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Cynthia Price Cohen

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FREEDOM FROM ABUSE: ONE OF THE HUMAN RIGHTS OF CHILDREN

Cynthia Price Cohen*

I. INTRODUCTION

In celebration of the 1979 International Year of the Child, the United Nations Commission on Human Rights was authorized by the General Assembly to draft the Convention on the Rights of the Child.¹ The purpose for this new treaty was to put into legally binding form the ideals which had been previously articulated in the 1959 Declaration of the Rights of the Child.² Formal drafting of the substantive articles by the Open-Ended Working Group on a draft Convention on the Rights of the Child is nearing completion.³ During the period since the Convention was first proposed, concern over the abuse of children has become a matter of world-wide importance. It is imperative for the Working Group to respond to this problem by ensuring that the final draft of the substantive portion of the Convention on the Rights of the Child contains an adequate proscription against every aspect of child abuse.

II. INTERNATIONAL PROBLEM OF CHILD ABUSE

The idea that children have special needs and should be accorded special protections is one that is relatively new. While differing levels of criminal culpability based on age were recognized under Roman law, and similar variations in criminal responsibility were applied under British common law, it was not until the nineteenth century that a systematic effort was undertaken to establish distinct legal procedures for processing accused youths or to separate convicted child criminals from

* United Nations Representative; Human Rights Internert; Research Consultant: Defense for Children International/USA. B.A., City College of New York (1975); J.D., New York Law School (1979); M.A., City University of New York Graduate Center (1986).

1. See U.N. Doc. A/134/424 (1979). See also Text of the Draft Convention on the Rights of the Child adopted by the Working Group, U.N. Doc. E/CN.4/1986/39, Annex 1 (1986) [hereinafter cited as Convention]. The text of the 1986 Convention is reproduced at the end of this article. See *infra* Appendix.

2. See 14 U.N. GAOR Supp. (No. 16), U.N. Doc. A/4054 (1959).

3. The Convention on the Rights of the Child is being drafted by Open-Ended Working Group on a draft convention on the rights of the child under the auspices of the United Nations Commission on Human Rights. It has met for one week each year, just prior to the annual session of the Commission, since the International Year of the Child in 1979. See *infra* notes 173-90 and accompanying text.

incarcerated adult offenders.⁴

The history of childhood is filled with illustrations of the maltreatment of children. They have been suckled by wet nurses, sent away to convents or on crusades, they have been treated as playthings, as property, as miniature adults, and as a source of income for the parents or caretakers.⁵ They have been forced to work in mines and factories, they have been shipped off to sea or made to work as indentured servants, they have been given away or sold, and in some cases, when they became too much of a burden to their families, they were simply killed or left to die.⁶ Unfortunately, for a substantial portion of the world's children, much of the aforementioned treatment still exists.⁷

Although declarations asserting the inalienable rights of adults appeared in the latter part of the eighteenth century,⁸ more than one hundred years passed before there was a similar declaration setting forth the rights of children. The first formal document on this subject, the Declaration of the Rights of the Child, also known as the Declaration of Geneva, was not proclaimed until 1923.⁹ It was drafted by the Save the Children International Union (S.C.I.U.), an organization estab-

4. See A. PLATT, *THE CHILD SAVERS* 124-34 (1969). See generally H. LOU, *JUVENILE COURTS IN THE UNITED STATES* (1927).

5. See generally P. ARIES, *CENTURIES OF CHILDHOOD* (1962); deMause, *The Evolution of Childhood*, in *THE HISTORY OF CHILDHOOD* I (L. deMause ed. 1974).

6. See generally P. ARIES, *supra* note 5; DeMause, *supra* note 5.

7. See, e.g., *infra* notes 127-33 and accompanying text. See also *Exploitation of Child Labour*, U.N. Doc. E/CN.4/Sub. 2/479/Rev. 1 (1982) (Report of Subcommittee on Prevention of Discrimination Against Minorities); M. Owen, *Child Abuse and Neglect: Legal and Judicial Aspects* (1985) (unpublished paper delivered at WHO/CIOMS Conference on Battered Children and Child Abuse, Berne Switzerland, Dec. 4-6, 1985).

8. See L. HENKIN, *THE RIGHTS OF MAN TODAY* 5-13 (1978).

9. See INTERNATIONAL UNION FOR CHILD WELFARE: 50 YEARS. IUCW, No. 7 (June 1970). Adopted by the Save the Children International Union (S.C.I.U.) in 1923, and in 1924 by the League of Nations, see U.N. Doc. E/41 Annex 6, Appendix B, at 249 (Report of Temporary Social Committee Apr. 29-May 14, 1946) [hereinafter cited as Declaration of Geneva], the Declaration of the Rights of the Child stated:

By the present Declaration of the Rights of the Child, commonly known as the "Declaration of Geneva," men and women of all nations, recognizing that mankind owes to the child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality, or creed:

1. The child must be given the means requisite for its normal development, both materially and spiritually.
2. The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored.
3. The child must be the first to receive relief in times of distress.
4. The child must be put in a position to earn a livelihood, and must be protected from every form of exploitation.
5. The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow-men.

lished through the work of Eglantyne Jebb at the end of World War I as the first international children's rights group.¹⁰ The S.C.I.U.'s Declaration of Geneva was adopted by the League of Nations in 1924.¹¹ This document subsequently provided inspiration for the post-World War II Declaration on the Rights of the Child adopted by the United Nations in 1959.¹²

Interestingly, neither of these declarations clearly addressed the matter of child abuse. Most of the provisions in the five-point Declaration of Geneva and the ten principles of the 1959 Declaration have been couched in what might be called the language of "promise," rather than the language of "protection." In other words, both declarations place their emphasis on what the state should *give* to the child and not what *protection* the child should *receive*. According to the two declarations, the state has an obligation to *give* the child food, shelter, education, social assistance, and medical treatment.¹³ This could, of course, be interpreted as providing *protection* from starvation, ignorance, and disease. However, any reference to even implied protection from the direct harm done to children by individuals is completely absent from both documents.

In point three of the Declaration of Geneva, it is asserted that "the child that is backward must be helped; the delinquent child must be reclaimed";¹⁴ yet, there is no indication that the methods used to accomplish these ends should not be abusive or diminish the child's dignity. The only specific type of abuse referred to in the Declaration of Geneva is exploitation which appears in point four, the child labor provision, and which states: "The child must be put in a position to earn a livelihood and must be protected from every form of exploitation."¹⁵ Here, although the words "every form" could conceivably be interpreted as implying a total protection against exploitation, because its reference is to employment, it would not be applicable to the larger context of child abuse or to abuse within the home.

An analysis of the protection from abuse which might be implied or contained in the 1959 Declaration of the Rights of the Child is slightly more complicated. In this document the word "protection" ap-

10. See Cohen, *The Human Rights of Children*, 12 *CAP. U.L. REV.* 369, 371 (1983). Unfortunately, the International Union for Child Welfare, which evolved from the S.C.I.U., was recently forced to discontinue its activities due to allegedly fraudulent financial mismanagement.

11. See INTERNATIONAL UNION FOR CHILD WELFARE: 50 YEARS, IUCW, *supra* note 9.

12. 14 U.N. GAOR Supp. (No. 16), U.N. Doc. A/4054 (1959).

13. See Declaration of Geneva, *supra* note 9; 14 U.N. GAOR Supp. (No.16), U.N. Doc. A/4054 (1959).

14. Declaration of Geneva, *supra* note 9, at ¶ 3.

pears five times,¹⁶ sometimes without answering the question "Protection from what"?¹⁷ The third paragraph of the preamble is a typical example of this vagueness; it calls for "legal protection," but does not specify what the law should protect: "*Whereas* the child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."¹⁸ The language of principle 2 is similarly unclear in its use of the word "protection": "The child shall enjoy special protection, and shall be given opportunities and facilities, by law and other means, to enable him to develop physically, mentally, morally, spiritually and socially"¹⁹ Nor is the language of principle 4 much clearer: "He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care."²⁰ Only principles 9 and 10, which deal with discrimination and employment, adequately answer the question, "Protection from what"? Principle 10 declares: "The child shall be protected from practices which may foster racial, religious and any other form of discrimination."²¹ While it can be argued that this language prohibits a particular form of abuse, it, obviously, does not include the type of random physical harm ordinarily associated with child abuse. The one reference to this type of abuse which is contained in the 1959 Declaration of the Rights of the Child is found in principle 9, which deals with child labor.²² The first paragraph states: "The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form."²³ While the language used in principle 9 is broad enough to encompass all forms of child abuse, because of its placement within the child labor section of the 1959 Declaration, it is unlikely that it was intended to apply to abuse occurring outside the workplace. As a consequence, the 1959 Declaration suffers from the same limitations as the Declaration of Geneva: Protection from abuse is limited to the context of employment. This shortcoming in the two documents can most likely be attributed to the lack of understanding about child abuse which existed until relatively recently.

It is only during the past two decades that serious attention has

16. See *infra* notes 18–23 and accompanying text.

17. See 14 U.N. GAOR Supp. (No. 16), U.N. Doc. A/4054 (1959).

18. *Id.* preamble.

19. *Id.* principle 2.

20. *Id.* principle 4.

21. *Id.* principle 10.

22. *Id.* principle 9.

been given to the right of the child to dignity, to bodily integrity, and to freedom from abuse. While concern for what is known in this country as the "battered-child syndrome" originated at the national level,²⁴ it has gradually grown as a matter of international concern, attracting the attention of both governmental and nongovernmental organizations. This concern has recently reached such proportions that projects aimed at measuring the extent and various manifestations of child abuse and neglect are being undertaken by the United Nations Children's Fund (UNICEF), the World Health Organization (WHO), and Defence for Children International and its local affiliates.

As might be expected, international response to the matter of child abuse has been varied. Many countries have shown a strong reluctance to recognize the existence of child abuse as a problem. This has been due, at least partially, to wide differences in culturally accepted practices. In certain parts of the world, for example, vigorous physical disciplining of children is commonplace and often considered to be actively desirable,²⁵ while in other parts of the world, it is illegal for anyone, including parents, to strike a child.²⁶ Thus, a major factor in any international drive against child abuse will be the establishment of universally acceptable standards. A separate, but related, issue is the standardization of terminology. There appears to be a fairly clear consensus that the intentional physical injury of children is deplorable. This is often referred to as "child battering" and is considered to be "child abuse." However, the term "child abuse" can also be used to denote nonphysical, intentional, emotional injury to the child. A survey of the American experience, combined with an overview of the current international situation, will shed some light on the complexity of this problem and the future issues it raises in the international arena.

A. *Child Abuse Prevention: The United States*

In the United States, the earliest manifestations of the recognition that children have special needs began in the mid-1800's with the establishment of homes for orphan children and separate places of incarceration for juvenile criminals.²⁷ Shortly thereafter, special schools were set up for the education of blind and deaf children. This was fol-

24. See Kempe, Silverman, Steele, Droegemueller & Silver, *The Battered-Child Syndrome*, 181 J. A.M.A. 17 (1962) [hereinafter cited as Kempe]. The term "battered-child syndrome" was coined by the authors, who were all medical doctors. See D. GIL, *VIOLENCE AGAINST CHILDREN* 20 (1973).

25. See S. Obikeze, *Child Maltreatment in Non-Industrialized Countries: A Framework for Analysis* 9-10 (1985) (unpublished paper) (presented at the WHO/CIOMS Conference on Battered Children and Child Abuse, Berne, Switzerland (Dec. 4-6, 1985)).

26. See generally LAW AND THE STATUS OF THE CHILD 1-2 (A. Pappas ed. 1983).

27. See A. D. PHILLIPS, *supra* note 4, at 108-17, 146-52.

lowed by laws requiring compulsory education. By the turn of the century, a large number of states in the United States and several other countries had set up a special court system for handling juvenile defendants.²⁸ However, it was not until the first part of the twentieth century that laws were enacted in this country preventing child labor. Nevertheless, throughout the period from about 1840 to the present there has been a steady trend toward giving greater respect to the rights of children.²⁹

The phenomenon of child abuse, however, went virtually unnoticed in the United States until the early-1960's when Dr. C. Henry Kempe published his ground-breaking report on the "battered-child syndrome."³⁰ His work led to further research by physicians and social workers and resulted in a groundswell of public opinion against child abuse.³¹ It was Dr. Kempe's study that prompted the United States government to hold a conference on child abuse in 1962. The response by states to the findings of this conference was such that, according to David G. Gil, "[b]y June 1967 every state in the United States had adopted laws which require, or recommend to, physicians and certain others to report suspected cases of child abuse to appropriate law enforcement or welfare authorities, and which free reporting persons from civil and criminal liability for doing so."³²

In his book, *Violence Against Children*,³³ Gil noted that although the use of physical force between adults has been "strictly limited and regulated, no such control has been placed on the use of physical force on children."³⁴ Gil attributed this to a number of factors, including the concept of children as property and the attendant socializing function of the family.³⁵ Gil postulated:

One may therefore conclude that a certain measure of physical abuse of children is a fully sanctioned aspect of the current stage of cultural development of American society [I]t cannot be denied that some measure of violence against children is patterned into the child-rearing philosophies and practices of nearly all Americans.³⁶

28. See A. PLATT, *supra* note 4, at 55-61, 129-36; Cohen, *supra* note 10, at 370. See also *supra* text accompanying note 4.

29. See Cohen, *supra* note 10, at 370-72. See also *supra* text accompanying notes 4 & 10.

30. See Kempe, *supra* note 24. See also Fontana, Donovan & Wong, *The "Maltreatment Syndrome" in Children*, 269 NEW ENG. J. MEDICINE 1389 (1963).

31. See D. GIL, *supra* note 24, at 20.

32. *Id.*

33. *Id.*

34. *Id.* at 8. Gil noted that in many societies physical force under specified conditions is encouraged. *Id.*

35. *Id.* at 8-10.

The change in the American public's attitude toward the right of the child to be free from abuse has been remarkable in that it has taken place on several levels simultaneously. Not only were states reasonably quick to respond to the national call for anti-child abuse legislation,³⁷ but action was simultaneously undertaken in state courts to open the way for litigation on behalf of the child through a steady erosion of the doctrine of intrafamilial tort immunity.³⁸ This theory had prevented members of a family from suing in tort for wrongs done to them by other family members.³⁹ More specifically, minor children had not been allowed to sue their parents for injuries brought about by parental negligence or intent.⁴⁰ The primary reason for this rule had been the belief that to allow intrafamily tort litigation would undermine family unity.⁴¹ The 1963 Wisconsin Supreme Court decision in *Goller v. White*⁴² marked the beginning of the dissolution of this principle which, in turn, has enabled minor children to hold their parents legally responsible for injuries they might cause to their children.⁴³

In 1974, the United States Congress bolstered state action on child abuse by enacting the Child Abuse Prevention and Treatment Act,⁴⁴ which established the National Center for Child Abuse and Neglect (NCCAN) within the Department of Health and Human Services.⁴⁵ The NCCAN is authorized to conduct research, support projects, give technical assistance to communities, publish directories of both public and private child abuse agencies, and assist states in obtaining grants to strengthen existing child abuse programs.⁴⁶ In addition, the NCCAN is authorized to operate a clearinghouse on child abuse and neglect information (NCCAN Clearinghouse).⁴⁷ Congress has continued its involvement in this area by regularly enacting amendments to the 1974 Child Abuse Prevention and Treatment Act⁴⁸ and by enacting the

37. See, e.g., Act of December 26, 1984, 1984 Ohio Legis. Serv. 5-673 (Baldwin) (codified in scattered sections of tits. 31 and 37 of OHIO REV. CODE ANN. (Page Supp. 1986)).

38. See, e.g., *Goller v. White*, 20 Wis. 2d 402, 122 N.W.2d 193 (1963) (abrogating parental immunity).

39. See W. KEETON, D. DOBBS, R. KEETON & D. OWEN, PROSSER & KEETON ON THE LAW OF TORTS § 122, at 907-08 (5th ed. 1984) [hereinafter cited as PROSSER AND KEETON].

40. See R. MNOOKIN, CHILD, FAMILY AND STATE: PROBLEMS AND MATERIALS ON CHILDREN AND THE LAW 305 (1978).

41. See PROSSER AND KEETON, *supra* note 39, at 905.

42. 20 Wis. 2d 402, 122 N.W.2d 193 (1963).

43. See R. MNOOKIN, *supra* note 40, at 305.

44. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (codified as amended at 42 U.S.C.A. §§ 5101-5115 (1983 and Supp. 1986)).

45. See 42 U.S.C. § 5101(a) (1982).

46. See *id.* § 5101(b)-(c).

47. See *id.* § 5101(b)(2).

48. See Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Pub. L. No. 95-266, 92 Stat. 2096 (codified as amended at 42 U.S.C.A. §§ 5101-5115 (1983 & Supp. 1985)).

Child Abuse Prevention and Treatment and Adoption Reform Act of 1978,⁴⁹ which is also subject to amendment. To obtain a better view of the problems affecting American families, the United States House of Representatives established the Select Committee on Children, Youth, and Families.⁵⁰ The Committee's hearings have covered such matters as sexual abuse of children, child abuse prevention, and violence in American families.⁵¹

A goal of both the House Select Committee hearings and the NCCAN studies was to determine the extent of child abuse in the United States and to find out whether it was increasing. According to a study undertaken by the NCCAN, 652,000 children are estimated to have been abused in the United States annually.⁵² The NCCAN suggested that this estimate was a "bare minimum" number and that there was a strong likelihood that the actual number of abused children in the United States was at least one million.⁵³ More recent estimates have placed this figure closer to 1.5 million.⁵⁴

The extent to which these figures have been increasing or decreasing is the subject of a great deal of dispute. Testimony of experts before the House Select Committee in 1984 indicated that the incidence of child abuse was continuing to grow,⁵⁵ thus supporting the basic thesis of the NCCAN's studies. However, at the National Conference on Child Abuse and Neglect, held in Chicago during November, 1985, and sponsored jointly by the Department of Health and Human Services and the National Committee for the Prevention of Child Abuse, there was some disagreement about this trend.⁵⁶ It was argued

1986)); Child Abuse Amendments of 1984, Pub. L. No. 98-457, 98 Stat. 1749 (codified at 42 U.S.C.A. §§ 5101-5115 (Supp. 1986)).

49. Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Pub. L. No. 95-266, 92 Stat. 205 (codified as amended at 42 U.S.C.A. §§ 5101-5115 (1983 & Supp. 1986)).

50. See *Providing for the Establishment of a House Select Committee on Children, Youth, and Families*, 98th Cong., 1st Sess. (1983).

51. See, e.g., *infra* notes 55 & 70-73 and accompanying text. See also *Violence and Abuse in American Families, 1984: Hearings on H.R. Before the House Select Committee on Children, Youth and Families*, 98th Cong., 2d Sess. (1984).

52. See U.S. DEP'T OF HEALTH & HUMAN SERVS., EXECUTIVE SUMMARY: NATIONAL STUDY OF THE INCIDENCE AND SEVERITY OF CHILD ABUSE AND NEGLECT (19) [hereinafter cited as EXECUTIVE SUMMARY].

53. See *id.*

54. See *Expert Urges Caution on Reports of Child Abuse*, N.Y. Times, Jan. 4, 1986, at 42, col. 3.

55. See generally *Child Abuse: What We Know About Prevention Strategies: Hearing Before the House Select Committee on Children, Youth and Families*, 98th Cong., 2d Sess. (1984).

56. See Shipp, *Experts on Children Seek to Cut Abuse Cases 20%*, N.Y. Times, Nov. 14, 1985, at A22, col. 1. The National Committee for the Prevention of Child Abuse is a Chicago-

that, although the latest study showed that at least one million children in the United States are abused each year, this did not actually represent an increase in child abuse because work being undertaken in this area had managed to keep the level of child abuse relatively constant.⁵⁷

Evaluations of the validity of these numerical estimates has produced widely differing opinions as to the percentage of complaints of child abuse which ultimately prove to be false. One expert at the Chicago conference stated that false reports amounted to only about 7.8 percent of the total complaints received.⁵⁸ He asserted that, in his experience, most false reports of sexual abuse had been made by adults and that those reports emanating from children are generally true.⁵⁹ On the other hand, a report by Douglas J. Besharov, director of the American Enterprise Institute's Social Intervention Project, in January, 1986, indicated that the nationwide average of false reports was as high as 65 percent.⁶⁰

While the accuracy of any statistical survey is always open to question, this is especially true in the case of child abuse where statistics are not only subject to the usual vagaries of inconsistent reporting techniques,⁶¹ but are also exacerbated by variations in the definition of abuse. As mentioned above, the original criterion of child abuse applied by Dr. Kempe was one of intentionally caused physical injury.⁶² It has since been recognized that children can suffer emotional damage as well as physical injury and that the passive injury brought about by neglect can cause harmful results despite the lack of visible, physical signs of abuse. In its 1979-80 study, the NCCAN divided what it called "child maltreatment" into three types of abuse and three types of neglect.⁶³ The three types of abuse, or intentional injury, were listed as physical, emotional, and sexual abuse.⁶⁴ The three types of neglect, or unintentional injury, were listed as physical, emotional, and educational neglect.⁶⁵ In the NCCAN Clearinghouse booklet, *Everything*

57. Sullivan, *Admissions of Child Abuse Found to Drop Sharply*, N.Y. Times, Nov. 11, 1985, at A13, col. 1.

58. See Shipp, *supra* note 56 (reporting address by Dr. D. Jones, Professor, University of Colorado, entitled *False Reports of Child Abuse: Do Children Lie?*, in Chicago, Ill. (Nov. 13, 1985)).

59. *Id.*

60. See *Expert Urges Caution on Reports of Child Abuse*, *supra* note 54, at 42, col. 1. Interestingly, in 1973, Mr. Besharov, a former director of NCCAN, estimated that false reports were no more than 35 percent of the total number of cases reported. *Id.*

61. See Sullivan, *supra* note 57, at A13, col. 1.

62. See Kempe, *supra* note 24, at 1.

63. See EXECUTIVE SUMMARY, *supra* note 52.

64. *Id.*

You Always Wanted to Know About Child Abuse and Neglect,⁶⁶ this model has been modified to include three types of abuse—physical, emotional, and sexual—and one general category of neglect.⁶⁷

The difficulty of collecting statistics on child abuse is not confined to the problem of designating abusive acts or of clarifying terminology. Another important aspect involves standards of behavior which vary depending on the relationship between the child and his abuser. Behavior which is often barred if committed by an outsider may well be within the “legal limits” allowable for a parent.⁶⁸ While the main thrust of the movement against child abuse has been aimed at abusive parents, abuse does occur outside the home.

The NCCAN Clearinghouse categorizes the child abuser as “a parent, custodian, or guardian . . . someone with a duty to protect and guide the child to normal adulthood.”⁶⁹ This definition would seem to limit child abuse to circumstances in which there is an ongoing relationship over a period of time. In fact, settings in which abuse is likely to occur are far more diverse than this categorization would indicate. Many children are indeed sexually abused by family members, but abusers are also found in a wide number of settings outside the home. For example, at an October 31, 1985, hearing on Child Victims of Exploitation held by the Crisis Intervention Task Force of the House Select Committee on Children, Youth, and Families, witnesses described the various types of individuals who abuse children sexually.⁷⁰ Thomas S. Berg’s testimony before the Task Force cited cases of children who have been abused by babysitters, scout leaders, physicians, and dancing instructors.⁷¹ Federal Bureau of Investigation Special Agent Kenneth V. Lanning’s testimony described the pedophile as “an individual with a sexual preference for prepubertal children,” but explained that the term includes “anyone whose erotic imagery and sexual fantasies

66. CLEARINGHOUSE ON CHILD ABUSE AND NEGLECT INFORMATION, U.S. DEP’T OF HEALTH & HUMAN SERVS., *EVERYTHING YOU ALWAYS WANTED TO KNOW ABOUT CHILD ABUSE AND NEGLECT* (19) [hereinafter cited as CLEARINGHOUSE ON CHILD ABUSE AND NEGLECT].

67. *Id.* at 3. The booklet outlines the warning signs of each type of abuse or neglect by listing the symptoms to watch for in the child’s appearance and behavior as well as the behavior of the parent or caretaker. *Id.* at 3–6. Interestingly, both physical and emotional abuse often grow out of disciplinary situations. *Id.*

68. See generally R. MNOOKIN, *supra* note 40, at 139, 277–97 (the limitation on a school’s ability to discipline based on a parent’s discretion).

69. See CLEARINGHOUSE ON CHILD ABUSE & NEGLECT, *supra* note 66, at 3.

70. *Child Victims of Exploitation, 1985: Hearings Before the Crisis Intervention Task Force of the House Select Committee on Children, Youth and Families*, 99th Cong., 1st Sess. — (1985).

71. See *id.* at — (testimony of Thomas S. Berg, Director of Clinical Services, Chesapeake Institute, Kensington, Maryland) (unpublished written statement was presented with the oral

center around children of any age."⁷² Lanning stated:

[A] pedophile may seek employment where he will necessarily be in contact with children (teacher, camp counselor, baby sitter, school bus driver, etc.) or where he can eventually specialize in dealing with children (physician, minister, photographer, social worker, police officer, etc.) Frequently, the pedophile will use a vocation, hobby or community service to gain access to children. He may become a scout leader, big brother, foster parent, Little League coach, etc.⁷³

Reacting to information regarding the sexual abuse outside the family, the Ninety-Eighth Congress, in 1984, amended the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 to protect children from sexual abuse by "employees of residential facilities and staff persons providing out of home care."⁷⁴

Examples of nonsexual child abuse outside the home were supplied by David J. Gil in his 1973 testimony before the Senate Subcommittee on Children and Youth.⁷⁵ Gil pointed out that: "[A]busive and damaging acts are perpetrated against children by such institutions as schools, juvenile courts, and detention centers, child welfare homes and agencies, correctional facilities, and the like."⁷⁶ Dr. Gil was especially critical of the use of corporal punishment and warned that whenever corporal punishment is used there is always the danger that a child will sustain injuries.⁷⁷ The Committee to End Violence Against the Next Generation (EVAN-G), a private organization working to eliminate the use of corporal punishment in schools, has reported that corporal punishment is also inflicted outside of the classroom by such persons as athletic coaches, after-school play group coordinators, scout leaders, church school officials, and certain religious sects.⁷⁸

72. See *Child Victims of Exploitation, 1985: Hearings Before the Crisis Intervention Task Force of the House Select Comm. on Children, Youth and Families* 99th Cong., 1st Sess. — (1985) (testimony of Kenneth V. Lanning, Special Agent, Behavioral Science Unit, Training Division, Federal Bureau of Investigation) (unpublished written statement was presented with the oral statement).

73. *Id.*

74. See Child Abuse Amendments of 1984, Pub. L. No. 98-457, 98 Stat. 1749 (codified at 42 U.S.C.A. §§ 5101-5115 (Supp. 1986)). See also H.R. REP. NO. 1038, 98th Cong., 2d Sess. 18, reprinted in 1984 U.S. CODE CONG. & AD. NEWS 2918, 2947.

75. *Child Abuse Prevention Act, 1973: Hearings before the Subcommittee on Children and Youth of the Senate Committee on Labor and Public Welfare*, 93d Cong., 1st Sess. (1973), reprinted in D. GIL, *supra* note 14, at 201 (testimony of D. Gil, Professor of Social Policy, Brandeis University).

76. *Id.*

77. *Id.* at 203.

78. The Committee to End Violence Against the Next Generation (EVAN-G) is a California based organization which regularly tracks developments on the incidence and abolition of corporal punishment. EVAN-G publishes its findings in a periodical entitled THE LAST? RESORT.

The issue of corporal punishment is a classic example of the complexity of finding universal standards for defining child abuse. On the one hand, an examination of the myriad settings in which corporal punishment can take place serves to provide an idea of the wide variety of circumstances in which a child may be abused. On the other hand, corporal punishment in the United States, by itself, is not generally considered to be abuse. It is still legal in the schools of most states,⁷⁹ despite strong arguments against its efficacy as a method of classroom discipline.⁸⁰ In fact, the United States Supreme Court has held that corporal punishment in school, even when unpredictably applied and clearly excessive, does not violate the United States Constitution.⁸¹ Yet, the practice of hitting school children is not one that is universally acceptable.⁸² Internationally, it appears to be confined to a handful of countries which were once occupied by England or were part of the United Kingdom.⁸³

B. Child Abuse Prevention: Comparative

Law and the Status of the Child,⁸⁴ a two volume work published by the United Nations Institute for Training and Research (UNITAR), contains a survey of the laws relating to children in thirteen countries, including the United States.⁸⁵ The UNITAR project focused on certain specific areas, such as each country's definition of childhood, laws applicable on the basis of age, parental rights and responsibilities, education, employment, criminal sanctions, and court proceedings.⁸⁶ The countries represented a geographic and political balance with a slight political bias toward democracies.⁸⁷

79. A minority of states have outlawed the use of corporal punishment in schools. See, e.g., HAWAII REV. STAT. § 298-16 (1976); MASS. GEN. LAWS ANN. ch. 71, § 37G (1982); N.J. STAT. ANN. § 18A:6-1 (1968); VT. STAT. ANN. tit. 16, § 1161a (Supp. 1985). It should be noted that corporal punishment has also been abolished in a number of United States cities. At this time, there are several additional states that are in the process of debating whether to eliminate corporal punishment from their schools. See, e.g., ABA Resolution Against Corporal Punishment (1985); Cohen, *Freedom from Corporal Punishment: One of the Human Rights of Children*, 2 N.Y.L.S. HUM. RTS. ANN. 95 (1984).

80. See Cohen, *Beating Children is as American as Apple Pie*, 7 HUM. RTS. 24 (1978). See also CORPORAL PUNISHMENT IN AMERICAN EDUCATION (I. Hyman & J. Wise ed. 1979); NATIONAL EDUCATION ASSOCIATION, REPORT OF THE TASK FORCE ON CORPORAL PUNISHMENT (1972).

81. See *Ingraham v. Wright*, 430 U.S. 651 (1977).

82. See generally Cohen, *supra* note 79, at 101-11. See also *Tyrer Case*, Judgment of the Court, 2 E.H.R.R., ser. A, No. 26 (Apr. 25, 1978); U.N. Doc. CCPR/C/21/Add.1 (1982).

83. See Cohen, *supra* note 79, at 102-06.

84. See LAW AND THE STATUS OF THE CHILD, *supra* note 26.

85. See *id.*

86. See *id.*

87. See *id.*

Based on a comparative analysis of the information given about each country, there appear to be four major, recognized types of abuses against children: abandonment, neglect, assault, and sexual offenses.⁸⁸ Laws of the individual countries applicable to the four types of offenses reflected the social concern of the particular locale. There were variations both in the content of the law—the description of the offense—and in the penalties applicable to such offenses. In several instances, offenses which carried criminal penalties in some countries appeared to be nonexistent in others, possibly because in the particular society the type of offense was totally unthinkable or, conversely, simply because it was so commonplace that it was taken for granted.

Laws relating to abandonment, for example, carried criminal penalties in Colombia, Congo, Cuba, Israel, and Kenya.⁸⁹ However, the problem of abandonment appeared to be virtually nonexistent in China and Norway.⁹⁰ While the exact penalties for abandonment in Australia, Czechoslovakia, England, and the United States were somewhat unclear, in Australia, England, and the United States, the abandonment did not have to be actual physical abandonment; neglect of parental supervision would be sufficient.⁹¹ Oddly, in Greece, this type of constructive abandonment resulted in a removal of only the father's parental rights and not those of both parents.⁹² United States laws, naturally, vary considerably from state to state, with some states providing for removal of parental rights in abandonment cases.⁹³ As a general rule in the United States, however, abandonment never involves criminal penalties—at most it becomes a consideration in the termination of parental rights.⁹⁴

In the nations studied, abandonment carried criminal penalties in five,⁹⁵ removal of parental rights in two,⁹⁶ and was unclear in seven.⁹⁷ Of these seven, three appeared to have provisions for state removal of

nations. Depending on which criteria were used for purposes of designation, five could be called European—Czechoslovakia, Greece, Israel, Norway, and England. The remaining eight states were Australia, China, Colombia, Congo, Cuba, Kenya, and the United States.

88. *Id.*

89. *Id.* at 126, 194–95, 255, 475, 511.

90. *Id.* at 71ff., 537ff.

91. *Id.* at 48–50, 658, 697–700.

92. *Id.* at 383ff.

93. See Parker, *Dissolving Family Relations: Termination of Parent-Child Relations—An Overview*, 11 UNIV. DAYTON L. REV. 555, 587–88 (1986).

94. See LAW AND THE STATUS OF THE CHILD, *supra* note 26, at 694ff.

95. LAW AND THE STATUS OF THE CHILD, *supra* note 26, at 126, 194–95, 255, 475, 511 (Colombia, Congo, Cuba, Israel, and Kenya).

96. *Id.* at 383ff., 194–95 (Greece and Congo).

97. *Id.* at 48–52, 92–93, 303–05, 327–28, 581–83, 657–59, 694–97 (Australia, China, Czechoslovakia, Egypt, Norway, England, and the United States).

parental rights under certain circumstances.⁹⁸ However, the studies of the four remaining states neglected to mention the existence of legal protections against abandonment.⁹⁹

The penalty for neglect most frequently adopted by the studied countries was revocation of parental rights.¹⁰⁰ In some countries there were also provisions for partial removal, which might involve, for example, temporary placement or supervision by a social worker, rather than total termination of parental rights.¹⁰¹ Because of the strong laws of paternal control in Greece, only the father's rights were affected.¹⁰² In China, on the other hand, child neglect carried criminal sanctions with possible penalties of imprisonment or up to "five years detention or control."¹⁰³ Criminal sanctions could also be imposed in Congo, Israel, and Kenya, with the penalties ranging from fines to imprisonment.¹⁰⁴ Of the nations studied, neglect had criminal penalties in four,¹⁰⁵ was grounds for removal of parental rights in six,¹⁰⁶ and was unclear in three.¹⁰⁷

According to the study, penalties for assault appeared to be approximately the same as those for neglect and often were included in the same statutory scheme, with four exceptions—Australia, Greece, England, and the United States.¹⁰⁸ Both England and the United States have strong policies regarding noninterference in the family which result in a reluctance to terminate parental rights.¹⁰⁹ Nevertheless, where the issue is one of assault or physical abuse, both have statutes which allow for criminal sanctions in specific circumstances.¹¹⁰ Greek law also allowed for criminal prosecution in cases of assault on children, in addition to termination of paternal rights.¹¹¹ Oddly, it appeared that only under Australian law were provisions also made for civil compensation to be granted to the injured child.¹¹² Of the thirteen countries studied, seven had laws which mandated criminal sanctions

98. *Id.* at 48–50, 658, 697–700 (Australia, England, and the United States).

99. *Id.* at 92–93, 303–05, 327–28, 581–83 (China, Czechoslovakia, Egypt, and Norway).

100. *Id.* at 49–52, 130, 234, 327–28, 383, 397–98.

101. *See, e.g., id.* at 696ff. (United States).

102. *Id.* at 383ff.

103. *Id.* at 92.

104. *Id.* at 194–95, 474, 511, 527.

105. *Id.* at 92–93, 194, 475, 511 (China, Congo, Israel, and Kenya).

106. *Id.* at 48–52, 130, 234, 327–28, 383, 397–98, 557–59, 581–83 (Australia, Colombia, Cuba, Egypt, Greece, and Norway).

107. *Id.* at 303–04, 657–59, 694–700 (Czechoslovakia, England, and the United States).

108. *Id.* at 48–52, 383–84, 657–59, 694–700.

109. *Id.* at 657–59, 694–700.

110. *Id.* at 657–59, 691–700.

111. *Id.* at 383.

for assaults on children¹¹³ and five had laws which terminated parental rights.¹¹⁴ Only Czechoslovakia's law was unclear in this area.

Twelve countries listed some type of criminal sanctions against sexual abuse and/or prostitution.¹¹⁵ Penalties varied, depending on the local legality of adult prostitution in each country.¹¹⁶ For example, in the Congo, where adult prostitution was legal, criminal penalties were reserved for those "aiding in the prostitution of another" and were especially strong if the offense involved the prostitution of a minor.¹¹⁷ This was the basic rule for six of the thirteen countries studied,¹¹⁸ although the "aiding" aspects varied, as did the age requirements for legal prostitution.¹¹⁹ Of the six countries where prostitution was illegal, Cuba and Czechoslovakia indicated that child prostitution was an extremely minor problem.¹²⁰ In fact, the Czechoslovakian report stated that "traffic in children does not occur."¹²¹

It should be noted that eleven countries had laws against statutory rape, the exceptions being Greece and Egypt.¹²² Unfortunately, because of the brevity of the reports, it was not clear to what extent the countries had laws covering the sexual abuse of children in circumstances other than prostitution and statutory rape. However, laws pertaining to general sexual abuse were listed by some countries and some had specific sanctions against child pornography.¹²³

Based on a comparative examination of offenses against children for which criminal penalties were mandated by the thirteen countries studied, clearly it is sexual abuse which received the most universal condemnation. Criminal penalties were applied almost unanimously. Physical assault also received a high percentage of criminal penalties. What is somewhat surprising about the study is the number of countries in which there were criminal punishments for abandonment and neglect, types of abuse for which less serious sanctions are applied in

113. *Id.* at 92-93, 194-95, 383, 397-98, 474-75, 628-33, 657-59, 694-700 (China, Congo, Greece, Israel, Kenya, England, and the United States).

114. *Id.* at 126, 130, 234-35, 327-28, 383, 397-98, 557-59, 581-83 (Colombia, Cuba, Egypt, Greece, and Norway).

115. *Id.* at 48, 52, 94, 162, 210, 255-56, 305, 328, 476, 528-29, 584, 659-60, 722-723 (Australia, China, Colombia, Congo, Cuba, Czechoslovakia, Egypt, Israel, Kenya, Norway, England, and the United States). In the Greek report, curiously, this information was totally omitted.

116. *Id.* at 52, 94, 162, 210, 255-56, 305, 328, 476, 528-29, 584, 659-60, 722-23.

117. *See id.* at 210.

118. *See id.* at 49, 162, 210, 476, 583-84, 659-60 (Australia, Colombia, Congo, Israel, Norway, and England).

119. *Id.*

120. *Id.* at 255, 305.

121. *Id.* at 305. *See also id.* at 584 (Norway also alleges that it has no traffic in children).

122. *Id.* at 53-54, 94, 163, 210, 256, 305, 476-77, 528-29, 584-85, 659-60, 721-22.

the United States. Of the states studied, only Congo, Kenya, and Israel had penal proscriptions against all four types of offenses against children.¹²⁴

While the UNITAR study does provide a broad overview of the laws relating to child abuse in each country, it does not give any indication of the actual amount of abuse which takes place, the extent to which laws are enforced, how effective the laws have been in preventing abuse, or whether there is any procedure for record keeping.¹²⁵ The only broad conclusion which might be drawn from the above examination of the UNITAR study is that all four types of offenses against children were punished by sanctions of some sort in each of the thirteen countries studied, regardless of politics, economics, or geography. Thus, it can be argued that a broad-based international consensus on the right of the child to be free from abuse is already in existence. On the other hand, despite its political, economic, and geographical diversity, the size of the sample used in the study precludes its use in the making of broader generalizations.

C. *Child Abuse Prevention: International*

According to recent reports, there are only approximately forty nations which regularly compile child abuse statistics.¹²⁶ This absence of systematic reporting, coupled with definitional inconsistencies, has made it virtually impossible to estimate the full extent of child abuse on a worldwide basis. However, growing concern over child abuse has recently spurred the creation of both governmental and non-governmental projects aimed at international information gathering.

In 1985, UNICEF sponsored two research projects on the abuse of children. One examined the worldwide problem of child abuse¹²⁷ and the other focused specifically on the international aspects of sexual exploitation.¹²⁸ The conclusion drawn by both projects was that while child abuse is indeed a problem of international dimension, it is also a

124. *Id.* at 194-95, 210, 511, 527-28, 474-76.

125. While the UNITAR study is very interesting, its reliance on reports by local scholars of specific legislation, usually without any commentary about how laws are applied in actual practice, limits its ability to give a truly accurate picture of children's rights.

126. I. Dogremaci, *Battered Children and Child Abuse* (1985) (unpublished paper) (presented at the WHO/CIOMS Conference on Battered Children and Child Abuse, in Berne, Switzerland (Dec. 4-6, 1985)).

127. See D. Finkelhor & J. Korbin, *Child Abuse in a Global Perspective* (Aug. 1985) (unpublished report) [hereinafter cited as D. Finkelhor] (this report was for the Programme Development and Planning Division of UNICEF, 1985).

128. See K. Hermann, *An International Strategy for Intervention into the Commercial Sexual Exploitation of Children* (Aug. 1985) (unpublished study) (this study was commissioned by UNICEF and was prepared by UNICEF/USA, 1985).

problem about which little is actually known.¹²⁹ The general report presented an overview of child abuse in a global perspective, dividing abuse into four categories—physical abuse, physical neglect, emotional abuse and neglect, and sexual abuse—and describing the differing characteristics which adhere to these categories in an international setting.¹³⁰ For example, physical abuse not only takes the form of “child battering” but also includes the very real problems of child homicide, permanent impairment from local rituals, and children caught in inter-group hostilities.¹³¹ The report also categorized groups of children which might be especially vulnerable to abuse: deformed or handicapped children, children born in unusual stigmatized circumstances,¹³² females, unwanted children, and immigrants, among others.¹³³ The report encouraged UNICEF to take an active role in the fight against child abuse and enumerated specific ways in which the organization could make useful contributions.¹³⁴

The study concerning the international aspects of sexual exploitation detailed the various ways in which this exploitation occurs and the degree to which it has become an international commercial enterprise.¹³⁵ According to the author:

The commercial sexual exploitation of children takes the form of child pornography, child prostitution, child trafficking for sexual purposes, and the pedophile problem. Each of these is inextricably linked . . . [C]hildren who are involved in the production of pornographic materials are usually involved in prostitution, are frequently moved within and between nations for this victimization, and are exploited to meet the pathological needs of pedophiles. However, it should be understood that it is not just the pedophile who frequents the child prostitute but also those who indiscriminantly seek commercial sex from any source.¹³⁶

While it is impossible to obtain any accurate information on actual numbers of children who are exploited sexually, the author estimates that the figure is in the millions.¹³⁷ The research cites cases in which very young children, even as young as fourteen months, have been “bought, sold and traded for the gratification of pedophiles and the fi-

129. See D. Finkelhor, *supra* note 127; K. Hermann, *supra* note 128.

130. D. Finkelhor, *supra* note 127, at 2–22.

131. See *id.*

132. In some cultures there is a stigma attached to having been born in a breach birth or a multiple birth, such as twins or triplets, or similar unusual circumstances.

133. See D. Finkelhor, *supra* note 127, at 13.

134. *Id.* at 19–20 (as reported in Interview with Michael Jupp, Director of Defense for Children International/USA, in New York, N.Y. (Dec. 3, 1985)).

135. See generally K. Hermann, *supra* note 128.

136. *Id.* at 3.

nancial gain of child merchants."¹³⁸ Undoubtedly, the most disturbing aspect of the report is the extent to which the author found that children of all ages, from all parts of the world, are pawns in international sexual transactions which take place across international borders, apparently beyond the reach of national law enforcement authorities.¹³⁹ The study, conducted by Defense for Children International/USA, outlined initiatives which could be undertaken by UNICEF to heighten public awareness of the sexual exploitation of children, and steps that might be taken locally as well as internationally to diminish the international traffic in children.¹⁴⁰

The World Health Organization (WHO) has also initiated an international investigation of child abuse. In December, 1985, WHO, in association with the Council for International Organizations of Medical Sciences (CIOMS), held a conference on "Battered Children and Child Abuse" in Berne, Switzerland. Papers presented at the conference examined such topics as child abuse in nonindustrialized countries,¹⁴¹ the psychological aspects of child abuse,¹⁴² the affects of war on children,¹⁴³ child labor,¹⁴⁴ and sexual abuse.¹⁴⁵ Overall, the speakers left no doubt that child abuse was a worldwide problem. One of the most interesting aspects of the conference was its expansion of the definition of child abuse to include the acts and omissions of governments, in addition to acts and omissions of individuals; in other words, child abuse can be both systemic and nonsystemic.¹⁴⁶ In his paper, *Child Maltreatment in Non-Industrialized Countries: A Framework for Analysis*, S. D. Obikeze stated that systemic maltreatment

is generated by conditions in the social structure. Prominent among these are a state of underdevelopment, poverty, ignorance and deprivation in which most of the non-industrialized countries find themselves. A con-

138. *Id.* at 5.

139. *Id.*

140. *Id.*

141. See S. Obikeze, *supra* note 25.

142. See B. Bell, *Physical Abuse and Neglect of Children in the Family: A Review of Psychological Factors* (1985) (unpublished paper) (presented at the WHO/CIOMS Conference, "Battered Children and Child Abuse," in Berne, Switzerland (Dec. 4-6, 1985)).

143. See A. Shamma'a, *Children in War: Implications for the Health Worker in the Eighties* (1985) (unpublished paper) (presented at the WHO/CIOMS Conference, "Battered Children and Child Abuse," in Berne, Switzerland (Dec. 4-6, 1985)).

144. See U. Naidu, *Exploitation of Working Children: Situation Analyses and Approaches to Improve their Conditions* (1985) (unpublished paper) (presented at the WHO/CIOMS Conference, "Battered Children and Child Abuse," in Berne, Switzerland (Dec. 4-6, 1985)).

145. See J. Ennew, *Sexual Abuse and Child Prostitution* (1985) (unpublished paper) (presented at the WHO/CIOMS Conference, "Battered Children and Child Abuse," in Berne, Switzerland (Dec. 4-6, 1985)).

comitant characteristic of under-development and poverty in the non-industrialized countries is scarcity of vital resources. And whenever there is scarcity, children, as a powerless minority group, are among the first to suffer maltreatment, denials and deprivations.¹⁴⁷

While other papers did not go as far as Obikeze's in defining child abuse as systemic, it could be argued that certain forms of abuse, such as that revealed in the UNICEF study on sexual exploitation,¹⁴⁸ are systemic as well as nonsystemic. The same argument could be made about widespread child labor, forced migration, and war, all of which are harmful to children both directly and indirectly and are primarily outcomes of the system rather than the result of acts of individuals. The paper on children in war was especially interesting because it detailed all of the ways in which children are affected: physical injuries, death, disease, and malnutrition; poor or nonexistent housing and education; nightmares, insecurity, and other psychological problems.¹⁴⁹ This is especially tragic, since, in most cases, children are innocent bystanders. One sobering point made by the author, Amal Shamma'a, was:

In a country where anywhere between 35% to 51% of the population is below the age of 15 years, a war lasting 10 years would mean that at least $\frac{2}{3}$ of the children have never known peace, have lived in isolated communities, and have grown up where violent people, the militiamen, were heroes. The children of 1975, ten years later, are the new militiamen of today, and killing has become their way of life.¹⁵⁰

Response to the WHO/CIOMS conference has been so strong that WHO is contemplating a research project to ascertain the actual global extent of all types of child abuse.¹⁵¹

The International Labor Organization (ILO) does not make a practice of investigating situations of child abuse, per se, because it is the ILO's position that all child labor is illegal.¹⁵² However, at the ILO International Seminar on Ways and Means of Achieving the Elimination of the Exploitation of Child Labor in All Parts of the World, held in Geneva from October 18 to November 8, 1985, certain types of child

147. *Id.* at ____.

148. See K. Hermann, *supra* note 128.

149. See A. Shamma'a, *supra* note 143.

150. *Id.* at 6.

151. Interview with Dr. Manuel Carballo, Scientist for Maternal and Child Health, World Health Organization, in Geneva, Switzerland (Jan. 29, 1986).

152. Interview with ____ Leonardi, International Labour Organization Delegate to the Open-Ended Working Group on the Draft Convention on the Rights of the Child, in Geneva, Switzerland (Jan. ____, 1986). See also Concerning the Minimum Age for Admission to Employment, ILO Convention 138, (1973).

labor were looked at as being especially exploitative.¹⁵³ According to the report of the second and third meetings:

The special attention of the seminar was drawn to the problems of bonded labor, the use of children in pornography and prostitution and the employment of children in armed conflicts as soldiers. The seminar was in complete agreement that these forms of child labor should certainly be considered as exploitative, and should be eliminated as soon as possible.¹⁵⁴

Much of the growth in international awareness of child abuse can be traced to the efforts of national and international nongovernmental organizations.¹⁵⁵ The earliest work in this area was begun in 1962 by Dr. C. Henry Kempe and his associates,¹⁵⁶ who published articles, organized symposia, and, eventually established the C. Henry Kempe National Center for the Prevention and Treatment of Child Abuse and Neglect.¹⁵⁷ It was also Dr. Kempe who, in 1975, initiated the formation of the Ad Hoc International Committee on Child Abuse and Neglect. This first meeting, held in Bellagio, Italy, laid the foundation for the establishment of the International Society for the Prevention of Child Abuse and Neglect (ISPCAN) in 1977.¹⁵⁸ ISPCAN's two major contributions to expanding international awareness of child abuse and neglect have been the publishing of *Child Abuse and Neglect: The International Journal*¹⁵⁹ and sponsoring five meetings of the International Congress on Child Abuse and Neglect.¹⁶⁰

While ISPCAN has played an important role in stirring international awareness of child abuse, the newly engendered activism of the United Nations' specialized agencies can be largely attributed to the work of international nongovernmental organizations (INGOs) which are associated with the Economic and Social Council (ECOSOC) of the United Nations. The INGO's activities are similar in most respects to those of typical lobbying groups, public interest organizations, or po-

153. U.N. Doc. Hr/Geneva/1985(2) CRP 2, at 4 (1985).

154. *Id.*

155. In the United States there are many organizations which have taken up the cause of the abused child. Of particular importance is the work that has been done by the National Committee for the Prevention of Child Abuse, the American Bar Association, Defense for Children International/USA, and the C. Henry Kempe National Center for the Prevention and Treatment of Child Abuse and Neglect.

156. See *supra* note 24 and accompanying text.

157. Selected Historical Events of the C. Henry Kempe National Center for the Prevention and Treatment of Child Abuse and Neglect I (undated) (unpublished manuscript) (available from the C. Henry Kempe National Center, Denver, Colo.).

158. *Id.* at 3.

159. *Id.* at 5.

160. The Sixth International Congress on Child Abuse and Neglect was held in Sydney, Australia, in August, 1986.

litical action committees in the United States. However, unlike pressure groups in the United States system, INGOs are an official part of the United Nations system. The Charter of the United Nations authorized ECOSOC to seek advice from qualified organizations.¹⁶¹ To carry out this mandate, ECOSOC instituted a system by which bona fide, international, nongovernmental organizations could be granted one of three levels of consultative status.¹⁶² Consultative status Level I is granted to organizations having broad interest in all ECOSOC business, Level II to those organizations with narrow expertise in specific areas of ECOSOC activities, and Roster Status is granted to those organizations which occasionally may be called upon for information relating to their special areas of interest.¹⁶³ Those organizations which have met the criteria for INGOs laid out in ECOSOC Resolution 1296 (XLIV) and which are granted Level I or II consultative status may attend all public meetings of ECOSOC or any of its branches and may make written or oral interventions under appropriate circumstances.¹⁶⁴

Among the INGOs which have been particularly active in the area of child abuse is Defence for Children International (DCI), an advocacy organization with consultative status, which was spawned during the 1979 International Year of the Child. DCI and its national affiliates, particularly DCI/USA, have spearheaded research into child abuse in general and sexual abuse¹⁶⁵ in particular.¹⁶⁶ Radda Barnen International (RBI), an international offshoot of the Swedish Radda Barnen organization, has been extensively involved in the Third World. RBI spearheaded the movement in African countries against female circumcision, which it considers a form of child abuse, and has repeatedly brought this matter to the attention of the United Nations Commission on Human Rights.¹⁶⁷ RBI has also worked on the sexual ex-

161. U.N. CHARTER art. 71. This provision, which describes the structure and function of the ECOSOC, states:

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

Id.

162. See ECOSOC Res. 1296 (XLIV).

163. See *id.*

164. See UNITED NATIONS AND HUMAN RIGHTS 19 (1978). See also ECOSOC Res. 1296 (XLIV). As of May, 1984, there were 753 nongovernmental organizations to which ECOSOC had granted some level of consultative status. See U.N. Doc. E/1984/INF/7.

165. The sexual abuse research focused on international sex traffic.

166. See 2 INTERNATIONAL CHILDREN'S RIGHTS MONITOR No. 1 & Spec. ed. (1984).

167. Radda Barnen International has tabled an amendment to article 12 *bis* of the draft Convention, dealing with the problem of "traditional practices harmful to the health of the child," which includes female circumcision. It will be discussed at the 1987 session of the Working

ploitation problem and has developed educational materials for use in alerting children to the dangers of sexual abuse.¹⁶⁸ Perhaps the earliest INGO to work on the exploitation issue was the Anti-Slavery Society, a group organized in the mid-nineteenth century, which still actively pursues issues relating to slavery and slave-like practices, including prostitution and what was once known as the "white slave trade" or "traffic in women and children."¹⁶⁹

These organizations, along with about twenty-five other INGOs having consultative status with both ECOSOC and UNICEF, have formed the nucleus of the Informal NGO Ad Hoc Group on the Drafting of a Convention on the Rights of the Child. Their joint collaboration has greatly influenced the content of the articles of the Convention which have been adopted since the group formed in 1983.¹⁷⁰

III. THE CONVENTION ON THE RIGHTS OF THE CHILD

A. Background

United Nations declarations are of importance primarily because they represent an international consensus on a particular topic. Thus, the ten principles set forth in the 1959 Declaration of the Rights of the Child¹⁷¹ contained the rights which, at that time, were generally agreed upon as being owed to the child. As international legal instruments, however, declarations are of little value because they contain no implementation provisions and place no binding obligations upon their signatories. The move to draft a Convention on the Rights of the Child was directed toward the creation of an instrument which would ensure that States Parties would be legally bound to uphold the rights contained in the 1959 Declaration.¹⁷² It was hoped that the children's rights Convention could be completed for presentation during the 1979 International Year of the Child (IYC).¹⁷³

The first draft submitted by Poland, the Convention's primary ad-

Group.

168. See K. Hermann, *supra* note 128, at 12.

169. This organization appears to have been instrumental in the adoption of such treaties as: the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 266 U.N.T.S. 3 (in force 1957), and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 96 U.N.T.S. 271 (in force 1957).

170. See C. Cohen, *The Convention on the Rights of the Child: Non-Governmental Organizations and Implementation* (1985) (unpublished paper) (presented at UNICEF Conference: UNICEF and the Draft Convention on the Rights of the Child, in New York, N.Y. (Nov. 25-27, 1985)).

171. 14 U.N. GAOR Supp. (No. 16), U.N. Doc. A/4054 (1959).

172. See U.N. Doc. A/134/424 (1979).

vocate, was basically a revised version of the Declaration of the Rights of the Child, to which had been added several articles on implementation and ratification.¹⁷⁴ This 1978 draft was rejected by the Commission on Human Rights, which authorized the establishment of an Open-Ended Working Group (Working Group) on a draft convention on the rights of the child.

A second draft convention, presented to the Commission by Poland in the fall of 1979, has served as the Working Group's model throughout its drafting sessions.¹⁷⁵ The Working Group has met in Geneva for one week each year, just prior to the annual session of the Commission on Human Rights, since January, 1979. During that time, the interest in children's rights, generated by IYC, has continued to grow, resulting in greater participation by observer states and nongovernmental organizations as well as State members of the Commission. Rights which were completely omitted in the 1959 Declaration have been added. As a consequence, the rights of the child, which were extended from ten principles in the 1959 Declaration to twenty substantive articles in the 1979 draft Convention, have now been further extended into a more comprehensive draft Convention for which the, as yet, unfinished substantive portion already contains thirty adopted articles.¹⁷⁶

When it is completed, the Convention on the Rights of the Child will be unique among human rights conventions because of the extensive rights it conveys. Unlike the Universal Declaration of Human Rights,¹⁷⁷ which was divided into two separate conventions—the International Covenant on Civil and Political Rights¹⁷⁸ and the International Covenant on Economic Social and Cultural Rights¹⁷⁹—the Declaration of the Rights of the Child has been reformulated into a convention which will contain the full scope of the rights of the child. Thus, the right to free expression and to freedom of religion appear alongside the right to social security, education, and health care.

Despite these innovations, major criticisms of the Convention have

174. See U.N. ESCOR Supp. (No. 4), U.N. Doc. E/CN.4/1292 (1978).

175. See U.N. Doc. E/CN.4/1349 (1979). Membership in the Working Group is technically based on a State's membership in the Commission on Human Rights, which is limited to forty States and which changes somewhat in makeup each year. However, all members of the United Nations may send observers to the Working Group and the observers participate as fully as active members do. As no vote is taken and decisions are based upon consensus, the actual differences between membership and observer status is virtually non-existent. It should be noted, however, that not all members of the Commission on Human Rights send delegates to the Working Group and that in some years there have been as many observers present as there are members.

176. See Convention, *supra* note 1.

177. G.A. Res. 217, U.N. Doc. A/810, at 71 (1948).

178. G.A. Res. 2200A, 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966).

not been aimed at its comprehensiveness. Rather, critics have claimed that there is no reason for the Convention at all and that children's rights are already adequately protected by the two international human rights covenants.¹⁸⁰ Supporters of the Convention have countered this claim with three arguments: First, it is not entirely clear that the two covenants do adequately protect children's rights, especially since the anti-discrimination clause in the covenants fails to mention age; second, there are rights which are owed to children which are not clearly laid out in the two human rights covenants; and, third, there are Member States which have not ratified the two covenants, which might be willing to ratify a convention on children's rights.¹⁸¹

At the conclusion of its 1986 session, the Working Group had adopted a total of thirty substantive articles.¹⁸² Because many of the new articles are related to articles in the 1979 Polish draft, the numbering at this time still reflects this relationship. Upon its completion, the articles of the Convention will be renumbered in appropriate sequence. In its 1986 form, the draft Convention contains the following articles:

Article 1	Definition of the word "child"
Article 2	Right to a name and nationality
Article 3	Protection during legal or administrative proceedings
Article 4	Non-discrimination
Article 5	State implementation
Article 6	Family unity and place of residence
Article 6 <i>bis</i>	Family reunification and communication
Article 6 <i>ter</i>	Intra-familial kidnapping
Article 7	Free expression of opinion
Article 7 <i>bis</i>	Freedom of religion
Article 8	Parental duties in child-rearing
Article 8 <i>bis</i>	Abuse and maltreatment
Article 9	Mass media
Article 9 <i>bis</i> *	Preservation and identity
Article 10	Emergency and foster care
Article 11	Adoption
Article 11 <i>bis</i>	Refugees
Article 12	Disabled
Article 12 <i>bis</i>	Health care services
Article 12 <i>ter</i> *	Periodic review of placement

180. See Cohen, *supra* note 10, at 376, 381.

181. See *id.* at 376-80.

Article 13	Social security
Article 14	Standard of living
Article 15	Compulsory education
Article 16	Preparation for a responsible life
Article 17	Leisure and recreation
Article 18*	Economic exploitation
Article 18 <i>bis</i> *	Protection from illegal use of narcotics
Article 19*	Penal provisions
Article 20*	Armed conflict
Article 21*	Protection of previously given greater rights ¹⁸³

Proposed substantive articles to be tabled at the 1987 session include the following topics: rights of children born out of wedlock, the right to leave and enter one's own state, confidentiality of adoption records, freedom of association, chemical and bacterial warfare, sexual exploitation, and female circumcision.¹⁸⁴

It is hoped that the substantive portion of the Convention will be completed during the 1987 session of the Working Group and that work will begin on the procedural sections.¹⁸⁵ Depending upon whether the Working Group is granted an additional work-week for its 1987 meetings, the Convention could be ready for a second reading as early as 1987 or 1988. The purpose of a second reading is to clear up remaining conflicts over content and wording and to make any necessary stylistic adjustments.¹⁸⁶ As it is not very likely that all of this can be accomplished in 1987, it seems reasonable to conclude that the Convention will be ready for submission to the Economic and Social Council (ECOSOC) and then to the General Assembly for adoption no earlier than 1988.

Once completed and adopted by the United Nations General Assembly, the Convention on the Rights of the Child will not go into force until it has been ratified by the required number of States¹⁸⁷ and then it will be binding only upon the States which become parties to the Convention through ratification or accession.¹⁸⁸ Although the procedural portion of the Convention has yet to be drafted, it is likely that

183. *Id.* Articles accompanied by an * were adopted at the 1986 session of the Working Group.

184. *Id.* at Annex II & III.

185. See C. Cohen, *supra* note 170.

186. Interview with J. Selby, delegate to the Working Group, U.S. State Department, in Geneva, Switzerland (Jan. 28, 1986).

187. This will depend entirely on the decision of the Working Group. The 1979 Polish draft required fifteen states to become States Parties for the Convention to go into effect. See U.N. Doc. E/CN.4/1349 (1979). See also U.N. Doc. E/CN.4/1986/39, Annex III.

188. See generally M. AKEHURST, A MODERN INTRODUCTION TO INTERNATIONAL LAW

the implementation section will consist of a reviewing mechanism similar to that of existing human rights conventions.¹⁸⁹ In other words, there will not be any actual method of enforcing the Convention; ratifying States must be relied upon to uphold the rights of the Convention in good faith. One of the reasons that human rights treaties contain no penalties for noncompliance is that ratifying nations retain their status as individual sovereign States. Enforcement procedures of necessity require a diminution of absolute sovereignty.¹⁹⁰ Nevertheless, because of the importance attached to international public opinion, in most cases States Parties find it preferable to adhere to the requirements of a convention and thereby avoid the risk of being publicly accused of being violators of their treaty obligations.

While the Convention will be binding only on States Parties, this will not diminish its importance. The very fact that so many governments, governmental agencies, and nongovernmental organizations have concurred in its content will make the Convention a solid example of international consensus on the rights of the child.

B. Child Abuse Prevention: The Convention on the Rights of the Child

The right of the child to human dignity and to bodily integrity—freedom from abuse—is still what might be called an “emerging concept.” Nevertheless, enough is known about the effects of abuse on children and the extent to which it exists internationally to be able to formulate certain guidelines as to how these rights should be protected by the Convention on the Rights of the Child. Articles of the draft Convention adopted thus far do not contain a single blanket proscription against all of the types of abuse outlined above. Instead, matters relating to abuse have been interspersed among several separate articles. As a result, making a thorough evaluation of the extent to which the draft Convention has succeeded in protecting the child from abuse makes it necessary to undertake two tasks. First, the various definitions of child abuse must be adjusted into a single, simplified formula which can then be used to measure the rights now guaranteed by the draft Convention. Second, the Convention must be analyzed, article by article, to assure that the right to be free from all types of abuse has been adequately covered and to see which protections, if any, have been omitted.

189. See Cohen, *supra* note 170. See also U.N. Doc. E/CN.4/1986/39, Annex I & II; U.N. Doc. E/CN.4/1349 (1979).

190. All members of the United Nations are sovereign states. As a result, all decisions must be either unanimous or by consensus and not by majority vote. In its simplest definition, consensus

1. Definitions

In order to employ the most comprehensive definitions of child abuse, as explained in the section discussing the international problem,¹⁹¹ it is helpful to utilize the formula adopted by Obikeze in his presentation on child abuse in nonindustrialized countries at the WHO/CIOMS conference in Berne.¹⁹² Obikeze divided the types of child abuse or, as he called it, "child maltreatment," into *systemic* and *nonsystemic* classifications.¹⁹³ Unfortunately, for our purposes, his definition of *systemic* abuse was described in terms of causal factors, such as poverty and underdevelopment, and outcomes, such as malnutrition, disease, and starvation, rather than focusing on the government's responsibility for these circumstances through its action or inaction.¹⁹⁴ However, he did make it clear that *systemic* abuse was different from the common conception of abuse which he referred to as *nonsystemic*.¹⁹⁵ For purposes of examining the Convention, Obikeze's concepts will be interpreted in the following fashion: *systemic* child abuse will refer to those acts by the state which are harmful to all children or to specific, large groups of children, such as the disabled, within the state. *Nonsystemic* child abuse will include all other types of child abuse.¹⁹⁶

A convention obligates its signatories to abide by specific duties which they undertake by virtue of becoming States Parties to the convention. In other words, the terms *systemic* and *nonsystemic* take on additional meanings when looked at within the context of duties the Convention requires of its States Parties. Therefore, for purposes of examining rights protected by the draft Convention on the Rights of the Child, the agreement by the state to prohibit *systemic* child abuse can be seen as *a guarantee by the State Party that it will not undertake acts which are harmful to all of or to specific groups of its child citizens.*

The State Party's agreement to prohibit *nonsystemic* child abuse requires *a guarantee that the State Party will protect individual children from the harmful acts of other individuals.* This, of course, includes the harmful acts of several individuals or of groups of individuals toward several children or small groups of children. The primary difference, then, is that in *systemic* abuse there is direct State action or

191. See *supra* notes 126-70 and accompanying text.

192. See S. Obikeze, *supra* note 25, at 6-7, 19-20.

193. *Id.*

194. *Id.* at 7-8.

195. *Id.* at 8-19.

196. Examples of *nonsystemic* abuse include all acts of abuse by individuals such as those listed in the NCCAN Clearinghouse booklet: battering, neglect, sexual exploitation, etc. See *general comments*, CHILD ABUSE AND NEGLECT, *supra* note 66.

inaction, whereas the State is not directly involved in the acts which constitute *nonsystemic* abuse.

Systemic and *nonsystemic* abuse can both be further subdivided into three types: *general abuse*, *neglect*, and *sexual abuse*.¹⁹⁷ *General abuse* refers to all acts which are intentionally and directly harmful to the child, regardless of whether the harm is physical or emotional. *Neglect* encompasses all failures to act which have a harmful effect on the child, both physically and mentally. *Sexual abuse* includes both the performance of sexual acts which are directly harmful to the child and exploitation of the child by others for the performance of these acts.

Finally, in order to streamline the analysis of the Convention on the Rights of the Child, two clarifications have been made in reference to the identity of the abusers and to the circumstances surrounding the abuse. First, all acts of individuals acting on behalf of the State Party have been incorporated into the *systemic* analysis of the Convention, *unless* the individual acting on behalf of the State Party has a special relationship or duty of care to the individual child or small group of children.¹⁹⁸ Thus, the acts of individual immigration officials, judges, and administrative officials are *systemic*, while the acts of teachers, social workers, employers, doctors, and parole officers are *nonsystemic*.

Second, a survey of the circumstances in which the three types of abuse occur reveals that *general abuse* most often takes place in situations where the person in authority—such as the parent, guardian, or teacher—is required to discipline or control the behavior of the child. *Neglect*, however, most frequently happens when the person in authority fails in his or her duty to care for the child. Because on many occasions *sexual abuse* is not the outcome of a formal relationship between the individual and the child,¹⁹⁹ it does not fit into this type of analysis. The main characteristic of *sexual abuse* is that it is primarily coercive and primarily for the benefit of the abuser, either sexually or monetarily.²⁰⁰

2. Analysis

Using the above definitions, a careful examination of the 1986 Convention on the Rights of the Child was undertaken to filter out from each article the protections which were related to child abuse and to separate them from the other rights and protections contained in the Convention. The abuse protections were then evaluated and divided

197. The many variations and subdivisions of concepts of abuse and neglect have been distilled down to the bare minimum for matters of simplicity, clarity, and convenience.

198. See Convention, *supra* note 1.

199. See K. Hermann, *supra* note 128.

200. <https://ecommons.udayton.edu/udlr/vol11/iss3/5>

into categories of *systemic* and *non-systemic* abuse. Next, these results were synthesized and further divided into the specific types of abuse. The conclusions drawn from the study were that the 1986 draft Convention on the Rights of the Child contains at least some protections against both *systemic* and *non-systemic* forms of child abuse, that protections against *general abuse* and *neglect* appeared in both the *systemic* and *non-systemic* analyses, and that protection against *sexual abuse* was either completely missing or totally inadequate.

a. Systemic Conclusions

The draft Convention on the Rights of the Child provided for protection against *systemic* abuse, as shown by the following conclusions:

(1) The failure of a State Party to abide by the obligations set forth in any of the thirty articles of the draft Convention would result in some form of *systemic* abuse, as each article required some act on the part of the State toward all or a large segment of its children and noncompliance would result in harm.²⁰¹

(2) Although no articles completely excluded the possibility that their violation would amount to *systemic* abuse, violations of some subsections of articles would be solely *nonsystemic*.²⁰²

(3) Only violations of Article 4(1), (2) (nondiscrimination) and Article 20(1), (2), (3) (armed conflict) could be characterized as constituting *systemic general abuse*.²⁰³ Violations of all other articles would be considered *neglect*, unless the violations were undertaken with intent to harm, in which case they would then be *general abuse*.²⁰⁴

(4) No articles in the draft Convention protected children against *systemic sexual abuse*, even though the type of traffic in children described in the UNICEF study clearly falls into this category.²⁰⁵

In the *systemic* analysis, it was assumed that the failure of the State Party to comply with Convention obligations to provide protection for the child from a deprivation of such rights as access to media, free speech, health services, social security, education, leisure, and recreation, or, said differently, the failure to assure the child of these rights, would be *systemic neglect* and not *systemic general abuse*. This assumption was arrived at by analogizing from *nonsystemic* concepts of *general abuse* and *neglect*, where it is generally considered to be *neglect* if the parent fails to ensure, for example, the child's attendance at

201. See Convention, *supra* note 1.

202. See *id.*

203. See *id.* arts. 4(1), (2), 20(1), (2), (3). Sections of articles, the violation of which would be solely *nonsystemic*, include articles 7 *bis*(3), (4), 8(2), 8 *bis*(1), 15(2), (3). *Id.*

204. See *id.*

school or fails to obtain regular health check-ups for the child.²⁰⁶

There were several articles in which the injuries resulting from a failure of the State Party to fulfill its obligations would be very severe and, arguably, deprivation of any of these rights could amount to *systemic general abuse*.²⁰⁷ There were two articles, however, where there was no question that the failure to provide protection would, per se, constitute the intent to injure which is a requisite factor in *general abuse*: Article 20, which protects children under the age of fifteen from participating in armed conflict, a denial of which would clearly be emotional and physical abuse, and Article 4, which protects against discrimination, a denial of which would amount to emotional abuse.²⁰⁸

b. Non-systemic Conclusions

Nonsystemic analysis of the Convention on the Rights of the Child was complicated by the fact that in some cases, obligations of the State Party to all of its children implicitly required the cooperation of or acts by additional individuals whose failure to act would result in *nonsystemic* abuse. Thus, the obligation of the State Party to provide for adoption might require not only the act of the State official, but also the cooperation of a social worker and the child's parent. Similarly, the State Party's obligation to provide appropriate access to mass media by children could be abridged by the acts of a *negligent* parent who failed to ensure the child's access to mass media or by a *generally abusive* parent who deliberately and systematically forbade the child's access to mass media.

The inclusion of implied unspecified acts of individuals in the analysis required that protection against *nonsystemic* abuse be separated into two types: *direct* and *implied*. Overall, the study of *nonsystemic* abuse resulted in these conclusions:

(1) Subsections of two articles *directly* protected children from *general abuse*²⁰⁹ and eight articles or subsections of articles did so *impliedly*.²¹⁰

(2) Eight articles or subsections *directly* protected children from *neglect*²¹¹ while thirteen additional articles or subsections *impliedly*

206. See CLEARINGHOUSE ON CHILD ABUSE AND NEGLECT, *supra* note 66.

207. For example, injuries such as those caused by the State's failure to provide for protection against economic exploitation, the use of narcotics, or the prevention of family reunification might also be characterized as systemic general abuse.

208. Convention, *supra* note 1, arts. 4, 20.

209. *Id.* arts. 8 *bis*(1), 15(2) (direct *nonsystemic general abuse*).

210. See *id.* arts. 4(2), 6 *ter*(1), 7, 7 *bis*, 9 *bis*, 17, 18, 19 (implied *nonsystemic general abuse*).

211. *Id.* arts. 7 *bis*(3), 8(2), 8 *bis*(1), 12(2), 14(2), (3), 15(2), (3) (direct *nonsystemic*

provided this protection.²¹²

(3) Only subsection (1) of Article 8 *bis* gave any protection against sexual abuse or exploitation and that protection was restricted to situations where the abuse or exploitation occurred while the child was in the care of a parent, guardian, or similar individual.²¹³

(4) No article protected children from extra-familial sexual abuse or exploitation.

(5) No article protected children from overzealous punishment or abuse by anyone outside the family or school setting.

The conclusions drawn from the study of protection against *nonsystemic general abuse* show that only Article 8 *bis* (1), which provided broad protection against "all forms of physical or mental injury or abuse, neglect, negligent treatment, maltreatment or exploitation including sexual abuse,"²¹⁴ and Article 15(2), which requires that school discipline be "administered in a manner reflective of the child's human dignity,"²¹⁵ gave *direct* protection against *general abuse*. The eight articles or subsections which *directly* protected children from *nonsystemic neglect* did so only in the following circumstances: choice of education, religion, performance of parental duties, provision of a standard of living, care of the disabled, and the blanket provision of Article 8 *bis* above.²¹⁶ However, there were other areas of *nonsystemic general abuse*²¹⁷ and *neglect*²¹⁸ for which protection was *implied*. These areas ranged from guarantees of health care services and social security to employment and penal provisions. The only areas where *nonsystemic* protection is blatantly lacking are cases of *general abuse* by individuals who are not family members or caretakers and *sexual abuse* and exploitation. The limitation of the protections of Article 8 *bis*(1) to those circumstances in which the child is "in the care of parent(s), legal guardians(s) or any other person who has the care of the child"²¹⁹ prevents its application to most cases of prostitution, pornography, or sexual traffic. Although these limitations also prevent the application of Article 8 *bis*(1) to the work situation, this void has been adequately filled by Article 18.²²⁰ It is imperative that a similar article be drafted

212. See *id.* arts. 7, 9, 10, 11, 18, 18 *bis*, 19(1), (2) (c)(ii), (iv), 13(2), 12 *bis*(2)(d), (e), 12 *ter*, 17(1), (2) (implied *nonsystemic neglect*).

213. *Id.* art. 8 *bis*.

214. *Id.* art. 8 *bis*(1).

215. *Id.* art. 15(2).

216. *Id.* arts. 7 *bis*(3), 8(2), 8 *bis*(1), 12(2), 14(2), (3), 15(2), (3) (direct *nonsystemic neglect*). See *supra* note 214 and accompanying text.

217. See *supra* note 210 and accompanying text.

218. See *supra* note 212 and accompanying text.

219. Convention, *supra* note 1, art. 8 *bis*(1).

to fill the Convention's gaps regarding *sexual abuse*.

IV. CONCLUSION

To have a perfectly precise evaluation of the protections against abuse guaranteed by the draft Convention on the Rights of the Child would, of course, require clear international consensus on the definition of child abuse. As discussed above, such a definition simply does not exist at this time. There is no single existing international treaty which encompasses the full spectrum of protections against abuse and neglect which, ideally, should be granted to children. Although the two international human rights covenants do provide some guidance in formulating standards for protection against *systemic* abuse, they do not provide similar aids for evaluating protection from *non-systemic* abuse.²²¹ It is also unlikely that a survey of all existing international and regional legal instruments affecting children would provide a standard any more complete than that contained in the draft Convention on the Rights of the Child. On the other hand, there is the distinct possibility that some individual instruments may apply a higher standard to specific rights than is applied in the draft Convention.

Because of mounting concern among INGO's and government delegates to the Open-Ended Working Group that the draft Convention might weaken protections already granted by other international treaties, a study was recently commissioned jointly by UNICEF and Defence for Children International (DCI) to compare the content of adopted articles of the draft Convention with similar articles in other international instruments. A second draft of the UNICEF-DCI study was completed by Dr. Katerina Tomasevski in January, 1986, and covered the articles of the draft Convention adopted during the period from 1979 to 1985.²²² While the project is an important additional tool for the evaluation of the Convention, in its present form it fails to provide sufficient information for purposes of analyzing the Convention's child abuse protection. First, the comparative study by Tomasevski does not include a critique of the seven articles adopted at the 1986 drafting session of the Working Group. Thus, it does not contain a comparative discussion of such significant matters such as the right to identity, protection from economic exploitation, narcotics, armed conflict, and penal provisions. Second, the comparative study, thus far, has not undertaken a synthesis of the protections guaranteed by other in-

221. There is no absolute agreement as to the extent to which the rights in the covenants are applicable to children.

222. K. Tomasevski, Comparative Survey of the Draft Convention on the Rights of the Child and Existing International Legal Instruments on the Rights of the Child, Part 1: Draft Convention on the Rights of the Child (1986) (unpublished study).

<https://ecommons.udayton.edu/olr/vol11/iss3/5>

struments which had not been addressed by adopted articles of the draft Convention. As a result, there is no efficient method of measuring what protections are missing from the draft Convention. Third, the author's commentary is brief and often lacking in detail, making it difficult to ferret out the necessary information for a reasoned comparison. Fourth, it intermixes the guarantees of treaties with those of declarations. This is legally misleading, as the rights contained in declarations are legally unenforceable unless it can be argued that under international practice they have become so universally accepted that they can be considered to be incorporated into the body of customary international law.²²³ If this is, in fact, true of even portions of the declarations which Tomasevski has intermingled with treaties in the comparative study, it has not been made clear to the reader. Finally, the study makes no mention of international practice. There was no discussion of the judgments of international courts or decisions by commissions or interpretations by reviewing committees, all of which contain a wealth of information about the meaning of treaties as applied in the real world.

While it is hoped that these matters will be corrected by the final draft of the UNICEF/DCI study, until that happens, the best measurement of international consensus regarding the right of the child to be free from abuse is to be found in the draft Convention on the Rights of the Child, where, as previously discussed, child abuse coverage is still incomplete.²²⁴ In the above analysis, there were two important areas of child abuse which had not been prohibited by any of the adopted articles. These were freedom from sexual abuse and exploitation, which was absent in both the *systemic* and *nonsystemic* analyses, and freedom from physical and emotional abuse by those outside the family and school, which falls under *nonsystemic* protection. The former shortcoming can best be corrected by the inclusion of a new article which explicitly addresses each aspect of this problem. It is important for such article to cover all types of sexual abuse, including traffic, sexual exploitation, pornography, and prostitution. This could be accomplished in a manner similar to that of the following model:

States Parties to the present Convention shall ensure that the child is protected from all forms of sexual abuse and exploitation. To this end they agree to take all legislative, administrative, social, and educational measures necessary to prevent:

- (1) *the sexual abuse of children,*

223. See M. AKEHURST, *supra* note 188, at 25-34.

224. See *supra* notes 191-200 and accompanying text.

(2) *child prostitution,*

(3) *the use of children in pornographic performances, films, and publications.*

Such measures shall provide for appropriate sanctions or penalties to be applied to anyone who in any manner causes a child to engage in the activities described above.

Although partially covered by existing articles, the problem of abuse by individuals outside the school and home could best be served by drafting a blanket article that would specifically cover the topic of discipline and behavior control and which would lay out standards that would ensure the child's right to bodily integrity in all circumstances. Article 7 of the International Covenant on Civil and Political Rights and both the European and American human rights conventions contain prohibitions against subjecting anyone "to torture or to cruel, inhuman or degrading treatment."²²⁵ A similar protection should be included in the Convention on the Rights of the Child.

A general article on disciplinary methods need not be lengthy. It might simply rephrase language already applicable to adults under other international treaties:

States Parties to the present Convention shall take appropriate measures to assure that the child is not subjected to corporal punishment or to other cruel or degrading forms of punishment or treatment under any circumstances.

Such an article could be applied to any situation and any individual, whether that person be a social worker, mental institution employee, or athletic coach. Further, its inclusion in the Convention would make it

225. See G. A. Res. 2200A, 21 U.N. GAOR Supp. (No. 16), art. 7, U.N. Doc. A/6316 (1966); European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 Europ. T.S. No. 5, 213 U.N.T.S. 211; American Convention on Human Rights, O.A.S. Off. Rec. OEA/Ser.K/XVI/1.1, Doc. 65, Rev. 1, Corr. 1. (Jan. 7, 1970).

Article 7 of the International Covenant on Civil and Political Rights contains the following prohibition: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment. In particular, no one shall be subjected without his free consent to medical or scientific experiment." G. A. Res. 2200A, 21 U.N. GAOR Supp. (No. 16), art. 7, U.N. Doc. A/6316 (1966).

The European Convention provides in part: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 Europ. T.S. No. 5, 213 U.N.T.S. 211, art. 4.

The American document provides in part:

Article 5

Right to Humane Treatment:

1. Every person has the right to have his physical, mental and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

American Convention on Human Rights, O.A.S. Off. Rec. OEA/Ser.K/XVI/1.1, Doc. 65, Rev.

clear that children, the most frequently disciplined segment of society, are entitled to the same protection of bodily integrity that is guaranteed to adults.

Since the right of the child to be free from abuse is an evolving concept, the passage of time will undoubtedly bring new theories about actions and inactions which will be considered to be abusive to children. It is hoped that, with this in mind, the Working Group will include a process for amendment and modernization in the procedural portion of the Convention. However, the right to bodily integrity and to freedom from abuse cannot be left to future negotiations between states. The protection of these rights is so basic that it must not be omitted from a document aimed at protecting the rights of the child.

APPENDIX

Annex I

TEXT OF THE DRAFT CONVENTION ON THE RIGHTS ON THE CHILD

ADOPTED BY THE WORKING GROUP

PREAMBLE

The States Parties to the Convention,

Considering that in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the basic unit of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that, as indicated in the Declaration of the Rights of the Child adopted in 1959, the child due to the needs of his physical and mental development requires particular care and assistance with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security,

Recognizing that the child, for full and harmonious development of his personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Bearing in mind that the need for extending particular care to the child has been stated in the Geneva Declaration of the Rights of the

Child of 1924 and in the Declaration of the Rights of the Child adopted by the United Nations in 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in its article 10) and in the statutes of specialized agencies and international organizations concerned with the welfare of children,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom and brotherhood,

Have agreed as follows:

Article 1

According to the present Convention a child is every human being to the age of 18 years unless, under the law of his State, he has attained his age of majority earlier.

Article 2

1. The child shall have the right from his birth to a name and to acquire a nationality.
2. The States Parties to the present Convention shall ensure that their legislation recognizes the principle according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, or administrative authorities, the best interests of the child shall be a primary consideration.
2. In all judicial or administrative proceedings affecting a child that is capable of forming his own views, an opportunity shall be provided for the views of the child to be heard, either directly or indirectly through a representative, as a party to the proceedings, and those views shall be taken into consideration by the competent authorities, in a manner consistent with the procedures followed in the State Party for the application of its legislation.
3. The States Parties to the present Convention undertake to ensure the child such protection and care as is necessary for his well-being, taking into account the rights and duties of his parents, legal guardians, or other individuals legally responsible for him, and, to this end, shall take all appropriate legislative and administrative measures.

4. The States Parties to the present Convention shall ensure competent supervision of officials and personnel of institutions directly responsible for the care of children.

Article 4

1. The States Parties to the present Convention shall respect and extend all the rights set forth in this Convention to each child in their territories without distinction of any kind, irrespective of the child's or his parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national or social origin, cultural beliefs or practices, property, educational attainment, birth, or any other basis whatever.

2. States Parties to the present Convention shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or other family members.

Article 5

The States Parties to the present Convention shall undertake all appropriate administrative and legislative measures, in accordance with their available resources, and, where needed, within the framework of international co-operation, for the implementation of the rights recognized in this Convention.

Article 6

1. The States Parties to the present Convention recognize that the child should enjoy parental care and should have his place of residence determined by his parent(s), except as provided herein.

2. States Parties shall ensure that a child shall not be separated from his parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such a determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination.

3. A child who is separated from one or both parents has the right to maintain personal relations and direct contacts with both parents on a regular basis, save in exceptional circumstances.

4. Where such separation results from any action initiated by a State party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 6 bis

1. In accordance with the obligation of States Parties under article 6, paragraph 2, applications by a child or his parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis save in exceptional circumstances personal relations and direct contacts with both parents.

Article 6 ter

1. The States Parties to the present Convention shall take appropriate measures to combat the illicit transfer and non-return of children abroad.

2. To this end, the States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements, as well as the introduction of periodic consultations between the competent national authorities.

Article 7

The States Parties to the present Convention shall assure to the child who is capable of forming his own views the right to express his opinion freely in all matters, the wishes of the child being given due weight in accordance with his age and maturity.

Article 7 bis

1. The States Parties to the present Convention shall respect the right of the child to freedom of thought, conscience and religion.

2. This right shall include in particular the freedom to have or to adopt a religion or whatsoever belief of his choice and freedom, either individually or in community with others and in public or private, to manifest his religion or belief, subject only to such limitations as are prescribed by law and are necessary to protect public safety, order,

health and morals; and the right to have access to education in the matter of religion or belief.

3. The States Parties shall respect the rights and duties of the parents and, where applicable, legal guardians, to provide direction to the child in the exercise of his right in a manner consistent with the evolving capacities of the child.

4. The States Parties shall equally respect the liberty of the child and his parents and, where applicable, legal guardians, to ensure the religious and moral education of the child in conformity with convictions of their choice.

Article 8

1. Parents or, as the case may be, guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common and similar responsibilities for the upbringing and development of the child.

2. For the purpose of guaranteeing and promoting the rights set forth in this Convention, the States Parties to the present Convention shall render appropriate assistance to parents and guardians in the performance of the child-rearing responsibilities and shall ensure the development of institutions for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible.

4. The institutions, services and facilities referred to in paragraph 2 and 3 of this article shall conform with the standards established by competent authorities particularly in the area of safety, health, and in the number and suitability of their staff.

Article 8 bis

1. The States Parties to the present Convention shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for ju-

dicial involvement.

Article 9

The States Parties to the present Convention recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, including those aimed at the promoting of his social, spiritual and moral well-being and physical and mental health. To this end, the States Parties shall:

(a) Encourage the mass media agencies to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 16;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the mass media agencies to have particular regard to the linguistic needs of the child who belongs to a minority group or an indigenous population;

(d) Encourage the development of appropriate guidelines for the protection of the child from information and material potentially injurious to his well-being bearing in mind the provisions of article 8.

*Article 9 bis**

1. The States Parties to the present Convention undertake to respect the right of the child to preserve his or her identity (nationality, name, family relations, as recognized by law) without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, the States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 10

1. A child permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance provided by the State.
2. The States Parties to the present Convention shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his family environment, or who in his best interests cannot be brought up or be allowed to remain in the environment shall be provided with alternative family care which could include, *inter alia*, adoption, foster placement, or placement in suitable institutions for the care

of children.

Article 11

1. The States Parties to the present Convention shall undertake measures, where appropriate, to facilitate the process of adoption of the child. Adoption of a child shall be authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if required, the appropriate persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary.

2. The States Parties to the present Convention shall take all appropriate measures to secure the best interests of the child who is the subject of intercountry adoption. States Parties shall ensure that placements are made by authorized agencies or appropriate persons under the adequate supervision of competent authorities, providing the same safeguards and standards that are applied in exclusively domestic adoptions. The competent authorities shall make every possible effort to ensure the legal validity of the adoption in the countries involved. States Parties shall endeavour, where appropriate, to promote these objectives by entering into bilateral or multilateral agreements.

Article 11 bis

The States Parties to the present Convention shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and other international human rights or humanitarian instruments to which the said States are Parties. In view of the important functions performed in refugee protection and assistance matters by the United Nations and other competent intergovernmental and non-governmental organizations, the States Parties to the present Convention shall provide appropriate co-operation in any efforts by these organizations to protect and assist such a child and to trace the parents or other close relatives of an unaccompanied refugee child in order to obtain information necessary for reunification with his family. In cases where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of this family environment for any reason, as set forth in the present

Article 12

1. The States Parties to the present Convention recognize that a mentally or physically disabled child should enjoy a full and decent life in conditions which ensure his dignity, promote his self-reliance, and facilitate his active participation in the community.
2. The States Parties to the present Convention recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his cultural and spiritual development.
4. States Parties shall promote in the spirit of international co-operation the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 12 bis

1. The States Parties to the present Convention recognize the right of the child to the enjoyment of the highest attainable standard of health and to medical and rehabilitation facilities. The States Parties shall strive to ensure that no child is deprived for financial reasons of his right of access to such health care services.
2. The States Parties to the present Convention shall pursue full implementation of this right and in particular, shall take appropriate measures to:
 - (a) diminish infant and child mortality,
 - (b) ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care.

- (c) ensure appropriate health care for expectant mothers,
- (d) encourage the provision of full and accurate information regarding methods of infant nutrition, including the advantages of breast-feeding,
- (e) ensure the provisions of information and training for parents and children in basic health care, sanitation and prevention of accidents,
- (f) develop preventive health care and family planning education and services.

3. States Parties to the present Convention undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in this article. In this regard, particular account shall be taken of the needs of developing countries.

*Article 12 ter **

States Parties to the present Convention recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection, or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 13

1. The States Parties to the present Convention shall, in a manner appropriate to national conditions, recognize for every child the right to benefit from social security and shall take the necessary measures to achieve the full realization of this right.
2. The benefits should, where appropriate, be granted taking into account the national resources available and the resources and the circumstances of the child and persons having responsibility for the maintenance of the child as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 14

1. The States Parties to the present Convention recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. The States Parties to the present Convention, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and sup-

port programmes, particularly with regard to nutrition, clothing and housing.

Article 15

1. The States Parties to the present Convention recognize the right of the child to education and, with a view to achieving the full realization of this right on the basis of equal opportunity, they shall, in particular:

(a) make primary education free and compulsory as early as possible,

(b) encourage the development of different forms of secondary education systems, both general and vocational, to make them available and accessible to all children, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need,

(c) make higher education equally accessible to all on the basis of capacity by every appropriate means.

2. The States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner reflective of the child's human dignity.

3. The States Parties to the present Convention shall respect the rights and duties of the parents and, where appropriate, legal guardians to provide direction to the child in the exercise of his right to education in a manner consistent with the evolving capacities of the child.

4. States Parties to the present Convention shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 16

1. The States Parties to the present Convention agree that the education of the child shall be directed to:

(a) The promotion of the development of the child's personality, talents and mental and physical abilities to their fullest potential and the fostering of respect for all human rights and fundamental freedoms.

(b) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance and friendship among all peoples, ethnic and religious groups.

(c) The development of respect for the natural environment and for the principles of the Charter of United Nations.

2. No part of paragraph 1 of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and di-

rect educational institutions, subject always to the observance of the principles set forth in paragraph 1 and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 17

1. States Parties to the present Convention recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. The States Parties to the present Convention shall respect and promote the rights of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

*Article 18 **

1. The States Parties to the present Convention recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's health or physical, mental, spiritual, moral or social development.
2. The States Parties to the present Convention shall take legislative and administrative measures to ensure the implementation of this article. To this end, and having regard to the relevant provisions of other international instruments, the States Parties shall in particular:
 - (a) provide for a minimum age or minimum ages for admission to employment;
 - (b) provide for appropriate regulation of the hours and conditions of employment; and
 - (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this article.

*Article 18 bis **

The States Parties to the present Convention shall take all appropriate measures, including legislative, social and educational measures, to protect children from the illegal use of narcotic and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illegal production and trafficking of such substances.

*Article 19 **

1. States Parties to the present Convention recognize the right of children who are accused or recognized as having infringed the penal law to be treated in a manner which is consistent with promoting their

sense of dignity and worth and intensifying their respect for the human rights and fundamental freedoms of others, and which takes into account their age and the desirability of promoting their rehabilitation.

2. To this end, and having regard to the relevant provisions of international instruments, the States Parties to the present Convention shall, in particular, ensure that:

(a) no child is arbitrarily detained or imprisoned or subjected to torture, cruel, inhuman or degrading treatment or punishment;

(b) capital punishment or life imprisonment without possibility of release is not imposed for crimes committed by persons below 18 years of age;

(c) children accused of infringing the penal law (i) are presumed innocent until proven guilty according to law; (ii) are informed promptly of the charges against them and, as of the time of being accused, have legal or other appropriate assistance in the preparation and presentation of their defence; (iii) have the matter determined according to law in a fair hearing within a reasonable period of time by an independent and impartial tribunal and (iv) if found guilty are entitled to have their conviction and sentence reviewed by a higher tribunal according to law. 3. An essential aim of treatment of children found guilty of infringing the penal law shall be their reformation and social rehabilitation. A variety of dispositions, including programmes of education and vocational training and alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate and proportionate both to their circumstances and the offence.

4. All children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person, and shall in particular:

(a) be brought as speedily as possible for adjudication;

(b) be separated from adults accused or convicted of having committed an offence unless it is considered in the child's best interest not to do so, or it is unnecessary for the protection of the child; and

(c) have the right to maintain contact with their family through correspondence and visits, save in exceptional circumstances.

*Article 20 **

1. The States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties to the present Convention shall take all feasible measures to ensure that no child takes a direct part in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of 15 years into their armed forces.

3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties to this Convention shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

*Article 21 **

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) Any other international convention, treaty or agreement in force for that State.