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# Toward Adoption of the United States Convention on the Rights of the Child

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international human rights standard setting. It reexplores some familiar but still unsettled terrain in human rights lawmaking. At the same time, the draft Convention provokes debate over new issues, such as the tension between paternalistic protection of the child from exploitation and respect for the child's autonomy in the enjoyment of full human dignity.

TOWARD ADOPTION OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF  
THE CHILD: A POLICY-ORIENTED OVERVIEW

*by Lung-chu Chen\**

This year is very special for the protection of the rights of the child in the world community—it marks the 30th anniversary of the Declaration of the Rights of the Child and the 10th anniversary of the International Year of the Child. The United Nations has accorded top priority for adopting the Convention on the Rights of the Child in 1989. On March 8, 1989, the U.N. Commission on Human Rights did its part by completing its work on the draft Convention on the Rights of the Child and transmitted the draft Convention, through the Economic and Social Council, to the General Assembly for adoption at its 44th session this fall.

Deprivations imposed upon children have had long historic roots and continued contemporary manifestations. Though the plight of the child varies from community to community and from culture to culture, the deprivations, consciously or unconsciously imposed upon the child, have become increasingly apparent. Practices, both governmental and private, that deny children the protection and fulfillment of human values are far from historical relics, but continue to be a fact of life in the differing communities around the world.

In the developing world, the fundamental stake of survival for children has been amply documented by UNICEF in its annual State of the World's Children report. In the developing countries, such as the United States, the question of child abuse in all its many forms and manifestations has increasingly captured news headlines. Indeed, the deprivations of the child extend to respect, well-being, wealth, and other value processes and take various forms.

For a quick inventory of dramatic examples: in relation to respect—treating children as parental property rather than persons; the sale and trafficking of children; discrimination on account of a child's birth status or other grounds. In relation to well-being—the battered child syndrome; child abuse, neglect, sexual exploitation; starvation; malnutrition; poor health for lack of health care and insurance; high infant mortality rates; death caused by frequent infection and prolonged undernutrition; as victims of violence and drug abuse; growing suicide rates. In relation to power—total powerlessness and dependency; denial of due process protection. In relation to enlightenment—high rates of school dropout; illiteracy. In relation to skill—lack of basic skills and training. In relation to wealth—stark poverty; exploitation of child labor; unemployment. In relation to affection—as pawns in the custody battle; as target of parental abduction rather than affection; as victims of divided and broken families. In relation to rectitude—imposition of religious dogmas; denial of freedom for spontaneous cultivation and development of responsible norms of conduct.

These deprivations and the nonfulfillment of values give rise to a wide range of legal problems that require serious attention. Though these problems may differ in their manifestation, magnitude, and gravity from community to community, as exemplified

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by the striking contrast between developed and developing countries, childhood problems are indeed a shared human concern. Humankind will be better served once the world community and individual national communities come to grips with these problems.

The concept of human dignity covers the entire span of life, commencing with childhood, continuing with adulthood, and throughout all phases of the aging process. The overriding policy of promoting human dignity for all human beings requires, first of all, that a child be treated as a person and be accorded dignity and general human rights protection.

In addition, because of their special needs, dependency, and vulnerability, children require special care, protection, and assistance. "The best interests of the child" has become a well-worn catch-phrase in our time, but it remains a sound statement of the overriding community policy. The critical question, however, is how "the best interests of the child" are to be given effective expression both in word and in deed regarding manifold choices and decisions, and not relegated to an expedient pretext. This would require careful consideration of the distinct roles played by the child, the family (including parents, legal guardians, or other adults), and the general community (the state).

A preferred policy is to secure family integrity and provide a stable family environment for a child's healthy growth, psychologically as well as physically. Thus, under normal conditions, it is in the best interest of the child to respect the rights of parents to raise children as they see fit, free of governmental intrusion. However, when community/state intervention becomes necessary and justified because of parental neglect, abuse, or abandonment, then the strong presumption in favor of the paramouncy of the needs and interests of the child becomes even more urgent and compelling. In this connection, the two classics by Joseph Goldstein, Anna Freud, and Albert J. Solnit, *Beyond the Best Interests of the Child* and *Before the Best Interests of the Child*, are particularly incisive.

The quality and future of society and the degree to which human dignity values are fulfilled may be measured by the protection and treatment accorded to the young members of the population. The treatment of the child concerns not only the child; it involves the identity system of the self and of the whole society of which the self is a part. It is a matter of common interest for all members of society. How has the human community responded to this challenge?

Children were legally treated as parental (usually paternal) property back in ancient Rome. Only in the 19th century did the law begin to bestow special protection to children, to restrict the exploitation of child labor, to provide basic education, to give financial aid for the most dependent, and to minimize extreme cases of neglect and abuse.

During the era of the League of Nations, the Assembly of the League adopted the Declaration of the Rights of the Child of 1924, also known as the Geneva Declaration of 1924, in clear affirmation of the importance of international protection of children. In addition, the League adopted conventions to prohibit traffic in women and children and slavery and the slave trade. Furthermore, the International Labor Organization (ILO) adopted numerous conventions in order to abolish child labor and to enhance the conditions and terms of employment for working children.

In the present era of the United Nations, the protection of the rights of the child cannot be discussed in a vacuum; it must be discussed within the larger context of the contemporary human rights movement. The concerted effort toward the adoption of

a U.N. Convention on the Rights of the Child is an integral part of this ongoing and ever-growing movement.

The contemporary global human rights movement is heir to other great historic movements for human dignity, freedom, and equality. It expresses the enduring elements in most of the world's great religions and philosophies. It builds on the findings of modern science about the close link between respect for human dignity and all other values, between human rights and peace.

The peoples of the world, whatever their differences in cultural traditions and institutional practices, today demand most intensely all those basic rights conveniently summarized in terms of the greater production and wider sharing of values of human dignity. These values include respect, power, enlightenment, well-being, wealth, skill, affection, and rectitude. In brief, respect entails recognition as a person, freedom of choice, equality both in positive and negative senses, and a large domain of personal autonomy. Power is participation in the making or influencing of decisions both in formal and effective power processes. Enlightenment is the gathering, processing, and communication of information and knowledge. Well-being refers to health, safety, and comfort. Wealth is access to goods and services. Skill is the development and exercise of latent capabilities in arts, professions, and so on. Affection refers to bestowal of positive sentiment, intimacy, friendship, and love. Rectitude is the formation and expression of forms of responsible conduct. The aggregate of all these values may be described as security.

These demands for human dignity values have received authoritative expression in a host of human rights prescriptions, from the U.N. Charter to the Universal Declaration of Human Rights, and a host of ancillary instruments, both global and regional.

The Universal Declaration, the International Covenant on Civil and Political Rights and its Protocol, and the International Covenant on Economic, Social, and Cultural Rights constitute what is commonly known as the International Bill of Human Rights. This developing International Bill of Human Rights has been greatly strengthened in substance by various ancillary instruments dealing with particular categories of participants, such as women, refugees, stateless persons, aliens, the elderly, youths, children, and disabled persons, or particular values or subjects, such as genocide, apartheid, discrimination, racial discrimination, sex-based discrimination, slavery, forced labor, torture, nationality, political participation, employment, education, and marriage. It has also been fortified by decisions and recommendations of international governmental organizations, especially U.N. organs and entities, and by customary international law, especially that concerning state responsibility for injury to aliens.

Together these important human rights instruments cover, in the popular parlance, not only civil and political rights, but also economic, social, and cultural rights. They extend to all basic values widely cherished. The core content of these various communications has been prescribed as a global bill of human rights in the dynamic sense. This dynamic bill of rights is in both form and policy content much like those bills of rights created and maintained in some national communities. Its core content expresses the intensely demanded values of human beings around the world, even though the degree of deprivation and fulfillment of values differs from community to community.

An important trend in this developing bill of human rights is to expand the scope of protection and fulfillment from general protection for all human beings to particular categories of people requiring special protection and assistance. The drive toward the

formulation and adoption of the U.N. Convention on the Rights of the Child represents such a community effort.

Building on the Geneva Declaration on the Rights of the Child of 1924, the General Assembly of the United Nations adopted the Declaration of the Rights of the Child in 1959, reaffirming the importance of according special protections and assistance to children. To commemorate 1979 as the International Year of the Child, the General Assembly directed the U.N. Commission on Human Rights to formulate a Convention on the Rights of the Child. After 10 years of hard work, especially through its Open-Ended Working Group, the Commission completed the task of drafting the Convention in March 1989 and has transmitted it to the General Assembly for adoption this year.

The draft Convention consists of 54 articles, covering a full range of substantive rights and measures of implementation. It represents significant consensus amid diversity in claims, perspectives, and practices. It manifests the following basic community policies: (1) children need special legal protection beyond that provided to adults, (2) the ideal environment for a child's survival and development is generally within a protective and caring family setting, and (3) governments, and the adult world in general, should respect and act in the best interests of children.

In terms of substantive rights, let me give you a quick rundown value by value:

**Respect**—nondiscrimination; preservation of identity; protection of privacy, honor, and reputation; prevention of abduction, sale, and trafficking; and protection from all other forms of exploitation.

**Power**—right to name and nationality; due process in penal matters; and prevention of child soldiering.

**Enlightenment**—right to express opinions; freedom of expression and information; freedom of association; access to appropriate information through responsible mass media; and right to education.

**Well-being**—right to life; prevention of abuse; provision for health, rest, and leisure; protection from narcotic and psychotropic substances; freedom from torture; and freedom from capital punishment.

**Wealth**—right to benefit from social security; right to an adequate standard of living; and protection from economic exploitation.

**Skill**—education and training.

**Affection**—parental guidance; parental care (nonseparation from parents); family reunification; adoption; periodic review of placed children; refugee children; and recovery and reintegration.

**Rectitude**—freedom of thought, conscience, and religion; and cultural, religious, and linguistic rights.

In terms of measures of implementation, the draft Convention is rather weak; the emphasis is on cooperation rather than confrontation. It relies on a reporting system, giving a special role to UNICEF and other pertinent agencies. It does not contain state-to-state complaint and individual petition systems, characteristic of many of the international human rights instruments.

This is a quick overview. Other panelists will shortly give you more details about the legislative history of the draft Convention and spotlight some of the more important and controversial issues involved throughout the prescribing process.

I would like, however, to emphasize one central point relevant to the interpretation and application of the entire Convention. In the course of formulating the draft Convention, serious concern has been expressed over a number of interrelated questions,

notably: What would be the relationship between the draft Convention and the existing human rights instruments? Would the draft Convention dichotomize “children” and “other human beings”? Would the draft Convention fortify or dilute the protection and fulfillment of human rights for the child and for other individuals? These are important questions and deserve serious considerations.

As I stated before, a dynamic global bill of human rights has emerged and continues to develop. Central to this developing corpus of international human rights law is the notion that every individual is entitled to human dignity simply because he or she is a human being. It reflects the clear and universal recognition that the individual is the ultimate actor—the ultimate beneficiary and the ultimate victim—in any social interaction and decisionmaking, national or transnational. Hence, all the major human rights instruments of general scope, notably the Universal Declaration and the two Covenants, are designed to apply to all human beings, irrespective of age.

The standard formula employed by the Universal Declaration is: “Everyone has the right to . . .” “Everyone” certainly refers to all human beings, regardless of age, children and adults alike. When a particular age group is intended, it is clearly stated. Article 16(1), for instance, reads in part: “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.” Article 25(2) stipulates: “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” Article 26(3) further states that “[p]arents have a prior right to choose the kind of education that shall be given to their children.”

The same concern for the protection of all human beings, based on the same prescriptive formulas, is equally evident in both international covenants on human rights. Even human rights conventions with a more restrictive focus are, again, formulated generally in terms of every individual human being.

Similarly, the three regional human rights conventions—European, American, and African—are all cast in broad language designed to protect all human beings, regardless of age, with exceptions clearly stipulated.

The draft Convention, while incorporating some of the familiar rights, such as freedom of expression and assembly, that appeared in the major human rights instruments, seeks primarily to provide special protection to children to meet children’s unique and special needs. Including some rights and omitting many others in the draft Convention naturally may generate concern as to whether children would thus be denied those rights that are taken for granted but omitted from the draft Convention.

To duplicate wholesale the rights already provided in the Universal Declaration, the two covenants, and other relevant instruments would not be economical and effective. To dispel any doubt or misgiving caused by the prescriptive techniques of selective incorporation, I had proposed, before the second reading of the draft Convention, that this inclusive, generic clause be included in the Convention: “It is hereby confirmed that all of the rights accorded to the child in all other human rights instruments and customary law, though not explicitly incorporated in this Convention, are preserved and made fully effective.”

Although the Human Rights Commission did not adopt this wording, it is gratifying to see that article 41, as adopted by the Commission, reflects strongly the essence of the proposal. Article 41 reads: “Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in: (a) the law of a State party; or (b) international law in force for that State.” The phrase “international law in force for that State” includes customary law