]

[21] For further discussion of the disability understanding, see the "Senate Action" and "U.S. Laws Protecting the Rights of Individuals with Disabilities" sections.

[22] Drawn in part from U.S. Congress, Senate Committee on Foreign Relations, *Treaties and Other International Agreements: The Role of the United States Senate*, committee print, prepared by the Congressional Research Service,

treaty."[23] The Bush Administration did, however join consensus on the General Assembly resolution that adopted the treaty and opened it for signature.[24] Neither President Bush nor President Obama signed, or indicated intent to sign, the Convention's Optional Protocol.

106th Cong., 2nd sess., January 2001, S. Prt. 106-71 (Washington: GPO, 2001).

[23] Department of State, "U.S. Participation in the United Nations, 2005," pp. 68-69. For more information on the Bush Administration position on CRPD, also see, "U.S. Participation in the United Nations, 2006," pp. 79-80.

[24] Statement by Ambassador Richard T. Miller, "Explanation of Position on the Convention on the Rights of Persons with Disabilities, Agenda Item 67(b), in the General Assembly," U.S. Mission to the United Nations Press Release #396(06), December 13, 2006.

Senate Actions

2012-2013

On July 31, 2012, the Senate Foreign Relations Committee (SFRC) reported CRPD favorably to the full Senate by a vote of 13 in favor and 6 against.[25] To address the concerns of some opponents, the committee agreed to the following understandings and declarations (in addition to or modifying the aforementioned RUDs proposed by President Obama):

- a **role of the Disabilities Committee understanding**, which states that the committee has no authority to compel actions by States Parties, and that the United States does not consider the conclusions, recommendations, or general comments issued by the committee as constituting customary international law or to be legally binding in the United States in any manner;
- an **abortion-related understanding**, which states that nothing in the agreement requires States Parties to provide any health program or procedure; rather, the Convention requires parties to provide health programs and procedures to individuals with disabilities on a non-discriminatory basis;
- a **best interests of the child understanding**, which states that the use of "best interests of the child" in CRPD Article 7(2) will be applied and interpreted as it is under U.S. law, and that nothing in Article 7 requires a change to existing U.S. law;[28]
- a **definitions understanding** that modifies President Obama's proposed understanding on the definition of disability—it clarifies that the terms "disability," "persons with disabilities," "undue burden" (terms not defined by the CRPD), "discrimination on the basis of disability," and "reasonable accommodation," are defined in U.S law; and
- a **U.S. obligations declaration**, which states that current U.S. law fulfills or exceeds the obligations of the Convention.[29]

Consideration of Other Treaties

During the 113th Congress, the Senate may consider several other treaties, such as the U.N. Convention on the Law of the Sea, the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the U.N. Convention on the Rights of the Child (CRC). Similarly to CRPD, these treaties have garnered considerable attention from policy makers and members of the public due to concerns that they could undermine national sovereignty.[26]

The Obama Administration has recommended the U.N. Convention on the Law of the Sea and CEDAW as treaties on which it supports Senate action at this time.[27] CRC has not been transmitted to the Senate by the President for advice and consent to ratification.

[25] U.S. Congress, Senate Committee on Foreign Relations, *Convention on the Rights of Persons with Disabilities (Treaty Doc. 112-7)*, Report Together With Minority Views [To accompany Treaty Doc. 112-7], 112th Cong., 2nd sess., July 31, 2012, Exec. Rept. 112-6 (Washington: GPO, 2012). (Hereinafter referred to as *Senate Exec. Rept. 112-6*.) See **Appendix B** for a list of all legislative actions related to CRPD.

[26] For more information on CRC and CEDAW, see CRS Report R40484, *The United Nations Convention on the Rights of the Child*, and CRS Report R40750, *The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Issues in the U.S. Ratification Debate*, both by Luisa Blanchfield.

[27] Letter from David S. Adams, Assistant Secretary for Legislative Affairs, State Department, to Senator John Kerry, SFRC Chairperson, October 5, 2011.

[28] For a further discussion of this issue, see the "Potential Impact on Parental Authority" section.

[29] For a full list of RUDs approved by SFRC, see *Senate Exec. Rept. 112-6*, pp. 12-14.

On December 4, 2012, the Senate voted against providing advice and consent to ratification of CRPD by a vote of 61 to 38. With a few exceptions, the vote was split along party lines: 55 Democrats and 6 Republicans voted in favor of the treaty, and 38 Republicans voted against it. At the adjournment of the 112th Congress, CRPD was returned to SFRC in accordance with Senate rules. Majority Leader Harry Reid stated that if the treaty were voted favorably out of SFRC during the 113th Congress, he planned to bring CRPD "up for a vote" in the Senate.[30] SFRC held hearings on the treaty on November 6 and November 21, 2013.

During hearings and debates leading up to the votes in SFRC and the full Senate, Senators focused on the Convention's possible impact on U.S. sovereignty, particularly the impact of the recommendations of the Disabilities Committee on domestic laws and policies, as well as the potential effect U.S. ratification might have on existing U.S. abortion laws. Some Members also argued that treaties should not be considered during a lame duck session of Congress. Thirty-six Senators signed a letter to Majority Leader Reid and Minority Leader Mitch McConnell stating that Members of the 113th Congress should be "afforded the opportunity to review and consider any international agreements that are outstanding at the time of their election."[31] Opponents of this position noted that since the 1970s, the Senate has provided its advice and consent to ratification of treaties 19 times during lame duck sessions.[32]

2014-2015

On July 22, 2014, SFRC reported the treaty favorably by a vote of 12 in favor and 6 against, subject to three reservations, nine understandings, and two declarations. These RUDs were similar to those agreed to in 2012 and 2013, with one additional condition. Specifically, the committee agreed to a *homeschooling understanding*, which states, "Nothing in the Convention limits the rights of parents to homeschool their children."[33]

The full Senate did not consider providing its advice and consent to ratification. The treaty was automatically returned to SFRC at the end of the 113th Congress.

U.S. Laws Protecting the Rights of Individuals with Disabilities[34]

The U.N. Convention on the Rights of Persons with Disabilities requires States Parties to adopt "all appropriate legislative, administrative and other measures" to implement its provisions.[35] As previously discussed, CRPD sets forth obligations for States Parties in a range of contexts,

[30] Ramsey Cox, "Reid Vows to Take up Disability Treaty in the Next Congress," *The Hill*, December 4, 2012.

[31] Letter to Senator Reid and Senator McConnell, dated September 20, 2012, signed by 36 Republican Senators. All but one of the letter's signatories, then-Senator Scott Brown, voted against CRPD. For more information on lame duck sessions, see CRS Report RL33677, *Lame Duck Sessions of Congress, 1935-2012 (74th-112th Congresses)*, by Richard S. Beth and Jessica Tollestrup.

[32] Senator John Kerry, "Executive Session, Convention on the Rights of Persons with Disabilities," Senate debate, *Congressional Record*, daily edition, December 4, 2012, p. S7378; Ramsey Cox, "Senate rejected United Nations Treaty for Disabled Rights in a 61-38 vote," *The Hill*, December 4, 2012.

[33] U.S. Congress, Senate Committee on Foreign Relations, *Convention on the Rights of Persons with Disabilities*, Report Together with Minority Views, to Accompany Treaty Doc. 112-7, 113th Cong., 2nd sess., July 28, 2014, Exec. Rept. 113-12 (Washington: GPO, 2014), (hereafter *Senate Exec. Rept. 113-12*) p. 26.

[34] This section was written by Cynthia Brown, Legislative Attorney.

[35] CRPD, art. 4(a).

including accessibility, education, employment, equal rights, and health. The language of the Convention is broad and generally does not provide specific standards or requirements.[36] State Parties must thus consider whether existing laws satisfy CRPD requirements or whether new measures may be required for compliance.

Generally, many U.S. policy makers agree that existing U.S. laws and policies are compatible with the Convention. For example, in his letter of transmittal to the Senate, President Obama stated that existing U.S. law is "consistent with and sufficient to implement the Convention, including the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Individuals with Disabilities Education Act (IDEA)." In addition, SFRC adopted, by a vote of 14 in favor and 5 against, a declaration to accompany CRPD which states that "current United States law fulfills or exceeds the obligations of the convention for the United States."[37] In its executive report, SFRC also noted that "[t]he United States has a comprehensive network of existing federal and state disability laws and enforcement mechanisms" and that "[i]n the large majority of cases, existing federal and state law meets or exceeds the requirements of the Convention."[38]

Indeed, the United States historically has recognized the rights of individuals with disabilities through various constitutional and statutory protections, including the Americans with Disabilities Act of 1990 (ADA).[39] As such, many of the Convention's provisions addressing the protection of disability rights already exist in federal law. In fact, some CRPD requirements appear to be modeled after these U.S. disability laws.[40]

Federal Versus State Law

It is important to note that some of the obligations in the Convention address matters typically covered by U.S. state laws, such as guardianship, civil commitment, and education.[41] As discussed earlier, to address concerns regarding constitutional principles of federalism, the Obama Administration proposed, and SFRC adopted, a federalism reservation to CRPD, stating,

> This Convention shall be implemented by the Federal Government of the United States of America to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the obligations of the United States of America under the Convention are limited to the Federal Government's taking measures appropriate to the Federal system, which may include enforcement action against state and local actions that are inconsistent with the Constitution, the Americans with Disabilities Act, or other Federal laws, with the ultimate objective of fully implementing the Convention.[42]

Thus, the authority of state and local governments would not be controlled by the terms of the treaty unless they are acting subject to federal law. For example, education is an issue that

[36] For example, the Convention directs States Parties to "take appropriate measures to ensure persons with disabilities access, on an equal basis with others," to various facilities and services. *See* CRPD, art. 9.1. The Convention does not indicate what those measures might be, nor what the standard of accessibility is. Rather, it requires only that whatever facilities or services are provided to individuals without disabilities are also accessible to individuals with disabilities.

[37] *Senate Exec. Rept. 112-6*, p. 14.

[38] Ibid., 6. The same declaration was adopted by SFRC in 2013. See *Senate Exec. Rept.* 113-12, p. 26.

[39] 42 U.S.C. §12101 *et seq*.

[40] *Compare* 20 U.S.C. §1400 et seq. *with* CRPD, art. 24.

[41] *Senate Exec. Rept. 112-6*, p. 134.

[42] *Senate Exec. Rept. 112-6*, pp. 14-15. Also see *Senate Exec. Rept. 113-12*, p. 24.

generally falls under state and local jurisdiction. However, the federal government has enacted legislation requiring schools that receive federal funding to implement certain federal standards.[43] If the United States were to ratify the Convention, the federal legislation must comport with the obligations imposed by the Convention, but state and local policies on education that are not implicated by the federal legislation—for example, homeschooling—would not be governed by the Convention's provisions.

Existing Laws and Policies

The following sections discuss the most significant existing U.S. laws that might fulfill the requirements of the CRPD, if the Senate provides its advice and consent to ratification. A number of other disability laws are in effect that may likewise satisfy obligations required by the Convention. Many of these are discussed specifically in both the President's transmittal package and the SFRC Committee Report on the CRPD.[44]

U.S. Constitution

Many of the rights required by CRPD are already guaranteed by the U.S. Constitution, particularly the CRPD provisions relating to equal rights and equal access to justice systems.[45] For instance, the Equal Protection Clause of the Fourteenth Amendment prevents U.S. states from denying any person under its jurisdiction "the equal protection of the laws."[46] This constitutional requirement for equal protection under the law is applicable to the federal government through the Due Process Clause of the Fifth Amendment, which provides that "[n]o person ... shall be deprived of life, liberty, or property without due process of the law."

Courts therefore have construed laws that discriminate against people with disabilities as unconstitutional when there is no rational basis or legitimate purpose for those laws. In *City of Cleburne v. Cleburne Living Center, Inc.*, for example, the U.S. Supreme Court determined that a city ordinance requiring a special use permit for the operation of a group home for the mentally disabled was unconstitutional.[47] The Court interpreted the Equal Protection Clause as a "direction that all persons similarly situated should be treated alike," ultimately concluding that "requiring the permit in this case appears to us to rest on an irrational prejudice against the mentally retarded."[48] In sum, as the President observed in his transmittal package to the Senate, the Fifth and Fourteenth Amendments of the Constitution ensure that all individuals are equal before the law.

In addition, the Eighth Amendment of the Constitution, which is applicable to the federal government and to states through the Due Process Clause of the Fourteenth Amendment, bars the use of "cruel and unusual punishment."[49] In general, punishments violate this amendment when they are "grossly disproportionate" to the crime committed.[50] The Supreme Court has held that

[43] *See, e.g.*, Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq*.

[44] See *Treaty Doc. 112-7*, and *Senate Exec. Rept.* 112-6.

[45] *See, e.g.*, CRPD, art 5, art. 10, art. 13, art. 12, art. 14, art. 15.

[46] U.S. CONST. amend. XIV.

[47] *See* 473 U.S. 432 (1985).

[48] *Id*. at 439, 450.

[49] U.S. CONST. amend. VIII.

[50] *See* Graham v. Florida, 130 S.Ct. 2011 (2010) (citing Harmellin v. Michigan, 501 U.S. 277, 997, 1000-1001 (1991) (Kennedy, J. concurring in part and concurring in judgment)).

deliberate indifference to prisoners' serious medical needs, including the requirements of disabled inmates, would constitute cruel and unusual punishment.[51]

Americans with Disabilities Act (ADA)

Enacted in 1990, the Americans with Disabilities Act (ADA) provides broad non-discrimination protections for people with disabilities. As the most comprehensive disability rights law in the United States, the ADA might fulfill many of the CRPD obligations addressing accessibility, employment, transportation, health care, and equal participation in government and private programs.[52]

The ADA received bipartisan support, as did the ADA Amendments Act in 2008.[53] Among other changes, the 2008 amendments broadened the definition of disability to expand coverage to a wider range of individuals with disabilities. Currently, the ADA defines disability as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment."[54] The act also contains rules of construction providing, among other things, that the definition of disability shall be construed in favor of broad coverage to the maximum extent permitted by the terms of the law.[55]

Although the Convention does not define disability, it does identify which individuals may qualify as persons with disabilities, including "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."[56] During negotiations for the Convention, an explicit definition for disability was intentionally omitted so that the term could be altered "depending on the prevailing environment from society to society."[57] As previously discussed, to clarify the U.S. position on how disability would be defined under the Convention, the Administration proposed, and SFRC adopted, an understanding stating that the term will be defined coextensively with its definitions under domestic law.[58]

Employment

The ADA provides protections related to employment of individuals with disabilities. Employment discrimination protections under the ADA apply to employers with 15 or more employees[59] and to state and local governments.[60] The ADA generally prohibits discrimination in employment based on an individual's disability if the individual is otherwise qualified for the

[51] *See* Estelle v. Gamble, 429 U.S. 97 (1976).

[52] *See, e.g.,* CRPD, art. 1, art. 5, art. 9, art. 10, art. 18, art. 19, art. 21, art. 25, art. 27, art. 30.

[53] *See* P.L. 110-325, 122 Stat. 3553 (September 25, 2008).

[54] 42 U.S.C. §12102(1).

[55] 42 U.S.C. §12102(4).

[56] CRPD, art. 1.

[57] *See* United Nations Enable, "Are the terms 'disability' and 'persons with disabilities' defined in the Convention?" Frequently Asked Questions Regarding the Convention on the Rights of Persons with Disabilities, available at http://www.un.org/disabilities/default.asp?navid=24&pid=151#sqc3. See also *Treaty Doc. 112-7,* pp. 4-7.

[58] *Senate Exec. Rept. 112-6,* p. 16.

[59] 42 U.S.C. §12111(5)(A).

[60] 42 U.S.C. §12131.

position.[61] Discrimination based on a disability is prohibited across a range of employment decisions, including application procedures; hiring, retention, and promotion; compensation; training; and other terms of employment.[62] The ADA requires that employers offer qualified individuals reasonable accommodation to perform the desired position if such an accommodation would not create an undue hardship on the employer's business.[63]

Under the ADA, *reasonable accommodation* may include making facilities readily accessible to individuals with disabilities; offering alternative work schedules; reassignment to a different position; modification of equipment; assistance with communications needs; or other similar accommodations.[64] *Undue hardship* is defined as "an action requiring significant difficulty or expense."[65] To determine whether an accommodation constitutes an undue hardship, an employer may consider its nature and cost; the financial resources involved and the accommodation's impact on expenses and resources; and the type of operation of the employer and its facilities.[66]

State and Local Governments

Title II of the ADA provides that no qualified individual with a disability shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by any such entity.[67] "Public entity" is defined as state and local governments, any department or other instrumentality of a state or local government, and certain transportation authorities.

In *Olmstead v. L.C.*, the Supreme Court interpreted Title II of the ADA to find that individuals with mental disabilities have the right to live in the community rather than in institutions if "the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."[68] In other words, the ADA's prohibitions on discrimination by state and local governments may require the placement of persons with mental disabilities in community settings rather than institutions. The Court found that "[u]njustified isolation ... is properly regarded as discrimination based on disability."[69]

Public Accommodations

Title III of the ADA provides that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.[70] Entities that are covered by the term "public accommodation" are listed, and include, among others, hotels, restaurants, theaters,

[61] 42 U.S.C. §12112.

[62] 42 U.S.C. §12112(a).

[63] *See* 42 U.S.C. §12112(b)(5).

[64] 42 U.S.C. §12111(9).

[65] 42 U.S.C. §12111(10)(A).

[66] 42 U.S.C. §12111(10)(B).

[67] 42 U.S.C. §§12131-12133.

[68] 527 U.S. 581, 587 (1999).

[69] *Id.* at 597.

[70] 42 U.S.C. §12182.

auditoriums, laundromats, travel services, museums, parks, zoos, private schools, day care centers, professional offices of health care providers, and gymnasiums.[71] Religious institutions or entities controlled by religious institutions are not included on the list.

There are some limitations on the non-discrimination requirements, and a failure to remove architectural barriers is not a violation unless such a removal is "readily achievable."[72] "Readily achievable" is defined as meaning "easily accomplishable and able to be carried out without much difficulty or expense."[73] Reasonable modifications in practices, policies, or procedures are required unless they would fundamentally alter the nature of the goods, services, facilities, or privileges or they would result in an undue burden.[74] As previously discussed, an undue burden is defined as an action involving "significant difficulty or expense."[75]

Rehabilitation Act of 1973

While the ADA prohibits discrimination against individuals based on disability by state and local governments and certain private entities, Section 504 of the Rehabilitation Act of 1973[76] provides similar protection in the context of federal entities and federal programs. It provides that

> [n]o otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.[77]

Each federal agency is then required to promulgate regulations implementing the act.[78]

The standards for establishing a violation of Section 504 of the Rehabilitation Act and the ADA are essentially the same. Furthermore, the Rehabilitation Act explicitly adopts the same requirements and standards as the ADA in cases alleging employment discrimination based on disability (for example, reasonable accommodations required unless such accommodations would create an undue hardship).[79]

Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA) is the major federal statute for the education of children with disabilities.[80] As a result, it might satisfy the education provisions in the CRPD.[81]

IDEA authorizes federal funding for special education and related services and, for states that accept these funds, it sets out principles under which special education and related services are to

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[71] 42 U.S.C. §12181.

[72] 42 U.S.C. §12182(b)(2)(A)(iv).

[73] 42 U.S.C. §12181.

[74] 42 U.S.C. §12182(b)(2)(A).

[75] 28 C.F.R. §36.104.

[76] 29 U.S.C. §794 (P.L. 93-112, 87 Stat. 355 (September 26, 1973)).

[77] 29 U.S.C.A. §794(a).

[78] *See id.*

[79] *See* 29 U.S.C. §794(d).

[80] 20 U.S.C. §1400 et seq.

[81] *See, e.g.*, CRPD, art. 24.

be provided. It requires that states and school districts make available a "free appropriate public education" (FAPE) to all children with disabilities, generally between the ages of three and 21.[82] FAPE is defined to include "special education and related services that—(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (D) are provided in conformity with the individual education program required [under the statute]."[83]

Students receiving special education services under IDEA must have an individual education plan (IEP), which specifies the particular services that will be provided to meet the student's educational needs.[84] After a child has been identified as a child with a disability under IDEA, an individualized education team is formed to write an individualized education program for the child.[85] The IEP must indicate the child's current levels of academic achievement and functional performance; measurable annual goals; the special education and related services to be provided; and the extent to which the child is to be educated with children without disabilities.[86] Additionally, when developing a child's IEP, the IEP team must consider the child's language and communication needs, including whether Braille, sign language, or other assistance would be appropriate.[87]

One of the stated purposes of IDEA is that special education students should be educated with students without disabilities "to the maximum extent possible."[88] IDEA requires that separate schooling or special classes occur "only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."[89]

Policy Issues

The question of U.S. ratification of CRPD has generated debate among U.S. policy makers and members of the public. A significant issue underlying almost all aspects of these discussions is the treaty's possible impact on national sovereignty. Opponents of the Convention argue that treaties are the "supreme Law of the Land" under the Constitution, and that U.S. ratification of CRPD could supersede federal, state, and local laws.[90] Specifically, critics are concerned that ratification could lead to the United Nations, the international community, or the Disabilities Committee having authority over existing U.S. laws and policies related to disability rights, as well as the private lives of U.S. citizens in areas such as education, health care, and parental rights.

Supporters of ratification emphasize that CRPD is a non-discrimination treaty that does not create new obligations. They contend that U.S. laws such as the ADA meet, and in some cases exceed, the requirements of the Convention, thereby having little or no impact on U.S. sovereignty.

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[82] 20 U.S.C. §1412.

[83] 20 U.S.C. §1401(9).

[84] *See* 20 U.S.C. §1414.

[85] *Id*.

[86] 20 U.S.C. §1414(d)(1)(A).

[87] 20 U.S.C. §1414(d)(3)(B).

[88] 20 U.S.C. §1400.

[89] 20 U.S.C. §1412(a)(5)(A).

[90] U.S. CONST. art. 6. For additional discussion of this issue, see Martin S. Flaherty, "History Right?: Historical Scholarship, Original Understanding, and Treaties as "Supreme Law of the Land," *Columbia Law Review*, Vol. 99, No. 8, December 1999, pp. 2095-2153.

Proponents also note that the RUDs that may accompany the treaty—particularly the non-self executing declaration which states that no new laws would be created as a result of U.S. ratification—address any concerns that the CRPD may undermine national sovereignty. More broadly, supporters point out that many of CRPD's provisions call on States Parties to take "all *appropriate* measures" [emphasis added], thereby leaving it to governments to determine what actions are appropriate based on their domestic laws and policies. Supporters also emphasize that CRPD brings increased global attention to rights of disabled persons, and that ratification has led some countries to adopt laws and policies to improve disability rights. These and other selected issues are discussed in more detail in the following sections.

The Role of the Disabilities Committee

Opponents of CRPD ratification are concerned about the role of the Disabilities Committee in monitoring States Parties' compliance with CRPD. Specifically, critics are concerned that committee recommendations and decisions could supersede U.S. laws and presume authority affecting the lives, freedoms, and decisions of private citizens. Opponents highlight decisions made by other human rights treaty committees that in their view advocate abortion, undermine parental rights, or make recommendations that extend beyond the scope of the treaty. They worry that such decisions or recommendations could be used in U.S. courts to challenge existing laws and policies.

Proponents of the CRPD ratification, including the Obama Administration, emphasize that any decisions or recommendations made by the committee are "advisory only" and non-binding under international and domestic law.[91] Supporters also note that there are no established rules in CRPD for enforcing the committee's decisions or addressing treaty non-compliance. Moreover, several human rights treaties ratified by the United States have monitoring committees similar to CRPD, and there appears to be no instance where a U.S. federal court or the executive branch has construed a committee's recommendations or decisions as having the force of law.[92]

To address concerns related to the committee's role and authority, the Senate Foreign Relations Committee (SFRC) adopted an understanding to accompany CRPD, which stated that the committee has no authority to compel action by States Parties, and that the United States does not consider conclusions, recommendations, or general comments issued by the committee as constituting customary international law or to be legally binding on the United States in any manner.[93]

CRPD as an Instrument of U.S. Foreign Policy

Supporters of CRPD contend that U.S. ratification would enhance the United States' credibility as it advocates the rights of persons with disabilities globally. For example, Obama Administration officials state that ratification will put the United States in the best possible position to influence the international community on disability rights, and that non-ratification would make it

[91] Under art. 36 of CRPD, the committee "considers" States Parties' reports on treaty implementation and "shall make such suggestions and general recommendations" to the State Party.

[92] These include the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination.

[93] The understanding, which was introduced by Senator John Kerry as an amendment to an amendment proposed by Senator Rubio, was agreed to by a voice vote. The full text is available in *Senate Exec. Rept. 112-6*, p. 16. The same understanding was adopted by the committee in 2014. See *Senate Exec. Rept.* 113-12, p. 23.

"difficult" to advance such interests.[94] Supporters also emphasize that as a leader in disability rights, the United States could work within the framework of CRPD, such as in the Conference of States Parties, to provide expertise, guidance, and technical assistance to countries that seek to improve the well-being of disabled persons, particularly in the areas of education, employment, and accessibility. Moreover, many supporters suggest that, as a State Party, the United States could engage with the Disabilities Committee to nominate and vote for committee experts—including, perhaps, a U.S. citizen—to leverage U.S. expertise and influence the work of the committee.

On the other side, opponents argue that the United States does not need to ratify CRPD to demonstrate its credibility and leadership in disability rights. They suggest that U.S. laws and policies, such as the ADA, are robust examples of U.S. commitment to the issue. Critics also express concern regarding CRPD provisions that would obligate the United States to report to the treaty's monitoring body, the Disabilities Committee. Specifically, they worry that instead of providing a forum to share U.S. expertise or advocate disability rights, the committee might be used as a platform for political criticism of the United States, particularly by countries with lesser human rights standards. Opponents also emphasize that U.S. ratification itself may not enhance the rights of disabled persons in countries with poor human rights records. Any such improvements, they argue, can only be made by the governments of these countries.

Possible Impact on U.S. Citizens and Businesses Abroad

When advocating for U.S. ratification of CRPD, many supporters highlight two key benefits for the United States. First, proponents contend that U.S. ratification, as well as the United States' overall support for the treaty, may improve the lives of U.S. citizens with disabilities living, working, or traveling abroad—including students, retirees, veterans, and members of the U.S. Armed Forces. Currently, many developed countries do not have comparable disability services or infrastructure. This makes it difficult for U.S. citizens to be employed, move freely, and have the same rights and access to disability-related services in other countries as they would in the United States.[95] Supporters suggest that as more countries ratify the Convention and implement its provisions, disability rights and services in other countries may improve.

Second, some CRPD supporters maintain that U.S. ratification would help U.S. companies that already comply with higher disability standards. Since the ADA was enacted in 1990, U.S. businesses have been required to make reasonable accommodations for their employees and customers, while businesses in countries with less stringent laws and policies have not been required to do so. Proponents suggest that CRPD ratification by the United States and other countries may lead foreign companies to institute such standards and thus help "level the playing field" for U.S. businesses.[96] In addition, some maintain that increased global standards for and awareness of disabilities rights through CRPD ratification may provide new economic

[94] Statement of Honorable Judith Heumann, Special Adviser for International Disability Rights, U.S. Department of State, Washington DC, at SFRC Hearing, "Convention on the Rights of Persons with Disabilities (Treaty Doc. 112-7)," July 12, 2012.

[95] A number of veterans and international education groups support U.S. ratification for these reasons, including the American Veterans (AMVETS), the Air Force Sergeant's Association, the Iraq and Afghanistan Veterans of America, the Vietnam Veterans of America, the Association on Higher Education and Disability, the Disability Law Center, the National Disabilities Rights Network, among others. For a complete list, see *Senate Exec. Rept. 112-6*, pp. 9-12. Also see *Senate Exec. Rept. 113-12*, p. 11. In addition, on November 21, 2013, Secretary of Defense Chuck Hagel issued a statement urging the Senate to ratify the Convention.

[96] Prepared Statement of John L. Wodatch, Former Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at SFRC hearing, "Convention on the Rights of Persons with Disabilities (Treaty Doc. 112-7)," July 12, 2012.

opportunities for U.S. companies. Supporters note that if international disabilities standards were to improve, new markets could emerge for U.S. companies that develop, manufacture, and sell disability-related products and technologies.

The extent to which U.S. ratification of CRPD may positively affect U.S. businesses or disabled U.S. citizens living or traveling abroad is not entirely clear. States Parties to CRPD are responsible for implementing its provisions, and U.S. ratification of the treaty does not guarantee that all countries will fulfill their obligations under the Convention. Ultimately, CRPD's impact on disability rights and on the scope of the global market for disability-related services, expertise, and products will become more apparent as individual countries begin to implement the Convention's provisions.

Potential Impact on Parental Authority

Some opponents of CRPD contend that the treaty undermines the rights of parents of disabled children. Specifically, many take issue with Article 7(2), which states, "In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration." Critics believe that this provision may give governments, and not U.S. parents, the right to make educational and treatment-related decisions for their disabled children. Additionally, opponents are concerned that the Disabilities Committee could have the authority to make decisions regarding the "best interests" of disabled children in the United States. For example, homeschooling advocates worry that the committee could declare homeschooling inconsistent with the best interest of the child, thereby undermining the right of parents to educate their children as they see fit.[97] To address these concerns, in July 2014 the committee agreed to a homeschooling understanding, which states, "Nothing in the Convention limits the rights of parents to homeschool their children."[98]

Supporters of the Convention, including the Obama Administration, maintain that CRPD would not undermine the rights of U.S. parents. They contend that existing federal, state, and local laws provide adequate protection for parents to do what they believe is in the best interests of their children. These protections, they emphasize, would be ensured through proposed reservations, understandings, and declarations (RUDs) to CRPD that include a non-self executing declaration and private conduct and federalism reservations.[99] To further alleviate concerns about parental rights, SFRC adopted an understanding that states that the use of "best interests of the child" in Article 7(2) will be applied and interpreted as it is under U.S. law, and that nothing in Article 7 requires a change to existing U.S. law.[100] More broadly, some supporters emphasize that concerns about CRPD's potential impact on parental rights should be viewed in the context of other provisions that appear to support the role of parents and families in the lives of disabled children.[101]

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[97] For more information on the Disabilities Committee, see the "Committee on the Rights of Persons with Disabilities" and "The Role of the Disabilities Committee" sections.

[98] *Senate Exec. Rept., 113-12,* p. 26.

[99] For more information on RUDs, see the "Obama Administration Actions," "Senate Action," and "U.S. Laws Protecting the Rights of Individuals with Disabilities," sections.

[100] *Senate Exec. Rept. 112-6,* pp. 130, 135. For descriptions of these RUDs, see the "Obama Administration Actions" and the "Senate Action" sections.

[101] For example, art. 18 states, "Children with disabilities shall … have … the right to know and be cared for by their parents." Art. 23 states, "In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents."

Possible Impact on Abortion Laws and Policies

The debate over U.S. ratification of CRPD reflects concern as to whether, and to what extent, the treaty might address abortion. In particular, some critics have raised questions about CRPD Article 25, which states that States Parties shall

> a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes; [and]
>
> b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons….

Many CRPD opponents maintain that abortion is an issue that should be handled at a state or local level, and not by an international body. They are concerned that the term "sexual and reproductive health" could be interpreted to be a euphemism for abortion.[102] They also worry that U.S. ratification could obligate the United States to provide persons with disabilities access to free or affordable abortions or to overturn parental notification laws, thereby undermining current laws that ban federal funding for abortion.[103] When advocating these views, critics note that after CRPD was adopted by the General Assembly, a Bush Administration official remarked that the United States understood that the phrase "reproductive health" in Article 25(a) did not include abortion.[104] They further emphasize that Poland, Malta, and Monaco included reservations or declarations to CRPD that stated that nothing in Article 25 shall be interpreted to include abortion.[105] Some opponents also suggest that the Disabilities Committee could interpret Article 25 to include abortion.

CRPD advocates note that the word "abortion" is never mentioned in the treaty and contend that no U.S laws related to abortion would be created as a result of U.S. ratification. They maintain that references to sexual and reproductive health and health services are non-discrimination requirements that would not obligate the United States to modify its existing abortion laws or other health services. The Obama Administration emphasizes that Article 25, and the treaty as a whole, already complies with obligations under the ADA; specifically, any health care programs and benefits provided under domestic law, including those related to "sexual and reproductive health," should also be provided to disabled persons.[106] Supporters also point out that any recommendations made by the Disabilities Committee related to abortion are not legally binding.

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[102] In the minority views of *Senate Exec. Rept. 112-6* (pp. 17-18), for example, some Senators took issue with a 2009 statement by Secretary of State Hillary Clinton before the House Foreign Affairs Committee: "We happen to think that family planning is an important part of women's health, and reproductive health includes access to abortion, that I believe should be safe, legal, and rare."

[103] For more information on existing abortion restrictions in U.S. law, see CRS Report RL33467, *Abortion: Judicial History and Legislative Response*, by Jon O. Shimabukuro, CRS Report 95-724, *Abortion Law Development: A Brief Overview*, by Jon O. Shimabukuro, and CRS Report R41360, *Abortion and Family Planning-Related Provisions in U.S. Foreign Assistance Law and Policy*, by Luisa Blanchfield.

[104] Statement by Ambassador Richard T. Miller, "Explanation of Position on the Convention on the Rights of Persons with Disabilities, Agenda Item 67(b), in the General Assembly," U.S. Mission to the United Nations Press Release #396(06), December 13, 2006.

[105] A list of RUDs by States Parties is available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en#6.

[106] *Senate Exec. Rept. 112-6*, p. 143.

As discussed earlier, CRPD has no established mechanisms for treaty non-compliance; it relies primarily on States Parties to fulfill their treaty obligations.

To address ongoing concerns about CRPD's potential impact on existing abortion laws, SFRC approved an understanding stating that nothing in the Convention, including Article 25, addresses "the provision of any particular health program or procedure."[107] The understanding amended a previous proposal by Senator Marco Rubio that stated that Article 25(a) does not include abortion or create any abortion rights, nor could it be interpreted to constitute the support, endorsement, or promotion of abortion (including as a method of family planning).[108] Although the amended measure was adopted by SFRC, several Senators have expressed dismay that the word "abortion" was not specifically mentioned in the understanding.[109]

Issues on the Horizon

As U.S. policy makers continue to debate U.S. ratification of CRPD and States Parties take steps toward implementing the Convention, Members may wish to monitor several potential issues:

- **Evaluating effectiveness**—CRPD has been in force for nearly five years. As a result, there is minimal evidence demonstrating its effectiveness or potential areas for improvement. Evaluating the country-specific or global impact of the treaty may be particularly difficult because there is a lack of consistent or comparable data on persons with disabilities worldwide and often within countries and regions.
- **Challenges to implementation**—As States Parties take steps toward implementing the treaty's provisions, Senators may wish to monitor any challenges these countries face and how, if at all, CRPD mechanisms such as the Conference of States Parties or Disabilities Committee may assist with such issues. The United States may also consider ways that it can contribute to these bodies and share its expertise in disability rights as a CRPD observer.
- **Role of civil society**—Civil society, including human rights and disability rights groups, play a particularly important role not only in raising awareness of disability issues, but also in holding governments accountable to their CRPD commitments. As such, the United States may wish to monitor and encourage the full participation of civil society in CRPD mechanisms, particularly the Disabilities Committee, which is charged with evaluating reports from States Parties—some of which have weak disability rights standards.

[107] The proposal was adopted by a SFRC vote of 10 in favor and 9 against in 2012. The understanding was also adopted by SFRC in 2014. See *Senate Exec. Rept. 113-12*, pp. 25-26.

[108] For a description of the debates over the amendments, see *Congressional Quarterly* article by Joanna Anderson, "Senate Panel Supports Ratification of U.N. Treaty on the Disabled, Approves Nominees," July 26, 2012.

[109] See, for example, *Senate Exec. Rept. 112-6*, pp. 17-19 (Minority Views), and Grace Melton, "U.N. Disabilities Treaty Leaves Door Open for Abortion Advocates," *The Heritage Foundation*, August 1, 2012.

Appendix A. States Parties to CRPD

Afghanistan*	Djibouti*	Malaysia	Serbia*
Albania	Ecuador*	Maldives	Seychelles
Algeria	Egypt	Mali*	Sierra Leone
Andorra*	El Salvador*	Malta*	Singapore
Angola*	Estonia*	Mauritania*	Slovakia*
Argentina*	Ethiopia	Mauritius	Slovenia*
Armenia	European Union	Mexico*	South Africa*
Australia*	France*	Mongolia*	Spain*
Austria*	Gabon	Montenegro*	St. Vincent & Grenadines*
Azerbaijan*	Georgia	Morocco*	Sudan*
Bahrain	Germany*	Mozambique*	Swaziland*
Bangladesh*	Ghana*	Myanmar	Sweden*
Barbados	Greece*	Namibia*	Switzerland
Belgium*	Grenada	Nauru	Syrian Arab Republic*
Belize	Guatemala *	Nepal*	Thailand
Benin*	Guinea*	New Zealand	The former Yugoslav Republic of Macedonia*
Bolivia*	Guinea-Bissau	Nicaragua*	Togo*
Bosnia and Herzegovina*	Guyana	Niger*	Tunisia*
Brazil*	Haiti*	Nigeria*	Turkey
Bulgaria	Honduras*	Norway	Turkmenistan*
Burkina Faso*	Hungary*	Oman	Tuvalu
Burundi*	India	Pakistan	Uganda*
Cabo Verde	Indonesia	Palau*	Ukraine*
Cambodia	Iran	"State of Palestine"	United Arab Emirates
Canada	Iraq	Panama*	United Kingdom*
Cape Verde	Israel	Papua New Guinea	United Republic of Tanzania*
Chile*	Italy*	Paraguay*	Uruguay*
China	Jamaica	Peru*	Vanuatu
Colombia	Japan	Philippines	Venezuela*
Congo*	Jordan	Poland	Yemen*
Cook Islands*	Kenya	Portugal*	Zambia
Costa Rica*	Kiribati	Qatar	Zimbabwe*
Cote d'Ivoire	Kuwait	Republic of Korea	
Croatia*	Lao People's Democratic Republic	Republic of Moldova	
Cuba	Latvia*	Romania	
Cyprus*	Lesotho	Russian Federation	
Czech Republic	Liberia	Rwanda*	
Dominica*	Lithuania*	San Marino*	
Dominican Republic*	Luxembourg*	Saudi Arabia*	
Denmark	Malawi	Senegal	

Source: U.N. Treaty Collection.

Note: An asterisk (*) indicates State Party to the Optional Protocol.

Appendix B. Key CRPD Legislative Actions

- **May 17, 2012**: CRPD was received in the Senate and referred to the Committee on Foreign Relations (SFRC) by unanimous consent.
- **July 12, 2012**: SFRC held a hearing, "Convention on the Rights of Persons with Disabilities, Treaty Doc. 112-7."
- **July 26, 2012**: SFRC ordered CRPD to be reported favorably. (See Senate Exec. Rept. 112-6.)
- **July 31, 2012**: CRPD was reported favorably by Senator Kerry, Chairperson of SFRC, with minority views. A resolution of advice and consent to ratification was filed with three reservations, eight understandings, and two declarations.
- **November 27, 2012**: Senators approved a motion to proceed to executive session to consider the treaty in the full Senate by a vote of 61 in favor and 35 against. (See record vote number 205.)
- **November 30, 2012**: The Senate agreed, by unanimous consent, to debate and vote on CRPD on December 4, 2012.
- **December 4, 2012**: The resolution of advice and consent to ratification was not agreed to in the Senate by a vote of 61 in favor and 38 against. (See record vote number 219.)
- **January 3, 2013**: At the adjournment of the 112th Congress, CRPD was automatically returned to SFRC under Rule XXX, Section 2, of the Standing Rules of the Senate.[110]
- **November 5 and November 21, 2013**: SFRC held hearings on the Convention.
- **July 22, 2014**: SFRC ordered CRPD to be reported with amendments favorably. (See Senate Exec. Rept. 113-12.)
- **July 28, 2014**: Reported by Senator Menendez, Chairperson of SFRC, with minority views. A resolution of advice and consent to ratification was filed with three reservations, nine understandings, and two declarations.

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[110] Section 2 of Rule XXX states in part that "all proceedings on treaties shall terminate with the Congress, and they shall be resumed at the commencement of the next Congress as if no proceedings had previously been had thereon."

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