

# THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES AND U.S. RATIFICATION ISSUES



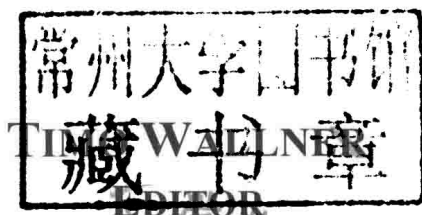
LAWS AND  
LEGISLATION

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EDITOR

NOVA

LAWS AND LEGISLATION

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CONVENTION ON THE RIGHTS  
OF PERSONS WITH DISABILITIES  
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## PREFACE

During the 113th 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). CRPD, which has been ratified or acceded to by 129 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. Many U.S. policymakers, 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. This book provides an overview on the United Nations Convention on the Rights of Persons with Disabilities, with a focus on its objectives, structure, and policy issues.

Chapter 1 - During the 113<sup>th</sup> 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 129 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.

Many U.S. policymakers, 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. 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 112<sup>th</sup> Congress.

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 CRPD 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.

Chapter 2 – This is the Testimony of Judith Heumann, Special Adviser for International Disability Rights, U.S. Department of State. Hearing on “Convention on the Rights of Persons with Disabilities.”

Chapter 3 – This is the Statement of Eve Hill, Senior Counselor to the Assistant Attorney General For Civil Rights, U.S. Department of Justice. Hearing on “Convention on the Rights of Persons with Disabilities.”

Chapter 4 – This is the Testimony of Dick Thornburgh, Former Attorney General of the United States. Hearing on “Convention on the Rights of Persons with Disabilities.”

Chapter 5 - This is the Testimony of John L. Wodatch, Former Chief of the Disability Rights Section, Civil Rights Division, U.S. Department of Justice. Hearing on “Convention on the Rights of Persons with Disabilities.”

Chapter 6 – This is the Statement of Steven Groves, Bernard and Barbara Lomas Fellow, The Heritage Foundation. Hearing on “Convention on the Rights of Persons with Disabilities.”

Chapter 7 – This is the Testimony of Michael Farris, Chancellor, Patrick Henry College. Hearing on “Convention on the Rights of Persons with Disabilities.”

Chapter 8 – This is the Testimony of John Lancaster, Retired Executive Director, National Council On Independent Living. Hearing on “Convention on the Rights of Persons with Disabilities.”

Chapter 9 – The Americans with Disabilities Act (ADA) provides broad nondiscrimination protection in employment, public services, public accommodations, services operated by public entities, transportation, and telecommunications for individuals with disabilities. This report summarizes

the major provisions of the ADA and analyzes selected recent issues, including the Supreme Court cases and the ADA Amendments Act of 2008.

Chapter 10 - The consideration of treaties and nominations constitutes the executive business of the Senate. To conduct executive business, the Senate must resolve into executive session. Senate Rule XXIX governs executive sessions, generally; Rule XXX addresses proceedings on treaties.

When the President submits a treaty to the Senate, the treaty, and any supporting materials, are referred to the Committee on Foreign Relations. Paragraph 3 of Senate Rule XXIX requires that all treaties and “all remarks, votes, and proceedings thereon shall also be kept secret, until the Senate shall, by their resolution, take off the injunction of secrecy.” At the time the treaty is referred to committee, the Senate typically agrees by unanimous consent to remove the “injunction of secrecy.”

The Foreign Relations Committee can order the treaty reported back to the Senate—favorably, unfavorably, or without recommendation—or, instead, decline to act on the treaty. If the committee does not act on the treaty, it is not automatically returned to the President. Treaties, unlike bills and other legislative measures, remain available to the Senate from one Congress to the next, until they are disposed or the Senate agrees to return them to the President. Paragraph 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.” Thus, if the Foreign Relations Committee fails to report a treaty before the end of a Congress, the treaty remains before the committee during the next Congress. If the committee has reported a treaty, but the Senate has not completed floor consideration of it when the Congress ends, the treaty is recommitted to the committee, and the committee must report it again before the Senate may consider it on the floor.

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*Chapter 1*

**THE UNITED NATIONS CONVENTION ON  
THE RIGHTS OF PERSONS WITH  
DISABILITIES: ISSUES IN THE U.S.  
RATIFICATION DEBATE\***

*Luisa Blanchfield, Cynthia Brougher  
and James V. DeBergh*

**SUMMARY**

During the 113<sup>th</sup> 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 129 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.

Many U.S. policymakers, 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.

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\* This is an edited, reformatted and augmented version of Congressional Research Service, Publication No. R42749, dated March 4, 2013.

In July 2009, President Obama signed CRPD. The Administration transmitted it to the Senate for advice and consent to ratification in May 2012. 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 112<sup>th</sup> Congress.

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 CRPD 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.

## 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 113<sup>th</sup> Congress. CRPD is the only multilateral treaty that specifically aims to protect the rights of those who are disabled. To date, 129 countries have ratified or acceded to the Convention. It has been signed by 155 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.<sup>2</sup> 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 112<sup>th</sup> Congress adjourned, the treaty was automatically returned to SFRC. The committee must report the treaty out again in order for the Senate to consider it.

### 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.<sup>1</sup>

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 policymakers—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 policymakers 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 113<sup>th</sup> Congress. For example, some policymakers 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.

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 policymakers 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.<sup>3</sup>

## OBJECTIVES AND STRUCTURE

The CRPD and its Optional Protocol were adopted by the U.N. General Assembly in December 2006.<sup>4</sup> 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.<sup>5</sup>

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.

Parties to the treaty 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."<sup>6</sup>

### 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.

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.)

Parties to CRPD agree to take appropriate measures to carry out a range of policies, laws, and administrative measures. The Convention’s provisions can be 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.”<sup>7</sup> Accordingly, States Parties are required to take steps to ensure that reasonable accommodations are provided to persons with disabilities.<sup>8</sup>
- **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.<sup>9</sup> 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.”<sup>10</sup> 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.”<sup>11</sup>
- **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.”<sup>12</sup> 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.<sup>13</sup>
- **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