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

*Lung-chu Chen***

1989 is a very special year for the protection of the rights of the child in the world community because it marks the thirtieth anniversary of the Declaration on the Rights of the Child and the tenth anniversary of the International Year of the Child. The United Nations has accorded top priority for the adoption of the Convention on the Rights of the Child in 1989.¹ On March 8, 1989, the United Nations 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 forty-fourth session this fall.²

I. FACTUAL BACKGROUND

Deprivations imposed upon children have had long

* Adapted and expanded from a speech delivered at the Annual Meeting of the American Society of International Law in April 1989.

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1. G.A. Res. 43/112, 43 U.N. GOAR Supp. (No. 49) at 188, U.N. Doc. A/43/49 (1988).

2. Commission Res. 1989/57, 45 U.N. ESCOR Supp. (No. 2) at 137-38, 6-7, U.N. Doc. E/1989/20, E/CN.4/1989/86 (1989); ECOSOC Res. 1989/79, Resolutions and Decisions adopted by the Economic and Social Council at 155-56, -- U.N. ESCOR --, U.N. Doc. E/1989/INF/7 (1989); Annotated Preliminary List of Items to be Included in the Provisional Agenda of the Forty-Fourth Regular Session of the General Assembly at 313-14, G.A. Res. --, 44 U.N. GOAR Supp. (No.--), U.N. Doc. A/44/100 (1989).

historic roots and continued contemporary manifestations. Although the plight of the child varies from community to community and from culture to culture, the deprivations, consciously or unconsciously imposed on 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.³ In developed countries, such as the United States, the question of child abuse, in all its many forms and manifestations, has increasingly captured news headlines.⁴

Indeed, the deprivations of the child take various forms and extend to respect, well-being, wealth and other value processes.⁵ For a quick inventory of dramatic examples:

In relation to *respect*, treating children as parental property rather than as persons; 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.

3. See UNICEF, THE STATE OF THE WORLD'S CHILDREN 1989 (1989); UNICEF, THE STATE OF THE WORLD'S CHILDREN 1988 (1988).

4. See, e.g., THE BATTERED CHILD (R. Helfer & R. Kempe eds. 4th ed. 1987); CHILD ABUSE: AN AGENDA FOR ACTION (G. Gerbner ed. 1980); Cohen, *Freedom from abuse: One of the Human Rights of Children*, 11 U. DAYTON L. REV. 601 (1986).

5. For definition of these values, see *infra* note 12 and accompanying text.

In relation to *skills*, lack of basic skills and training.

In relation to *wealth*, stark poverty; exploitation of child labor; unemployment.

In relation to *affection*, children becoming 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.

Thus, these deprivations and non-fulfillment 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 by the striking contrast between developed and developing countries, childhood problems are indeed a shared human concern. Humankind would be better served the sooner the world community and individual national communities come to grips with these problems.

II. BASIC COMMUNITY POLICIES

The concept of human dignity covers the entire span of life, commencing with childhood, 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"⁶ has become a well-worn catchphrase 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

6. See generally *infra* note 7.

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 the parents to raise children as they see fit, free of governmental intrusion. However, when community and state intervention becomes necessary and justified because of parental neglect, abuse or abandonment, the strong presumption in favor of the paramount needs and interests of the child becomes even more urgent and compelling. In this connection, the seminal works by Joseph Goldstein, Anna Freud and Albert J. Solnit are particularly noteworthy.⁷

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?

III. TRENDS IN DECISION

Children were legally treated as parental (usually paternal) property way back in ancient Rome.⁸ Only in the nineteenth century did the law begin to bestow special protection to children, to restrict the exploitation of child

7. J. GOLDSTEIN, A. FREUD & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* (1973); *BEFORE THE BEST INTERESTS OF THE CHILD* (1979); *IN THE BEST INTERESTS OF THE CHILD* (1986).

8. A. SCOTT, 1 *THE CIVIL LAW* 64-65 n.2 (1973).

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 1924,⁹ in clear affirmation of the importance of international protection of children. In addition, the League adopted conventions to prohibit the trafficking of women and children, 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.¹⁰

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 United Nations 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.¹¹

9. LEAGUE OF NATIONS O.J. Spec. Supp. 21, at 43 (1924).

10. See generally Slavery Convention, Sept. 25, 1926, 46 Stat. 2183, T.S. No. 778, 60 L.N.T.S. 253.

11. See M. MCDUGAL, H. LASSWELL & L. CHEN, HUMAN RIGHTS AND WORLD PUBLIC ORDER (1980) [hereinafter HUMAN RIGHTS]. In addition, see generally T. BUERGENTHAL, INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL (1988); HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES (T. Meron ed. 1984); HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES AND ACTION (R. Claude & B. Weston eds. 1989); H. LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS (1950); B. RAMCHARAN, THE CONCEPT AND PRESENT STATUS OF THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS (1989); A. ROBERTSON, HUMAN RIGHTS IN THE WORLD (2d ed. 1982); P. SIEGHART, THE LAWFUL RIGHTS OF MANKIND (1985); THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT

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 decision both in formal and effective power processes. Enlightenment is 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 norms of responsible conduct. (The aggregate of all these values may be described as *security*.)¹² These demands for human dignity values have received authoritative expression in a host of human rights prescriptions, from the United Nations Charter to the Universal Declaration of Human Rights,¹³ and a host of ancillary instruments, both global and regional.

The Universal Declaration, the International Covenant on Civil and Political Rights and its Protocol,¹⁴ and the International Covenant on Economic, Social, and Cultural

ON CIVIL AND POLITICAL RIGHTS (L. Henkin ed. 1981); THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS (K. Vasak & P. Alston eds. 1982).

12. See HUMAN RIGHTS, *supra* note 11, at 7-37, 84-86. See also L. CHEN, AN INTRODUCTION TO CONTEMPORARY INTERNATIONAL LAW: A POLICY-ORIENTED PERSPECTIVE 209-11 (1989).

13. The Universal Declaration of Human Rights was adopted Dec. 10, 1948. G.A. Res. 217(III), U.N. Doc. A/810, at 71 (1948) [hereinafter Universal Declaration].

14. International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976. As of Dec. 31, 1987, 87 states were parties to this covenant); Optional Protocol to the International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976. As of Dec. 31, 1987, 40 states were parties to this treaty.).

Rights¹⁵ constitute what is commonly known as the International Bill of Human Rights.¹⁶ More than the familiar form, this developing International Bill of Human Rights has been greatly strengthened in substance by various ancillary instruments dealing with particular categories of participants (women, refugees, stateless persons, aliens, the elderly, youths, children, disabled persons and so on) or particular values or subjects (genocide, apartheid, discrimination, racial discrimination, sex-based discrimination, slavery, forced labor, education, marriage, and so on). 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.¹⁷

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 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.¹⁸ 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

15. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976. As of Dec. 31, 1987, 91 states were parties to this covenant.).

16. United Nations Centre for Human Rights, Fact Sheet No. 2, The International Bill of Human Rights (1988).

17. For a convenient compilation of these documents, see UNITED NATIONS CENTRE FOR HUMAN RIGHTS, HUMAN RIGHTS: A COMPILATION OF INTERNATIONAL INSTRUMENTS, U.N. Doc. ST/HR/1/Rev.3, U.N. Sales No. E.88.XIV.1 (1988).

18. For an elaboration of a global bill of human rights in the dynamic sense, see HUMAN RIGHTS, *supra* note 11, at 313-63.

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 United Nations Convention on the Rights of the Child represents such a community effort.¹⁹

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 1959,²⁰ reaffirming the importance of according special protections and assistance to children. To commemorate 1979 as the International Year of the Child,²¹ the General Assembly directed the United Nations Commission on Human Rights to formulate a Convention on the Rights of the Child. After ten 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.²²

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.²³

In terms of substantive rights, here is a quick rundown value by value:

19. See *supra* notes 1, 2 and accompanying text.

20. G.A. Res. 1386, 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

21. G.A. Res. 31/169, 31 U.N. GAOR Supp. (No. 39) at 74, U.N. Doc. A/31/39 (1976).

22. See *supra* note 1; *Question of A Convention on the Rights of the Child: Report of the Working Group on a draft convention on the rights of the child*, 45 U.N. ESCOR (Agenda Item 13), U.N. Doc. E/CN.4/1989/48 (1989) [hereinafter *Report of the Working Group*].

23. See *Report of the Working Group*, *supra* note 22, at 22-26.

Respect:

Non-discrimination

Preservation of identity

Protection of privacy, honor and reputation

Prevention of abduction, sale and traffic

Protection from all other forms of exploitation

Power:

Right to name and nationality

Due process in penal matters

Prevention of child soldier²⁴

Enlightenment:

Right to express opinions

Freedom of expression and information

Freedom of association

Access to appropriate information through responsible mass media

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

Freedom from capital punishment

Wealth:

Right to benefit from social security

Right to an adequate standard of living

Protection from economic exploitation

24. This was one of the most controversial issues receiving lengthy debates. *Id.* at 110-16.

Skill:

Education and training

Affection:

Parental guidance

Parental care (non-separation from parents)

Family reunification

Adoption

Periodic review of placed children

Refugee child

Recovery and re-integration

Rectitude:

Freedom of thought, conscience and religion

Cultural, religious and linguistic rights

In terms of implementation, the Draft Convention is rather weak; the emphasis is on cooperation rather than confrontation. It relies on a reporting system and gives special roles to UNICEF and other pertinent agencies. It does not contain state-to-state complaint and individual petition systems which are characteristic of many international human rights instruments.²⁵

This has been a quick overview. Other contributors to this symposium have provided more details about the legislative history of the draft Convention and spotlighted some of the more important and controversial issues involved throughout the prescribing process. However, one central point relevant to the interpretation and application of the entire Convention should be emphasized. In the course of formulating the draft Convention, serious concern has been expressed over a number of interrelated questions, notably: (a)

25. *Id.* at 119-27. *Compare*, UNITED NATIONS CENTRE FOR HUMAN RIGHTS, UNITED NATIONS ACTION IN THE FIELD OF HUMAN RIGHTS at 24-26, U.N. Doc. ST/HR/2/Rev.3, U.N. Sales No. E.88.XIV.2 (1988); GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE (H. Hannum ed. 1984). In addition, *compare* references cited in note 11, *supra*.

What would be the relationship between the draft Convention and the existing human rights instruments?; (b) Would the draft Convention dichotomize "children" and "other human beings"?; and (c) 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 consideration.

As stated above, 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 universal recognition that the individual is the ultimate actor -- the ultimate beneficiary and the ultimate victim -- in any social interaction and decision making, 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 . . ." ²⁶ Negatively, the formula is: "No one shall be . . ." ²⁷ 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: "[m]en and women of *full age*, without any limitation due to race, nationality or religion, have the right to marry and to found a family."²⁸ Article 25(2) stipulates: "[m]otherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same protection."²⁹ Article 26(3) further states that "[p]arents

26. See Universal Declaration, *supra* note 13, arts. 3, 6, 8, 13, 14(1), 15(1), 17(1), 18, 19, 20(1), 22, 23, 24, 25(1), 26(1), 27.

27. *Id.* arts. 4, 5, 9, 11(2), 12, 15(2), 17(2).

28. *Id.* art. 16(1) (emphasis added).

29. *Id.* art. 25(2).

have a prior right to choose the kind of education that shall be given to their children."³⁰

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 cast in broad language designed to protect all human beings, regardless of age, with exceptions clearly stipulated.³¹ The draft Convention, while incorporating some of the familiar rights (such as freedom of expression and assembly) 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 instruments³² would not be economical and effective. To dispel any doubt or misgiving caused by the prescriptive techniques of selective incorporation, prior to the second reading of the draft Convention, the following inclusive, generic clause was proposed for inclusion in the Convention:

30. *Id.* art. 26(3).

31. See [European] Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, 226 (entered into force Sept. 3, 1953. As of Dec. 1987, 21 states were parties to this convention.); American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36 at 1, O.A.S. Off. Rec. OEA/Ser. L/V/II.23 doc. 21 rev. (1970) (as of Mar. 1, 1988, 20 states were parties to this convention).

African [Banjul] Charter On Human And People's Rights, adopted June 27, 1981, O.A.U. Doc. CAB/LEG/67/3/Rev.5 (1981), reprinted in 21 I.L.M. 59, 60 (1982) (entered into force Oct. 21, 1986. As of April 16, 1987, 33 states were parties to the Charter). Unlike the other two regional human rights conventions, the African Charter enunciates "peoples' rights" in addition to "individual rights." *Id.*

32. See *supra* notes 10-13.

"[i]t 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."³³

Although the Human Rights Commission did not adopt this formula in wording, it is gratifying to see that Article 41, as adopted by the Commission, strongly reflects the essence of the proposal. Article 41 reads: "[n]othing 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."³⁴ "International law in force for that State" includes customary law as well as treaty law; it is sufficiently broad in scope and potential application. It would, for example, make the standards enunciated in the Universal Declaration of Human Rights, which is today widely perceived to be customary international law, applicable to contracting states.³⁵

33. Chen, *Proposal for Adding an Inclusive Clause to the Draft Convention on the Rights of the Child*, INDEPENDENT COMMENTARY: UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 1 (C. Cohen ed. 1988).

34. *Report of the Working Group*, *supra* note 22, at 116-19.

35. See HUMAN RIGHTS, *supra* note 11, at 273-74, 325-30, and references cited therein; Compare United Nations Centre for Human Rights, *Bulletin of Human Rights, Special Issue, Fortieth Anniversary of the Universal Declaration of Human Rights (1988)* [hereinafter *Bulletin of Human Rights*]. In his introduction to this special issue, Jan Martenson, Director-General of the U.N. Office at Geneva and Under-Secretary-General for Human Rights, stated at the outset:

Nineteen eighty-eight marks the 40th anniversary of the Universal Declaration of Human Rights. The Declaration is nothing less than a monument to humankind, a veritable Magna Carta enumerating specific standards of achievement in the civil, political, economic, social, and cultural fields that had never been attempted before and which are valid for all members of the human family. In the years that have elapsed since the adoption of that bold and inspiring document, the international community has made great strides in translating the vision of the Declaration into reality. Indeed, over fifty international instruments dealing with basically all aspects of human endeavor have been concluded since and have provided legal obligations to the primarily moral character of the Universal Declaration. Within this wide-ranging international code of human rights, the International Covenants on Human

IV. APPRAISAL AND RECOMMENDATIONS

The task of formulating the Convention on the Rights of the Child is an integral part of the ongoing global effort in the defense and fulfillment of human rights. The new Convention is designed to complement and reinforce, not to deprive or dilute, the protection that has already been accorded to the child under contemporary international law, both conventional and customary. The specific contours and details of the relationship of the contemplated convention and the existing human rights instruments must of course wait future interpretation and application. Just as other human rights instruments are constantly evolving, the contemplated Convention, when adopted and entering into force, would undoubtedly undergo a comparable process of dynamic growth.

The task of adopting the draft Convention, however, is now--Target 89! Once the Convention is adopted, it would, despite all its flaws and imperfections, further facilitate crystallization of community expectations and support in the defense and fulfillment of the rights of the child.

The concept of human dignity covers the whole life span. The quality of society and the degree to which human dignity values are fulfilled may be measured by the treatment accorded to children as well as the aged members of the population. To maximize the self-fulfillment of individual persons and their contributions to the common interest, it is essential that individual potential receive the fullest possible protection and expression at all stages of life, especially a healthy and good start at the early stage.

Rights take pride of place.

Bulletin of Human Rights, *supra*, at 1.

THE AGE OF MAJORITY: ARTICLE 1

Timothy Porterfield and Gregory H. Stanton***

Article 1 of the draft Convention on the Rights of the Child states that "According to the present Convention a child is every human being up to the age of 18 years unless, under the law of his State, he has attained his age of majority earlier."¹ Article 1 is perhaps the most important article of the Convention. If an individual is not accorded the classification of a child, he or she will not receive the protections that the subsequent articles provide.² It is crucial to have an unambiguous definition of what exactly constitutes a child in order to ensure that the protective measures of the Convention are applied. The first half of Article 1 is very specific, stating that a child is anyone who is under the age of 18.³ However, the second part of Article 1 provides an exception if the child's country determines that he or she has

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1. The authors quotes the version of Article 1 that was adopted by the United Nations Working Group in 1988, but was subject to approval during the second reading of the Draft Convention on November 28 through December 1, 1988. 43 U.N. ESCOR C.4 (28th mtg.), U.N. Doc. E/CN.4/1988/28 (1988). Following the second reading of the Draft Convention, Article 1 stated, "[f]or the purpose of the present convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." *Convention on the rights of the Child: text of the draft convention as adopted by the Working Group at second reading*, 45 U.N. ESCOR --, U.N. Doc. E/CN.4/1989/29 (1988). The Commission on Human Rights and the Economic and Social Council adopted this version of the text, which was submitted to the United Nations General Assembly. 45 U.N. ESCOR Comm. on Human Rights (Agenda Item 13) Res. 1989/57 at 137-38, 6-7; E.S.C. Res. 1989/79, U.N. Doc. E/1989/INF/7 (1989); see *Adoption of A Convention on the Rights of the Child*, G.A. Res. --, -- U.N. GOAR (Supp. No. --), U.N. Doc. A/44/616 (1989) [hereinafter *Adoption of A Convention*].

2. See generally *Adoption of A Convention*, *supra* note 1.

3. *Id.* art. 1.

attained an "age of majority" at an age earlier than 18.⁴ This section of Article 1 threatens the goals of the entire Convention.

The logical interpretation of the phrase "age of majority" is the achievement of full maturity and legal adult status. Upon reaching the "age of majority," an individual's protections and benefits provided by the Convention would completely dissipate. To allow each and every country to arbitrarily decide at what age childhood ends and when adulthood begins could destroy the international uniformity of the Convention, and lead to unequal treatment of children based solely upon their national domicile.

It is true that different nations have different customs and children will be treated differently according to these customs. For example, Sweden has criminalized all physical punishment of children.⁵ The United States, however, has refused to characterize the physical punishment of children as *per se* child abuse.⁶ Although Sweden and the United States treat their children somewhat differently, it would be a gross generalization to say that one nation cares about its children more than the other.

It must be recognized that differences exist between nations when it comes to the treatment of their children. Furthermore, in some countries it may be necessary for children to be treated as adults at an earlier age than children in other countries. Scarcity of food may require children to work long hours and forego education in order to survive. Political unrest or rampant crime may require that children in their teens be tried as adults in order to protect other citizens.

Although there are benefits in allowing each country to determine when a child becomes an adult from a legal standpoint, the potential harm in allowing such an option necessitates its removal from Article 1. Studies show that

4. *Id.*

5. *News Notes; Child Abuse*, 5 *Fam. L. Rep. (BNA)* No. 32, at 2662 (June 19, 1979).

6. *Singleton v. State*, 129 *Ga. App.* 644, 200 *S.E.2d* 507 (1973).

autonomous morality in an individual does not truly begin to develop until a child is around fourteen years of age.⁷ It is also clear that adult physical development does not begin until about the same age. Permitting any country to decide when a child has attained "age of majority" allows for the possibility of a child being treated as an adult and losing the international protections accorded to the child when he or she is neither capable of independent reason nor physically developed. For example, a 12-year old boy should not be forced or even asked to participate in active combat. The United Nations should not allow any country the legal flexibility to exploit its children for its own gain and still be in accordance with international law.

There is still the difficulty that underdeveloped nations need their children to work and behave as adults in order to survive. Yet in such countries where children live in exceptionally difficult conditions, children need greater consideration, not less. Due to more adverse conditions, these children are in even greater need of the protections of the Convention. The Convention preamble acknowledges this and the Convention should reflect this fact. Thus, there is a greater need to ensure that these children are not treated as adults at an early age.

Representatives of third world nations have been supportive of children's rights.⁸ During the drafting of the Covenant on Civil and Political Rights, Tanganyika actively supported the inclusion of an article that dealt exclusively with the rights of children.⁹ The Tanganyikan delegate to the Convention pointed out that the true goal of all developing countries is really to improve the lives of their children and future generations.¹⁰ The delegate from Chile also supported the inclusion of a separate article dealing solely with children,

7. Bater, *The Rights of Adolescents*, 23 WM. & MARY L. REV. 363, 367 (1982).

8. Cohen, *The Human Rights of Children*, 12 CAP. L. REV. 396, 378-80 (1983).

9. *Id.* at 379 (1983) (quoting U.N. Doc. E/CN.4/850/Add. 2 at 2 (1963)).

10. *See id.* (quoting U.N. Doc. E/CN.4/SR. 752 at 4 (1964)).

because less developed nations are ready to assume the legal obligation of safeguarding their children.¹¹ It is clear that the vast majority of nations want to protect the rights of the child. For a child's rights to be protected, he or she must be recognized as a child. The "age of majority" provision allows those few nations who would exploit their children a legal escape so that they may do so. This option must be eliminated.

Article 1 would better serve the goals of the Convention on the Rights of the Child with a more precise definition of adulthood rather than the "age of majority." This would mandate less flexibility for countries to decide when adulthood begins. Article 37(1) of the Convention prohibits the imposition of capital punishment or life imprisonment upon any individual below eighteen years of age.¹² No exceptions exist. Article 1, with its all encompassing power, needs such clarity.

No country should be able to classify an individual as an adult to escape the scope of the Convention unless that individual has attained the age of fourteen years. An adolescent is characterized as a minor until he or she is at least fourteen years old.¹³ By the age of fourteen, the onset of adolescence will have allowed for both physical growth and independent reasoning to progress to a stage where an individual can be said to begin the transition from childhood to adulthood. The transition to adulthood does not occur on a certain birthday, but is a gradual, continuing process. By fourteen the process will normally have advanced to the point where the individual is capable of some degree of self-sufficiency. If a country, due to economic hardship, is forced to characterize fourteen year-olds as adults, the adolescent,

11. *See id.*

12. The text of the Draft Convention adopted by the United Nations Working Group in 1988 addressed capital punishment in Article 19(2)(b). However, during the second reading, the Articles were renumbered. Since then, they have remained unchanged. Presently, the new Article number is 37. *See Adoption of A Convention, supra* note 1, art. 37.

13. Bater, *supra* note 6, at 364.

with the help of family and friends, may be able to cope with the responsibilities of an adult. Persons younger than fourteen should be considered children without exception. On no account, however, should an adolescent be required to assume the full adult moral responsibility of military service. A separate clause in the Convention should forbid military exploitation of adolescents. A revised version of Article 1 might read:

According to the Convention a child is every human being up to the age of 18 years, unless under the laws of his or her state he or she has attained legal adulthood at an earlier age. Under no circumstances shall legal adulthood be declared to be less than 14 years of age.¹⁴

Such a provision would allow countries some flexibility in deciding when a child becomes an adult, but would protect all children up to the age of fourteen and state the United Nations' preference for eighteen as the age of majority.

14. See *supra* note 1 (text of Article 1 as submitted to the United Nations General Assembly in October 1989).