

# The Convention on the Rights of the Child and the UN Special Session on Children

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The Convention on the Rights of the Child (hereinafter, the convention) entered into force on 2 September 1990, and has been ratified by all nation states except the United States and Somalia. The convention forms an important—perhaps the important—backdrop to the UN Special Session on Children. While its terms are not being negotiated at the Special Session, while it is not universally binding either as treaty or as customary law, and while it is only explicitly referenced a few times in the document that is being negotiated at the Special Session, the ideas in it—including the terminology it employs—continue to have a significant influence on the approach taken by delegates to any UN session on children.

In analyzing the convention and determining strategy for UN negotiating sessions, it is vitally important to keep in mind that the convention contains some positive elements. Doing so helps pro-family advocates to shape their arguments for those delegates and nations who support, or who feel themselves bound by, the convention. However, the convention also contains elements that are, at best, ambiguous, and which enemies of the family and of life will seek to exploit. Nonetheless, even those provisions are subject to interpretation, i.e., to argument, and the best arguments are on the pro-family side.

## Positive Aspects of the Convention

The convention has a number of provisions that offer strong support for pro-life, pro-family advocates, both in the preamble and in the main body.

### *The Preamble*

The preamble to the convention recognizes:

- (1) that “the family . . . [is] the fundamental group of society and the natural environment for the growth and well being of . . . children” (Paragraph five);
- (2) that “the child, for the full development of his or her personality, should grow up in a family environment . . .” (Paragraph six); and
- (3) that the child “needs special safeguards and care, including appropriate legal protection, before as well as after birth” (emphasis added) (Paragraph nine).

A fundamental principle of treaty interpretation is that the preamble is part of the text (Vienna Convention on the Law of Treaties, Article 31-2). In other words, the convention must be understood in light of all its parts, including the preamble. The language in the preamble helps us determine the mean-

ing of other provisions. This preamble clearly shows that the nations of the world intend to respect the natural family and human life.

The preamble (paragraphs three and four) refers specifically to the Universal Declaration on Human Rights (hereinafter, the declaration), which is the first, fundamental human rights document, and, as such, is a powerful weapon. (The language of the declaration is picked up in one human rights treaty after another.) The declaration states—“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State” (Article 16-3).

### *The Main Body of the Convention*

Several articles of the convention appear particularly strong from the pro-family, pro-life perspective:

Article 5—“States Parties shall respect the responsibilities, rights, and duties of parents . . . to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child” of the rights in the convention. There are concerns with this article to be sure; for example, “others” in addition to parents are mentioned as having responsibility for the child. Yet, the article makes clear to any nonideological reader that the first and primary responsibility for childcare is the parents’ (only derivatively to others, such as the extended family or legal guardians). This is the principle that underlies the rest of the convention. Thus, the burden of proof, as lawyers say, rests upon those who advocate moving away from this.

The article’s requirement that “the responsibilities, rights, and duties of parents” be “in a manner consistent with the evolving capacities of the child” does, of course, give our opponents opportunity to argue that once a girl is, for instance, ten years old, the family should not control her access to contraception and abortion. However, such an argument would be weaker when younger children are involved, for, presumably, a child’s capacity to make independent judgments “evolves” as they age.

Article 6—“1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.” Section one, read in conjunction with the preamble, clearly establishes that the right to life begins before birth. Thus, whatever is meant by “to the maximum extent possible” in Section two, cannot be interpreted as allowing for abortion-on-demand.

Article 14—“States Parties shall respect the rights and duties of the parents . . . to provide direction to the child in

the exercise of his or her right [to freedom of thought, conscience, and religion] in a manner consistent with the evolving capacities of the child." Obviously, the term "evolving capacities of the child" could be misused, but, again, the basic principle is that the state shall respect the right of the parents to direct the child in, for example, matters of religion. We must resist any suggested infringement of this right by the state through reliance on the priority established in Article 14.

Article 18—"States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents . . . have the primary responsibility for the upbringing and development of the child" (Emphasis added). In establishing that both parents have responsibility, this article encourages marriage, and, more importantly, recognizes that the upbringing of the child is a parental and not a governmental responsibility (in conformity with the implications, at least, of the preamble). It is hard to imagine that the convention could articulate a more important principle.

Even in regards to education—perhaps the primary means by which liberals attack the traditional family and traditional values—there are some good standards in the convention. Article 29 states the goals to which the education of the child "shall be directed." These goals include: the "development of respect for the child's parents, his or her own cultural identity, language and values, [and] for the national values of the country in which the child is living." There is much in these goals that pro-family advocates can wholeheartedly support.

Article 28, by making "primary education compulsory," might be thought to infringe on the right of parents to send their children to religious schools. However, this article must be interpreted consistently with Article 14 that allows parents to direct the religious education, in particular of the youngest children. Also Article 29-2 states, "No part of the present article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions . . ." On this point, pro-family advocates should refer to the declaration. It states, "Parents have a prior right to choose the kind of education that shall be given their children" (Article 26-3).

Finally, I would draw your attention to Articles 33, 34, 35, and 36. These articles seek to promote international cooperation to protect children from drugs and sexual exploitation. These efforts for cooperation are of note for the international community. International cooperation would be an appropriate emphasis for a session on children.

#### **Negative or Ambiguous Aspects of the Convention**

A basic principle of the convention is that actions should be undertaken to promote or protect "the best interests of the

child" (Under the convention, a "child" is, generally, someone under eighteen). Note, for instance, Article 3—"In all actions concerning children, whether undertaken by public or private social welfare institutions [etc] . . . the best interests of the child shall be a primary consideration;" Article 18—in the upbringing of children by parents, "the best interests of the child will be their basic concern;" and Article 21 (concerning adoption).

Obviously, there are very different ideas about what constitutes the "best interests" of the child. However, pro-family advocates can certainly battle on this point, for social science research demonstrates the undeniable benefit to the child of being reared in a married two-parent, religious household. The "best interests" standard can be used to oppose interpretations that run counter to common sense. Delegates are to have the "best interests" standard in mind at all times, and it must, as noted, be understood within what the convention as a whole tells us are the "best interests." For example, the direction and supervision of parents is established as an important principle governing the child—per various articles noted above and elsewhere—and, hence, must be part of what constitutes the "best interests" of the child.

Article 13 is quite troublesome. Through "freedom of expression," it guarantees the child's "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, . . . through any . . . media of the child's choice." There is no explicit provision for parental supervision. While I believe such is implied by the other provisions of the convention, as discussed above, the omission of an explicit reference is troubling since Article 14 explicitly provides for such direct supervision. Article 17, concerning "the important function performed by mass media," "encourages the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being." This article references both Article 13 and Article 18, the latter of which provides for parents having "primary responsibility for the upbringing and development of the child."

A similar problem is found in Article 15, dealing with "freedom of association." The only restrictions noted in either Article 13 or 15 are legal restrictions. Likewise, Article 16 poses a problem. It states—"No child shall be subjected to arbitrary . . . interference with his . . . privacy . . .". Again, it must be argued that the convention as a whole implies parental supervision.

Article 19 is also troublesome—because it grants significant authority to the state to "protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, . . . while in the care of parent(s) . . . (etc)." This article was surely aimed at real abuse, but anti-family activists often argue that the teaching of traditional values and religion constitutes

“abuse.” Great mischief could be done here in undermining parents and the family.

Even so, the greatest threat likely comes from Article 24 dealing with “health.” It states:

States Parties shall strive to ensure that no child is deprived of his or her right of access to . . . *health care services*. . . . States Parties shall pursue full implementation of this right, and in particular, shall take appropriate measures . . . [1] to ensure that all segments of society, in particular parents and children, are informed, *have access to education* and are supported in the use of basic knowledge of child health . . . [and 2] to develop preventive health care, guidance for parents and family planning education and services. . . . States Parties shall take all effective and appropriate measures with a view of *abolishing traditional practices* prejudicial to the health of children. . . . States Parties undertake to promote and encourage *international cooperation* [in recognition of these rights]. In this regard, particular account shall be taken of the needs of *developing countries* (Emphases added).

It is important to stop and reflect on this article’s words. Nearly all the evils faced by the family can be hidden therein—abortion/contraception as “health care,” pornographic sex education, abortion as “family planning,” stigmatizing traditional religious beliefs and educational practices, and exporting the culture of death to the “developing” world. Of course, there is a pro-life, pro-family understanding of Article 24, consistent with a positive understanding of the convention as a whole [outlined above], which must be employed when the argument over the meaning of Article 24 is joined.

#### The Plans of the Anti-Family Forces

Now that we have examined the language of the convention, noting its strengths and weaknesses, how might anti-family forces, using ambiguous or weak concepts or language from the convention, attempt to advance their agenda at the UN Special Session? From a review of several UNICEF documents, the following lines of attack by anti-family forces may be identified.

*Attempt to Link Convention to More Radical Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)*

Anti-family forces may attempt to advance their agenda by linking the convention to the more radical CEDAW. For instance, in the UNICEF’s draft “A New Global Agenda for Children” (hereinafter, “draft agenda”), UNICEF states that its “vision” for the twenty-first century is expressly “guided” by both the convention and CEDAW (see draft agenda, II, Paragraph 3). The reason the link is attempted is because CEDAW, unlike the convention, emphasizes the “gender per-

spective”; CEDAW emphasizes “women’s rights.” Preparatory UN documents for the Special Session rarely, if ever, speak of wives (or husbands), and of boys or of the family. However, the convention (usually) places the child within the context of the family. It does not speak of “women’s rights” or of the “rights of girls and women.” While the convention forms the backdrop to the UN Special Session, CEDAW certainly does not. Thus, pro-family forces cannot accept any explicit or implicit link between the two treaties in the declaration that will emerge from the Special Session.

*Emphasis on Adolescent Rights—Carefully Distinguished From the Young Child’s Rights in Preparatory Documents*

In preparatory documents, there is an emphasis on adolescent rights, which are carefully distinguished from the young child’s rights (see draft agenda, II-C). It is through “adolescent rights” (to things such as abortion) that the rights of the parents and strength of the family are undermined. This is contrary to the convention which speaks of the child. The “adolescent” is not a focus of the convention.

*Focus on “Family Planning” and “Sex Education”*

Pro-family forces can expect their opponents to focus on “family planning” and “sex education.” The draft agenda states, “Adequate public funding of education and other social services, particularly for girls and women, leads to better family planning . . . .” Our opponents will use, particularly, the AIDS epidemic to do this, e.g., “There is a need to formulate and promote child-oriented policies, strategies and programs to prevent and combat HIV/AIDS.” Of course, as many persons in Kenya, for example, testify that the AIDS epidemic was halted through abstinence education, not condom distribution.

#### Proposed Responses of Pro-Family Forces

In response, at UN negotiating sessions, pro-family forces might emphasize/propose that:

- 1) the session endorse measures to encourage marriage and discourage divorce (all data show children benefit from being raised in a married household);
- 2) the problems sometimes identified as “remaining challenges” (such as death from preventable causes, lack of sanitation, and malnourishment) are an appropriate focus of governmental action and should be emphasized (rather redefining the family and parental and spousal roles); and
- 3) the efforts to convince states to pledge additional resources for UNICEF’s agenda should be resisted unless and until UNICEF moves away from its “political” agenda and shows significant and measurable results in areas such as reduction in childhood disease.