

THE CONVENTION ON THE RIGHTS OF THE CHILD: CREATING A NEW GLOBAL ETHIC FOR CHILDREN

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Summary

The Convention on The Rights of The Child places children's rights for the first time on a legally binding international level on a par with other human adult rights. Through its adoption, children have been granted the same comprehensive range of civil, political, economic, social and cultural rights enjoyed by adults. The Convention differs from its precedents also in the philosophical understanding of childrens' rights which it enshrines.

The State of The World's Children Reports, published annually by the United Nations Children's Fund, provide stark testimonials to both the pressing need for the Convention as well as to the significant obstacles, which it faces. Infectious diseases, malnutrition, war, child labor, and lack of access to education form part of a myriad of threats that place the well being, survival, and development of millions of children around the world at risk. While the Convention has raised the international standing of children's rights; and seen the instigation of a number of initiatives that have saved millions of children's lives, State Parties still have some distance to travel before they can be said to have fulfilled their legal and moral obligations to present and future generations of children.

1. The Convention on the Rights of the Child

1.1 Introduction and Overview

The Convention on the Rights of the Child represents a signal achievement in the arena of international human rights. It stands at the close of the century as the most widely ratified human rights treaty in the history of the United Nations. Unanimously endorsed by the United Nations General Assembly on 20 November 1989 and signed by a record 61 countries on the day it was opened for signature on 26 January 1990, the Convention provides powerful testimony to a global recognition for its pressing need. The USA and Somalia are the only two States still to ratify the Convention, although both have endorsed it in principle by acting as signatories. If and when they commit themselves fully to this global consensus, the Convention will stand as the first legally binding contract in the history of the United Nations to which all its members have agreed.

The Convention builds on over 75-years of UN children's rights initiatives. As early as 1924 the League of Nation's *Declaration of the Rights of the Child* (also known as the *Declaration Of Geneva*) set out a basic blueprint for the fundamental principles of children's well being. In 1948, the *Universal Declaration of Human Rights* focused further on children's needs as part of the broader freedoms and protections to which all human beings are entitled. In 1959, the *Declaration on the Rights of the Child* added to both these initiatives with a greater emphasis on children's legal and moral rights and on broader areas of need such as education and recreation. These initiatives provided the impetus for drafting the Convention, which began in 1978, in anticipation of the 1979 International Year of the Child, before taking ten years to reach fruition.

The Convention adds significantly to the scope and power of the precedents, important though they all are. It places children's rights for the first time on a legally binding international level on a par with other human adult rights. Ratification places State Parties under a legal and moral obligation to offer the administrative, legislative, judicial, and other means to advance the cause of implementing the rights outlined in the Convention. A monitoring process administered by a UN Committee on the Rights of the Child ensures that the efforts undertaken by each ratifying nation to implement the provisions are reported two years after ratification and every five years thereafter. This legislative power was lacking from all the previous declarations, which did not obligate States to act on the recommendations contained within them. Through its adoption, children have for the first time been granted the same comprehensive range of civil, political, economic, social, and cultural rights enjoyed by adults.

The Convention differs from the precedents also in the philosophical understanding of children's rights, which it encapsulates. The 1924 Declaration presented children's rights predominantly in terms of basic welfare issues. Growing out of the post-First World War concerns to rebuild social and economic stability, the 1924 Declaration concerned itself more with providing the fundamentals of children's well-being and development such as food, medical care, shelter and spiritual sustenance. It was also directed towards an earlier understanding of children's rights, which viewed them primarily from the perspective of adults in their care-taking roles. The 1959 Declaration, likewise, contained little reference to children's ability to take control for themselves; and participate actively in the creation and retention of their rights. The Convention, by contrast, seeks to replace this paternalistic conception of rights with an understanding of children as much more active agents of their own destinies. It emphasizes children's

ability to form their own opinions and to participate in society; and accordingly seeks to safeguard children's rights to be heard in judicial and administrative proceedings, which affect them. This emphasis on the rights of children to exercise autonomy in the decision-making process about factors influencing their lives has opened up a new and fundamentally important precedent in international law.

The global prioritization of children's rights grows out of a fundamental recognition of the importance of young children to the long-term growth and development of future societies. It recognizes the importance of developing an international framework aimed at developing a better and more conducive environment for children's growth and development needs in order for this importance to be realized. The Convention thus places a high priority on the responsibilities of society to offer support and attention to children in turn. The inclusion of a fuller spectrum of children's rights contained in the Convention recognizes, at the same time, the complex issues, and socio-economic realities that place the well being, healthy growth, and development of children at risk. It also importantly pressures State Parties to assume a position of responsibility and accountability in relation to the protection, survival and development of children. This new pledged responsibility also extends to children in other States whose governments lack the resources and structures to ensure the immediate recognition of their children's economic, social, and cultural rights. The Convention thus, promotes the development of a new global ethic towards children; and in so doing highlights their importance in determining the long-term survival of society. For these reasons, the Convention has taken on a different meaning to the declarations, covenants, and conventions concerning human rights and children that preceded it.

1.2 Scope of the Convention

The Convention on the Rights of the Child promotes four key principles, the first of which binds State Parties to ensuring that every child enjoys full rights "without discrimination of any kind" (Article 2). Children thus have a basic right to equal opportunities "irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, and political or other opinion; national, ethnic or social origin, property, disability, and birth or other status". The Convention also stresses the fundamental need that all decisions taken by adults in respect of children shall place the best interests of the children themselves as their guiding and primary consideration. This applies to all actions concerning children, "whether undertaken by public or private social welfare institutions, courts of law, and administrative authorities or legislative bodies" (Article 3).

On an even more fundamental level, the third principle enshrines the basic right of children to survival and development. This developmental emphasis is seen to apply to all areas of the developmental spectrum, from mental and cognitive, to social, and cultural development (Article 6). The fourth principle goes to the heart of the Convention's current understanding of the philosophical underpinnings to children's rights. It stresses the child's right to participate in society – to be heard "freely in all matters affecting the child [and] in accordance with the age and maturity of the child".

In addition to these four key principles, the Convention stipulates five substantive

provisions. The first relates to civil rights and freedoms. It encapsulates children's right to a name and nationality, to freedom of thought, conscience, religion, and association; and to protection from interference to privacy (Articles 7, 8, 14, and 16). It also enshrines the State's obligation to preserve children's identity and ensure that children are not subject to torture, degradation, and capital punishment or life imprisonment (Article 37).

The second provision relates to family environment and parental guidance. The Convention stipulates the rights and responsibilities of States, and parents, to raise children and offer them guidance (Article 18). It also defines and articulates the need for children to maintain contact with their parents in the event of separation, and unless deemed otherwise in the best interests of the child by competent authorities (Article 9). It also sets out the State's obligations to protect children from all forms of abuse and neglect and to offer support, rehabilitation and social integration to those children who are deprived of a family environment or who have experienced suffering and hardship (Articles 19, 20, 21, and 22).

The third provision concerns the health and welfare of children. The Convention sets out every child's right to attain the highest possible level of health and standard of living commensurate with his/her physical, mental, moral, spiritual, and social development (Article 24). It encourages international cooperation in the provision of primary and preventative health care, public health education and the reduction of infant mortality. It also highlights the State's responsibility to ensure that every child can gain access to effective health systems; and that working parents have the right to appropriate benefits for child-care services and facilities (Article 24). The Convention also recognizes the right of children with disabilities to special treatment, education, and care (Article 23).

The fourth provision relates to children's rights to education, leisure, and recreation (Articles 28, 31). States have a responsibility to ensure that primary secondary, higher education, and vocational guidance is "accessible to all," and that discipline in schools respects the child's dignity (Article 28). The aims of education should include an emphasis on children's personal development, as well as developing their intellectual and physical abilities to their fullest extent. Education should foster an awareness and understanding of the roles of parents, the importance of cultural identity, language and values and should prepare children for a responsible life in society (Article 29). Children equally have the right to enjoy leisure, recreation, and cultural activities (Article 31).

The Convention also outlines special protection measures for children threatened with adversity. Children facing legal charges have the right to be treated in a manner that respects their dignity and self-worth, and are entitled to basic guarantees as well as to legal and other assistance for their defense (Articles 37, 40). Children under fifteen years of age should be exempted from taking part in hostilities or being recruited into the armed forces. Victims of conflict should be protected from further suffering and treated appropriately with a view towards their eventual recovery and social reintegration (Article 38). Children also have the right to protection from physical, sexual, and emotional or economic exploitation, and from work that threatens their

health, education or development (Articles 24, 32). States shall set minimum standard ages for employment; and regulate working conditions so that they fall in line with standards set forth by the International Labor Organisation (Article 32). States must also make every effort to prevent the sale, trafficking, and abduction of children (Article 30). Children have every right to enjoy and practice their own culture, religion, and language without fear of persecution or discrimination.

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Biographical Sketch

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