



## FACTSHEET ON UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

The Convention on the Rights of Persons with Disabilities (CRPD) was originally conceived as an effort to promote the rights of persons with disabilities in countries where those rights were neglected. Nevertheless, several elements of the Convention give cause for alarm. We urge the Senate not to ratify the treaty.

C-FAM personnel were involved in the negotiation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) both as members of government delegations and as a non-governmental organization (NGO). This gives C-FAM unique insight into the controversy over parts of the text and the context in which the text it is now interpreted. Following are some of our concerns.

- 1. The CRPD presumes the establishment of rights contained in treaties that the United States has not ratified.** This includes the International Covenant on Social, Economic, and Cultural Rights (ICESCR). These rights are not recognized by the United States Constitution, nor are provided by existing U.S. laws, such as “the right to the enjoyment of the highest attainable standard of health” (Art. 25), which includes the right to “free or affordable health care” as well as the right to an “adequate standard of living and social protection” (Art. 28).
- 2. The treaty and the Committee on the Rights of Persons with Disabilities support a “social” definition of the term “disability” rather than a “medical” definition.** During the UN negotiations, Richard Thornburgh, former U.S. Attorney General, addressed the delegates. He stressed that even with the definition included in the Americans with Disabilities Act, the U.S. has had a hard time keeping the definition from ballooning. A social definition runs the risk of being expanded to such a degree that it will undermine the effectiveness of the law for those it is intended to protect. An expansive definition risks shifting focus away from helping people with disabilities to punishing the government or individuals for such things as “attitudinal barriers” rather than just physical barriers to the disabled.
- 3. It would be imprudent for the United States to ratify another UN human rights treaty until the UN treaty system is reformed.** Far from trivial, the misinterpretation of UN treaties has become a major concern of UN member states. Compliance committees, also known as treaty monitoring bodies or treaty bodies, routinely act *ultra vires* by purporting to issue rulings in a quasi-judicial capacity. These entities expand the meaning of international instruments, without consultation or agreement by member states, disregarding the sovereignty of the nations that constituted them. Ratifying the Convention would be seen as United States approval for this *modus operandi*. Several countries have undertaken an effort to reform the system. Ratifying the

treaty at this time will place the very leadership role of the United States in these matters in jeopardy.

**4. The CRPD includes the extremely controversial term “sexual and reproductive health.”**

The combination of ill-defined terms and activist treaty bodies is nowhere more obvious than in the interpretation of the controversial term “sexual and reproductive health,” which negotiators did not define before including in the CRPD. This is the first time the term occurs in binding international law. The UN General Assembly has never defined the term as including abortion in either a non-binding resolution or a binding convention. Yet, because it is routinely used to include abortion anyway, the U.S. rightly sounded a note of warning in its closing statement during treaty negotiations, stating that the treaty “cannot be interpreted to constitute support, endorsement, or promotion of abortion.”

- **UN human rights treaty bodies and various UN agencies, chiefly the World Health Organization, routinely interpret the term “sexual and reproductive health” to include abortion over the objections of UN member states.<sup>1</sup>**
- Indeed, this is the reason **fifteen countries made statements in the UN General Assembly at the time the CRPD was adopted in December 2006 that the treaty could not be interpreted as including abortion** and did not create any new rights. Four countries have so far made statements at time of signature or accession to that effect, including Lithuania, Malta, Monaco, and Poland.<sup>2</sup>
- The reason for concern also stems from the way **the term was railroaded through the treaty negotiations by a powerful group including the EU and the chairman of the proceedings.** Up until the very last days of negotiations, 23 nations called for its deletion. Strongest among them were the Arab Group, the Holy See, the U.S. and some Latin American states. In an unusual move, the chairman ignored the lack of consensus and told delegations to keep negotiating until they reached agreement on the term. Late on the last day of the negotiations, Article 25 was adopted with the phrase “sexual and reproductive care and programmes.”
- In order to get delegations to accept the term, abortion supporters had to concede during the negotiations that the term “sexual and reproductive health” does not include abortion nor

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<sup>1</sup> For example, some have interpreted the non-binding document from Cairo (ICPD – International Conference on Population and Development) as including abortion as part of sexual and reproductive health. They make that connection by accepting the 1994 WHO definitions of “fertility regulation” as including “interruption of pregnancy.” These definitions have not been accepted by the UN General Assembly.

<sup>2</sup> Lithuania said: “the concept of ‘sexual and reproductive health’ used in Article 25(a) of the Convention shall not be interpreted to establish new human rights and create relevant international commitments of the Republic of Lithuania. The legal content of this concept does not include support, encouragement or promotion of pregnancy termination, sterilization and medical procedures of persons with disabilities, able to cause discrimination on the grounds of genetic features.” Malta said: “the phrase ‘sexual and reproductive health’ in Art 25 (a) of the Convention does not constitute recognition of any new international law obligation, does not create any abortion rights, and cannot be interpreted to constitute support, endorsement, or promotion of abortion. Malta further understands that the use of this phrase is intended exclusively to underline the point that where health services are provided, they are provided without discrimination on the basis of disability. Monaco said: “articles 23 and 25 of the Convention must not be interpreted as recognizing an individual right to abortion except where expressly provided for under national law.”

does its inclusion in the treaty create a right to abortion. At one point the chairman polled the room and asked if anyone believed that the document created any new rights. No country responded affirmatively. He further stressed the inclusion of a footnote in the working text to this effect, and that the rest of the *travaux preparatoire* would provide guidance to interpret the treaty in the future. **This was a watershed event and should have clarified the term's meaning as excluding abortion once and for all. Instead, as recently as 2010, Secretary of State Hillary Clinton stated that "sexual and reproductive health" is a term that includes abortion.**<sup>3</sup>

- **It can be expected that compliance committees which are already reading abortion rights into other treaties will unjustly interpret the text of the CRPD as including it, even more so since it includes the very term they have been using to promote abortion in other compliance committees.** The problem is that the footnote in the draft treaty is no longer attached nor does the *travaux preparatoire* accompany the document when it is interpreted by UN bureaucrats or judges. Committees for Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ICESCR, and the International Covenant on Civil and Political Rights (ICCPR) have pressured more than 90 nations to liberalize abortion laws by referring to the inclusion of this term in non-binding outcome documents from the 1994 Cairo conference on population and the 1995 Beijing conference on women. This misinterpretation has continued since the adoption of the CRPD.

5. The United States is fortunate that it does not have to wade into this morass in order to help its disabled citizens. **The American Disabilities Act and several other federal laws already regulate the concerns covered by the Convention.** We acknowledge that some groups sincerely believe that U.S. ratification would signal American support for its underlying principles of non-discrimination to the rest of the world. Aside from the fact that this is not sufficient reason to bind a country to international law, **there is little reason to expect that ratifying CRPD will make other nations better observe their obligations under the treaty.** Many countries continue to ignore their obligations under the ICCPR despite the fact that the United States is party to it.

With so many problems associated with its interpretation, the Senate should reject ratification of the CRPD.

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<sup>3</sup> Hillary Clinton, Speech, Statement to G8 Ministers (Mar. 2010).