

The background of the cover features several faint, stylized leaf motifs in a light green color, scattered across the page. The main title is centered in the upper half of the cover.

THE CONVENTION ON THE RIGHTS OF THE CHILD

International Law Support for Children

A. Glenn Mower, Jr.

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THE RIGHTS OF THE
CHILD

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A. Glenn Mower, Jr.

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Introduction

The Convention on the Rights of the Child was adopted by the United Nations General Assembly on November 20, 1989, after a ten-year preparatory period, was opened for ratification January 26, 1990, and, by September 2, 1990, had received the 20 ratifications required for its entry into effect.

The convention appeared at a time when the need for improvement in the status of the world's children was painfully apparent. It was a time when:

100 million abandoned children were driven to resort to hard labor, petty crime, prostitution, or begging in order to survive;

50 million children worked under unsafe or unhealthy conditions;

120 million children 6–11 years of age were not in school;

3.5 million children died annually from preventable or curable diseases;

155 million children under five years of age lived in absolute poverty; and

millions, including many in wealthier countries, were maltreated or neglected, sexually exploited, or victims of drug abuse.¹

It was a time when it could be concluded that “the reality is that no country protects the rights of all its children or provides them with an adequate standard of health care, education, day care, housing, and nutrition, or properly protects them from abuse, neglect, and exploitation.”²

It was, in short, a time that was ripe for some new steps to be taken to serve and protect the well-being of children, that segment of society so generally referred to as the most vulnerable.

As one such new step, the Convention on the Rights of the Child was designed to fulfill the functions characteristic of international human rights covenants with the added distinction of having these functions directed toward a specific sector of the nations' citizenry that had not, until this time, been so targeted: the child, defined in the convention as every human being below the age of 18, unless a particular nation's laws set an earlier age for the attaining of majority status.

The convention, thus, incorporates a set of agreed standards, in the form of stipulated rights and freedoms to be enjoyed by all the world's children; a formal, legal commitment of states parties to take such measures as are necessary in order to bring the quality of their children's lives as close as possible to that which is prescribed in the convention; and mechanisms and procedures to monitor the performance of states parties in relation to the convention's standards, in order to call attention to places where corrective action is called for and to provide some guidance and assistance to states parties desirous of improving their performance.

The present book looks at the convention in the light of these elements, first presenting the significance, background, and development of the convention and then describing and evaluating its substance and implementary mechanisms and procedures. The book concludes with comments on the convention's impact as of the time of this writing and on the factors that are most likely to determine how much progress can be expected toward the realization of the goals it sets forth in the form of its statement of children's rights and freedoms.

Special emphasis is given in this book to the system created to implement the convention and the economic, social, and cultural rights it sets forth — the rights that are most directly related to the everyday experience of all the world's children.

Written in the middle of the 1990s, the book contains data and statistics available and relevant at that time.

NOTES

1. Centre for Human Rights, *The Rights of the Child* (Fact Sheet No. 10) (Geneva, Switzerland: United Nations, 1990), p. 2.

2. Kay Castelle, *In the Child's Best Interest*, 3rd ed. (New York: Defense for Children International — U.S.A., 1990), p. 1.

Acknowledgments

The author gratefully acknowledges the invaluable contribution made to this book by members of the convention's Committee on the Rights of the Child who responded anonymously to his questionnaire and by committee member Thomas Hammarberg, who generously shared his knowledge of and insights into the working of the committee through correspondence and copies of his unpublished manuscripts and memos prepared by him for the committee. The author also expresses warm appreciation for the support, guidance, and encouragement he has received in his writing efforts from James T. Sabin, executive vice president of the Greenwood Publishing Group. No acknowledgments by the author would be complete without affectionate mention of his wife, Anne, who for so many years has been, and continues to be, the center and supreme joy of his life and of his children, Judith Evelyn, Steven Alan, and Alfred Glenn, III, whose names belong in this book dedicated to the child because of the many ways in which they have enriched the author's life.

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I

THE SIGNIFICANCE, BACKGROUND, AND DEVELOPMENT OF THE CONVENTION

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1

The Significance of the Convention

The Convention on the Rights of the Child is an important addition to the effort to improve the quality of life for the world's people by providing international protection of their rights for these reasons:

- the identity of the convention's subjects;
- the scope and content of the rights set forth in the convention;
- the convention's potential impact on the world's economic and social life; and
- the convention's potential impact on the domestic life of its parties — their laws, procedures, practices, and institutions.

THE IDENTITY OF THE CONVENTION'S SUBJECTS

The convention's significance lies first in the fact that it breaks new ground by being the first global instrument to explicitly recognize the child as possessing rights that states parties undertake to "respect and ensure" (Article 1). The status, thus, accorded the child and his or her rights reflects the realization that the child is a particularly vulnerable member of society and, therefore, requires and deserves special protection.¹

By becoming parties to the convention, states assume an obligation, under international law, to provide this special protection by implementing the rights set forth in the convention. The international community

also becomes a source of special protection for the child, because parties also assume an obligation to submit reports to convention organs concerning their performance under this instrument. As will be seen later, this process enables representatives of the international community to bring some pressure to bear on governments to be better guardians and promoters of the rights of the children within their jurisdiction.

A point worthy of emphasis in considering the convention's significance is the fact that the special protection it offers is specifically for the child as such, not just for the child as a member of the family or any other social group. The rights possessed by the child, in other words, are not held by implication or by any assumption that such rights as are held by parents or other pertinent adults or groups are also held by the child. As far as rights are concerned, then, the child, because of the convention, is an independent person, not relying on his or her relationship to any other persons or groups for protection under international law.

The convention not only identifies the child as possessor of certain rights as a child but also makes it possible for him or her to assert these rights in national judicial or administrative proceedings. The door to this possibility is opened by the language of Article 12: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child. . . . For this purpose, the child shall in particular be provided an opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or appropriate body, in a manner consistent with the procedural rules of national law."

The conditional procedural capacity this article bestows on the child has inspired the comment that "many observers consider the transformation of the child from a passive 'object' of measures of protection to an active subject of rights to be one of the most significant contributions of the Convention to the international law of human rights."²

The convention also strengthens the possibility that the child will use this procedural status to claim his or her convention rights by placing parties under an obligation "to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike" (Article 42).

Taken together, Articles 12 and 42 describe the child as a person to be made aware of his or her rights under international law and enabled to assert these rights in judicial and administrative proceedings affecting his or her welfare and interests. By becoming a party to the convention, a state accepts the responsibility to see that this description becomes reality for the children within its jurisdiction.

By identifying the child as both a possessor of rights that states are committed to protect and a person capable of asserting these rights in appropriate national forums, the convention constitutes a major step forward in the effort to bring the weight of the international community to bear on behalf of a better quality of life for children.

It is this concern for the kind of life the world's children are able to live that ultimately explains why the convention deserves to be considered an instrument of major significance. This concern is expressed not only in the specific protections and freedoms set forth in the convention but also in the principle that all parties to the convention are committed to respect: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration" (Article 3[1]).

A second general expression of the concern for the child's welfare that inspired and lends special significance to the convention is found in the second paragraph of Article 3, through which states parties "undertake to ensure the child such protection and care as is necessary for his or her well-being."

In both specific and general terms, then, the convention expresses what has been seen as a new attitude on the part of the international community toward the world's children and their condition, an attitude that has been described as seeing children in terms not of charity but of inherent rights. The convention, thus, meets the need for a new outlook expressed in this comment, made shortly before the adoption of the convention:

It isn't that children are forgotten. Politicians talk about them and want to be seen to care for them. Organizations are formed for the benefit of children. Funds are raised for projects to help children in need. From posters and cards we meet the eyes of tormented children, appealing for more contributions.

This is charity. On a general level, everyone is in favor of children, but the rights of the child are not yet recognized. To recognize these rights means something more than to feel pity for them, to make them an object of patronizing generosity.³

The rights of the child have now been recognized by the world community through a convention that constitutes a new and distinctive response to the condition and needs of children everywhere — an international legal instrument through which this community has said that "death, neglect, and abuse of children must finally be placed alongside slavery,

racism, and apartheid on the shelf reserved for those things no longer acceptable to humankind.”⁴

THE SCOPE AND CONTENT OF THE RIGHTS SET FORTH IN THE CONVENTION

A second factor contributing to the convention’s significance is its character as both a consolidator and an innovator. It is a consolidator in that it brings together “in one up-to-date global perspective” the rights of the child expressed in 80 texts that deal directly or indirectly with the rights of the child.⁵ The convention brings together, in one instrument, not only the rights of the child cited in others but also the whole gamut of human rights: those of an economic, social, and cultural nature and those that are civil and political in character. The convention, thus, demonstrates that both categories of human rights can be contained in a single instrument and, thereby, given equal status in international law.⁶

The convention has been judged to be innovative in “going beyond existing standards and practices” in regard to the child’s rights to live and develop; to a name and nationality from birth; in adoption proceedings; if disabled, a refugee, or in trouble with the law; to protection from all forms of exploitation; as a member of a minority or indigenous group; and in relation to the problems of drug abuse and child neglect.⁷

THE CONVENTION’S POTENTIAL IMPACT ON THE WORLD’S ECONOMIC AND SOCIAL LIFE

A third element in the convention’s significance is its practical aspect. Without detracting from its humanitarian character, it must be recognized that the convention is important also because of what it could mean in terms of the present and future economic and social health of the world society.

From a utilitarian standpoint, the protection of the child’s quality of life is a must for the nations of the world if their hopes for economic and social progress are to be realized, because it is today’s children who will, in the years ahead, make the decisions and perform the services necessary to lift the level of life for all humankind.

This is the broader perspective in which the convention’s rights, particularly those of an economic and social nature, must be viewed. This fact finds expression in such statements as that of Karl-Eric Knutsson: “Protecting the health and education of today’s children is the most basic and wisest of all investments.”⁸

The long-range impact of such convention-protected rights as the right to an education also has been recognized by the World Bank. "The educated child," in the opinion of this institution, "would make a greater contribution to the world economy, increasing economic production to the benefit of all." More specifically, the bank has estimated that "an increase of one year in the average years of education may lead to a 3% increase in GDP [gross domestic product]."⁹

Greater access to education is one of many rights set forth in the convention that has clear implications for the welfare of the world society. Because it is a critical factor in so many areas of global society, this right provides a good example of the convention's potential impact. It can be assumed that the general welfare of the people throughout the world demands, among other things, the containing of population growth within reasonable limits. It also can be assumed that this strategy, and methods designed to implement it, can be understood and served best by informed individuals whose education begins early in life.

The positive correlation that exists between education and population control also is present in such other problem areas as the environment and the development of viable and stable political systems that give high priority to the welfare of the people. For real, sustained progress in both life areas, an educated, literate populace is essential, and the development of such a populace begins in the early years of an individual's life.¹⁰

The convention's rights are, thus, linked significantly with economic and social problems and needs that, although rooted in national societies, are global in nature, given the extremely high level of interactivity and interdependency that characterizes the relations among nations. This link between the world's children and its economic and social health underscores the importance of the convention as an instrument that sets common standards and norms that apply to all states parties.

The convention's potential impact on global society, thus, stems, in part, from the fact that the convention increases the possibility that "no child will be left behind," regardless of where he or she resides.¹¹ This possibility is enhanced by provisions within this instrument calling for international cooperative efforts on behalf of the welfare of children everywhere.

One such provision is contained in the final paragraph of the convention's preamble, in which parties recognize "the importance of international cooperation for improving the living conditions of children in every country, in particular in developing countries."

What this cooperation might mean, in practical terms, is suggested in Article 4, in which states parties commit themselves to undertake all

appropriate measures to implement the convention's economic, social, and cultural rights "to the maximum extent of their available resources and, where needed, within the framework of international cooperation."

THE CONVENTION'S POTENTIAL IMPACT ON THE DOMESTIC LIFE OF ITS PARTIES: THEIR LAWS, PROCEDURES, PRACTICES, AND INSTITUTIONS

The fourth, and final, aspect of the convention that contributes to its significance is its potential for making a very real impact on the domestic life of its parties. For some countries this potential exists in the fact that, under their national constitutions, the contents of international treaties become part of the law of the land. Because of this process of incorporation, the rights set forth in the convention can be cited in the courts of these nations and, in general, find enforcement through their domestic procedures.¹²

For all parties, the convention's potential impact exists in its usefulness as a pressure device to be employed by child welfare advocates. Once a state has ratified this human rights treaty, its government becomes vulnerable to internal pressures exerted by individuals and organizations who can base their actions on the commitments assumed under the convention. The actions undertaken by child advocates can include monitoring their government's performance in relation to the convention's terms and calling attention to what they consider to be flaws in this performance. They also can demand national budgetary support for services and programs to promote and ensure the well-being of their nation's children, as defined in the convention's norms.¹³

Another way in which the convention can affect the domestic life of its parties is through its service as an educational tool by which the convention's standards and values can be inculcated.

One of the target groups within a national society toward which educational efforts can be directed is the children themselves. Parties to the convention are committed to making this instrument's contents known to both adults and children (Article 42). This educational process can serve at least two purposes, as far as children are concerned: it can prepare them for participation in proceedings that affect them (Article 12) and it can help them gain the understandings and develop the attitudes that will enable them, as adults, to be more effective contributors to the well-being of children.

A second educational target group is the professionals who are in direct contact with children. This group includes teachers, child-care workers,

judges, lawyers, the police, and medical personnel, all of whom are in positions to implement the convention's basic principle that, in all proceedings involving and affecting a child, the child's best interests shall be a primary consideration.

Individuals serving in these and similar capacities also are persons through whom effect can be given to the specific rights set forth in the convention.

A third target group for educational efforts on behalf of the convention's standards is a nation's nongovernmental community, that is, private groups concerned directly or indirectly with child welfare. These include welfare, development, and advocacy associations who endeavor to deal, in one way or another, with the problems and needs of their country's children.¹⁴

NOTES

1. The convention's preamble includes the recognition that "in all countries of the world there are children living in exceptionally difficult conditions and . . . need special consideration." Conditions creating this need will be noted in the chapter on the substance of the convention.

2. Daniel O'Donnell, "The Convention on the Rights of the Child: A Challenge for UNICEF," *Bulletin of Human Rights* 91(2) (1992): 32. The use of the term "subject" here does not mean or imply that the child has access as an individual, under the convention, to organs and procedures of international organizations, the traditional meaning of "subject" under international law. The convention makes no provision for recourse by a child to the implementary mechanisms established to serve it.

3. Thomas Hammarberg, "A Decade of Campaigning for Children's Rights," in *Making Reality of Children's Rights* (Final Report of the International Conference on the Rights of the Child) (Stockholm, Sweden: Save the Children, 1989), p. 42.

4. *Ibid.*, p. 58.

5. Centre for Human Rights, *The Rights of the Child* (Fact Sheet No. 10) (Geneva, Switzerland: United Nations, 1990), p. 8; Fatma-Zohra Ksentini, "The Convention on the Rights of the Child," *Bulletin of Human Rights* 91(2) (1992): 45.

6. Although the convention contains rights of both kinds, it places an emphasis on economic, social, and cultural rights.

7. United Nations Department of Public Information, *Convention on the Rights of the Child* (New York: United Nations, 1991), p. 3.

8. Hammarberg, "A Decade of Campaigning," p. 58.

9. Cited in Ruth Leger Sivard, *World Military and Social Expenditures 1991*, 14th ed. (Washington, D.C.: World Priorities, 1991), p. 12.

10. The discussion in these paragraphs is based on United Nations Children's Fund, *The State of the World's Children 1993* (New York: Oxford University Press, 1993), pp. 30–35.

11. "Leave No Child Behind" is the title of a campaign conducted by the Children's Defense Fund, Washington, D.C.

12. This possibility has been noted, for example, by Michael Jupp, "The UN Convention on the Rights of the Child," *Human Rights Quarterly* 12(1) (February 1990): 135.

13. *Ibid.*, p. 130.

14. This discussion of the convention as an educational tool is based on Nigel Cantwell, "A Tool for the Implementation of the UN Convention," in *Making Reality of Children's Rights* (Final Report of the International Conference on the Rights of the Child) (Stockholm, Sweden: Save the Children, 1989), pp. 37–39.

2

The Background and Development of the Convention

Philosophically, the convention is rooted in the change that occurred in the nineteenth century when the child ceased to be viewed simply as a property item, completely subservient to his or her father and valued primarily in economic terms. This conceptual change was accompanied by an increasing tendency on the part of states to take a more active interest in the well-being of children by intervening in family affairs to support, add to, or correct the treatment given children by their parents.

It was not until the last half of the twentieth century, however, that the child was accorded status as a person under the law. This century also witnessed the expansion of the human rights movement to include the rights of the child.¹

This expansion was due, in no small part, to the human suffering caused by the twentieth century's two world wars. Bearing with particular force on civilian populations, this experience dramatized the special vulnerability of children.

The sympathy felt by England's Eglantyne Jebb for these defenseless victims of World War I led her to start a campaign for better protection of the world's children. The first step in this campaign was her establishment of the Save the Children International Union, which she followed in 1923 with the drafting of the Children's Charter, considered to be the basis of the present Convention on the Rights of the Child.

The concern for children that motivated this pioneer in the field of the rights of the child also found expression in a wide variety of international instruments and actions by numerous international organizations, global in scope, prior to the adoption of the Convention on the Rights of the Child.

The International Labour Organization (ILO), for example, was the source of an impressive list of instruments dealing with such relevant matters as minimum age for employment, working hours and conditions for children, protection of child workers from dangerous work and substances, training and apprenticeship, and youth employment. The ILO also adopted conventions requiring states parties to suppress or abolish child labor in both the state and the private sectors.²

A number of other multilateral agreements also sought to protect children and promote their welfare. These included treaties whose terms applied to children: on traffic in children and on slavery; on refugees and stateless persons; on the rules of war; against discrimination in education; on child custody, abduction, support, illegitimacy, and adoption; and on consent to marriage, minimum age for marriage, and registration of marriages.

Other preconvention global actions included treaties having an indirect effect on child welfare: treaties on the elimination of all forms of discrimination against women and against genocide, torture, and all forms of racial discrimination. In addition, the terms of two major United Nations (UN) human rights treaties, the Covenants on Civil/Political Rights and on Economic/Social/Cultural Rights, apply either directly or indirectly to children.

Finally, the convention's background in actions taken by intergovernmental organizations includes the work of the United Nations International Children's Emergency Fund, established in 1946, whose basic function is to help governments of developing countries improve the quality of life of their children.

The League of Nations, the first result of the movement to establish a multifunctional international organization, became involved in the movement to provide international protection of children with the adoption in 1924 of the Declaration of the Rights of the Child, drafted by the Save the Children International Union.³ This Declaration of Geneva was meant to be a prelude to an instrument containing legally binding norms, but the collapse of the league put a temporary end to movement in this direction.

New impetus to this movement was given by the league's successor, the United Nations, when, in 1946, it began a series of actions that eventually produced a convention on the rights of the child. The first of these

actions was the issuance by the Temporary Social Commission of the Economic and Social Council of a statement asserting that the terms of the Declaration of Geneva should be as binding on the world's people as they had been in 1924.

The commission then, in 1950, took the further step of adopting a draft declaration on the rights of the child, which it sent to the Economic and Social Council (ECOSOC) with the recommendation that the Commission on Human Rights be asked for its observations on the draft. The commission's response, in the form of a revised draft, then was submitted to the UN General Assembly, which, on November 20, 1959, proclaimed the Declaration of the Rights of the Child.

In this declaration, the assembly called on "parents, men and women as individuals, voluntary organizations, local authorities, and national governments" to recognize the rights set forth in the declaration and to take legislative and other measures to promote them.

The UN declaration was valuable as a consciousness-raising effort on behalf of children's rights and added some elements to those contained in the league's declaration.⁴ Like its predecessor, however, it was only a statement of principles, with no legally binding force. A major step toward correcting this deficiency was taken in 1979, designated by the UN General Assembly as the International Year of the Child in commemoration of the twentieth anniversary of the issuance of the declaration.⁵

As part of the observance of this year, a conference was held in Warsaw, Poland, sponsored by the Polish Association of Jurists, the International Association of Democratic Lawyers, and the International Commission of Jurists. One result of this conference was a statement consisting of 21 principles on the legal protection of the rights of the child. This statement, closely resembling the 1959 Declaration of the Rights of the Child, with the addition of a section on implementation, subsequently was expanded and then submitted to the UN by the Polish government as its contribution to the International Year of the Child. Thus amended, the Polish document became the basis for discussions within the UN looking toward a convention on the rights of the child.

Work on the Polish draft convention was begun by the UN Commission on Human Rights in its thirty-fourth session (1978), when the commission acted to request the UN secretary-general to prepare a report containing the comments made by member states, competent specialized agencies, regional intergovernmental organizations, and UN-related nongovernmental organizations (NGOs) on the draft.

The draft convention continued to be a commission agenda item in sessions 35 through 44, with each session being preceded by a week's

examination of the proposed instrument by an open-ended 42-nation working group that ECOSOC had authorized the commission to form. The working group's meetings, open to all members of the Commission on Human Rights, were attended by 33 members, 32 other states present as observers, and, also in an observer capacity, representatives of 29 NGOs holding consultative status with ECOSOC.

The process of preparing a convention on the rights of the child was given new impetus by the UN General Assembly's December 1987 action asking the secretary-general to authorize the convening of the commission's working group for an additional week at its January 1988 session in order to complete a draft convention in 1989, a date selected because it was the thirtieth anniversary of the Declaration of the Rights of the Child and the tenth anniversary of the International Year of the Child. The assembly at this time also called on the commission to make every effort to have a completed draft convention ready for submission to it in 1989.⁶

In response to this call, the commission's working group held 23 meetings between November 28 and December 9, 1988, and February 21 and 23, 1989. During this final phase of its labors on the draft convention, the working group established 16 informal drafting subgroups and divided the draft's articles among them for consideration. This assignment was carried out in sessions before and after meetings of the working group.

The draft convention that was produced in these sessions was endorsed by the commission at its forty-fifth session on March 8, 1989. The way, thus, was cleared for the General Assembly to take the final step in the creation of an international instrument to protect and promote the rights of the child. This was done on November 20, 1989, when the assembly unanimously adopted the Convention on the Rights of the Child and expressed the hope that it would enter into force at an early date.

To this end, the convention was opened for signature in January 1990, and it became effective just 8 months later on September 2, 1990, 30 days after the deposit of the required twentieth instrument of ratification. The convention, thus, has the distinction of being the first global human rights treaty to be ratified by this many states in such a short period.

The fact that the convention was ratified so quickly is subject to several interpretations. On the negative side, it might be said that the states became parties simply to avoid the appearance of being unconcerned about children. It also might be said that they took this action because they felt that the convention contained so many loopholes, particularly in regard to economic, social, and cultural rights, that the obligations it imposed could be circumvented easily, should this seem desirable.

On the positive side, it might be said that the ratifying states really acted from a sincere desire to see that the needs and welfare of the world's children were more adequately served, that their basic rights were protected and promoted, and that they should be able to enjoy a higher quality of life. States who held this conviction certainly would welcome the convention as a truly important instrument whose purposes they endorsed and wanted to serve.

The same possibility of mixed motives might be said to apply to the fact that, only one year after the convention entered into force, its parties met to elect members to serve on its main implementary organ, the Committee on the Rights of the Child. This meeting attracted an unprecedented number of participants, 70, in a first election for a treaty organ and an unprecedented number of candidates, 35, who, moreover, came from all geographic areas.

In the years following its entry into force, the convention continued to attract additional adherents, with the number of parties reaching 167 states by November 1994. This list included all the major powers except the United States, a country that subsequently, on February 16, 1995, took the first step toward adherence by signing the convention.

The convention to which these states committed themselves was the product of a long, drawn-out negotiating process that took ten years to complete. A number of reasons can be given to explain why such a long time was required to produce this instrument, including the number of participants in the process, the heavy volume of materials to be considered, and (in the opinion of one critic of the process) the absence of a clear strategy and goal-oriented work plan.⁷

The basic reason for the length of time required to draft the convention, however, was the different backgrounds of the participants in the process. Differences in their nations' economic, social, cultural, and political systems inevitably produced conflicting and difficult to reconcile views concerning both the proposed convention in general and the specific rights that were to be included in it.

Western powers, for example, particularly the United States, saw this as an Eastern bloc project principally concerned with economic, social, and cultural matters, items that, in their opinion, were elements in a good social policy, not really "rights." The problem created by this ideological difference eventually was resolved by the expansion of the original Polish draft to include more of the civil and political rights favored by Western states.

Differences in backgrounds were also a major reason why such a long time was required to arrive at statements of specific rights. These

differences were a particularly troublesome factor when the provisions being discussed involved, as they frequently did, the respective rights and responsibilities of the child, the child's parents or guardians, and the state.

One such provision concerned the child's right to freedom of thought, conscience, and religion. This was an issue that brought representatives of more authoritarian religious and political systems into conflict with those whose backgrounds included a preference for a greater degree of individual freedom. Thus, one proposed version of the article on the child's right to religious freedom would have called on the states parties to respect the liberty of parents (or legal guardians) to ensure the religious and moral education of the child in accordance with their own conviction, a provision that could have had the effect of restricting the child's exposure to differing patterns of religious thinking, thereby, in effect, placing a limitation on the child's freedom of religious choice.

The issue of freedom of religious choice was even more explicitly joined by those who could not accept any provision that would give the child freedom to choose and change his or her religious belief, a stance taken by delegates whose background included either or both of two elements: adherence to a religion that did not permit this kind of freedom or citizenship in a state that forbade the teaching of any belief system that did not conform to its religion or ideology. Thus, for example, delegations from Islamic states objected to the proposed right to freedom of religion on the grounds that this was counter to both the teachings of the Koran and their national legislation, which held that only adults possessed the freedom to choose or change a religion.

The intense disagreements over this question created a situation in which the drafting group's coordinator finally had to report to the parent working group that all efforts to reconcile the differing positions on proposals submitted during the debate on the original draft had failed. This inability to reach a consensus on these proposals then led the working group's chairman to suggest that the group retain only those paragraphs in the working draft that contained no new or controversial provisions, and this was done.

The fact that the convention contains Article 14 asserting the child's right to freedom of religion is an indication that here, as in regard to other controversial issues, the "spirit of compromise" noted by Thomas Hammarberg was able to bridge the gap created by the background-induced differences among delegations.⁸

The working group's experience with the provision on religious freedom is illustrative of the difficulties encountered in the effort to produce statements of rights that would be acceptable to delegations who brought

differing attitudes into the discussion of sensitive issues. In this effort, the official negotiators were aided by representatives of NGOs, who saw the proposed convention as a necessary and desirable contribution to the welfare of the world's children.

At first resented and viewed with suspicion by governments, the NGOs, through an ad hoc working group on the convention, gradually became a positive factor in the drafting process through such activities as reviewing the work done by delegations and offering substantive recommendations for their consideration through both oral and written interventions.

The increasing confidence placed by governments in the NGOs led to what has been termed "a constructive dialogue" between the ad hoc working group and delegations charged with the responsibility for developing a convention. As a result of this interaction, the NGOs were credited with helping to achieve consensus among delegations holding different viewpoints on convention issues.

The contribution of the NGOs was substantive, as well as tension reducing. Because of their experience in dealing with child-related issues and their first-hand knowledge of the status of the world's children through their field work, NGOs were well-prepared to feed useful, relevant documents and comments into the drafting process.

Some of the substantive contributions made by NGOs took the form of such minor language changes as the use of gender-free wording while others were in the critical area of the rights that were to be included in the convention.

In some cases, the NGOs were able to gain the expansion of the content of rights set forth in this instrument: the insertion of the advantage of breast-feeding in Article 24 on health, for example, and, in Article 28 on education, standards for the administering of school discipline, which is to be "in a manner consistent with the child's human dignity and in conformity with the present Convention."

In other instances, the substantive contribution of the NGOs related to new provisions in the convention. Included in this group of NGO-promoted norms were those having to do with protection of the child against sexual and other exploitation, torture, traffic in children, and participation in armed conflict (Articles 34–39).⁹

The ability of the NGOs to have an influential hand in the drafting of the convention obviously was enhanced by the fact that this process was so time consuming, offering greater opportunity to introduce new ideas and suggest refinements of original concepts. Both official and unofficial participants in the process took advantage of this opportunity to identify

and correct deficiencies in the original draft and to clarify and expand its coverage.

The long, drawn-out nature of the drafting process proved to be beneficial for other reasons. The prolonged debate over the convention had a consciousness-raising effect, as governments and citizens throughout the world were made more aware of children's needs and interests. The protracted discussions also allowed more time to build support both for the convention itself and for the specific goals it set for the treatment of the world's children.¹⁰

This support-building effort served to bring to a successful climax the process formally begun with the founding, after World War I, of the Save the Children International Union. The final product of this process was a landmark addition to the growing array of global human rights instruments, one designed specifically to protect and promote the rights of children everywhere.

The identity of these rights and the situations calling for their inclusion in the convention will be dealt with in the next section.

NOTES

1. The developments cited above have been noted, for example, in Walter H. Bennett, Jr., "A Critique of the Emerging Convention on the Rights of the Child," *Cornell International Law Journal* 20(1) (Winter 1987): 15 and in Cynthia Price Cohen, Stuart N. Hart, and Susan M. Kosloske, "The UN Convention on the Rights of the Child: Developing an Information Model to Computerize the Monitoring of Treaty Compliance," *Human Rights Quarterly* 14(2) (May 1992): 219–31.

2. These ILO actions were taken over a span of years, beginning in 1919.

3. All the elements in this declaration were later incorporated in the convention. These elements included the principle of nondiscrimination in the extension of protection; the provision of the means necessary for the child's total development; care for hungry, sick, handicapped, maladjusted, orphaned children; relief in times of distress; the full benefits provided by social welfare and social security schemes; training to earn a livelihood; and protection from every form of exploitation. "The Convention on the Rights of the Child," *FACTS* (Westport, Conn.: Save the Children, 1993), pp. 1–3.

4. The UN declaration, for example, included the child's right to a name and nationality and to be brought up in peace and friendship among people.

5. The stated objectives of the year were to provide a framework for child advocacy to enhance awareness, on the part of the public and decision makers, of the child's special needs and to promote recognition of the fact that programs for

children should be an integral part of economic and development plans for the benefit of children at national and international levels.

6. This action followed a series of steps previously taken by the General Assembly to speed the process of preparing a convention on the rights of the child. These included calls on the Commission on Human Rights to give highest priority to the question of a convention contained in resolutions adopted in 1984, 1985, and 1986.

7. Per Miljeteig-Olssen, "Advocacy of Children's Rights: The Convention as More Than a Legal Document," *Human Rights Quarterly* 12(1) (February 1990): 150.

8. Sources for the preceding discussion include Thomas Hammarberg, "The UN Convention on the Rights of the Child and How to Make It Work," *Human Rights Quarterly* 12(1) (February 1990): 98–101; Bennett, "A Critique," passim; Thomas Hammarberg, "A Convention for the Future," in *Making Reality of Children's Rights* (Final Report of the International Conference on the Rights of the Child) (Stockholm, Sweden: Save the Children, 1989), pp. 11, 12; Cynthia Price Cohen, "United Nations Convention on the Rights of the Child," *The Review* 44 (June 1990): 36, 37; Joaquin Ruiz-Gimenez, "The Human Rights of the Child," *The Review* 50 (Special Issue 1993): 82, 83; Cynthia Price Cohen, "The Role of Nongovernmental Organizations in the Drafting of the Convention on the Rights of the Child," *Human Rights Quarterly* 12 (1) (February 1990): 138, 139; Hammarberg, "The UN Convention on the Rights of the Child and How to Make It Work," pp. 98–101; Centre for Human Rights, *The Rights of the Child* (Fact Sheet No. 10) (Geneva, Switzerland: United Nations, 1990), pp. 1–3.

9. The discussion here of the role of NGOs is based on Nigel Cantwell, "Nongovernmental Organizations and the United Nations Convention on the Rights of the Child," *Bulletin of Human Rights* 91(2) (1992): 6–24; Cohen, "The Role of Nongovernmental Organizations," pp. 139–43; Christopher P. Gilkerson, "Introduction to Children's Rights Symposium," *Human Rights Quarterly* 12(1) (February 1990): 96; Miljeteig-Olssen, "Advocacy of Children's Rights," pp. 151, 152.

10. These advantages and benefits of the drafting process were noted by Miljeteig-Olssen, "Advocacy of Children's Rights," pp. 150, 151.

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II

THE SUBSTANCE OF THE CONVENTION

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3

General Principles

THE CHILD'S BEST INTERESTS

“Politicians are duty-bound to care for children as a class — yet over the past ten years, the public budget share for education, juvenile justice, public health, social welfare and other services for children has decreased in almost every country in the world.”¹

The problem of the priority to be given to matters affecting the welfare of the child, to which this 1990 statement refers, is one of long standing, as is the effort by the child's rights movement to deal with it by championing the cause of children. One such effort was the inclusion in the UN Declaration of the Rights of the Child, proclaimed in 1959, of the assertion that “the best interests of the child shall be the guiding principle of those responsible for his education and guidance.”

The need to respond to the priorities problem with a clear statement of the “best interests” principle also was recognized by the framers of the convention, hence the insertion in this instrument of Article 3: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

The convention, thus, takes what the declaration lifted up as a “guiding principle” to be operative in a specific area of the life of a child and establishes it as its basic principle, present implicitly in all the rights it sets

forth and given explicit expression in a number of articles: Article 9 on the separation of the child from its family; Article 18 on the child's upbringing and development; Articles 20 and 21 concerning the child's separation from its family through various procedures and adoption; and Articles 37 and 40 dealing with the child's involvement with police and the judicial system.

This inclusion of the best interests principle was an acknowledgment of the fact that, in all likelihood, there would be times when certain rights of the child would come into conflict with the rights, prerogatives, and responsibilities of parents or guardians and with those of the state. The language of Article 3 makes a limited claim for the interests of the child in such instances, saying only that they are to be a primary, not a paramount or prevailing, consideration.

This apparent dilution of the parties' obligation to give precedence to the child's best interests is countered, however, by the use elsewhere in the convention of the term "paramount" in regard to these interests, as in Article 21, dealing with the practice of adoption. Furthermore, as Philip Alston suggests, the intention behind the use of "primary," rather than "paramount," was not to weaken the principle but to provide the flexibility needed to give priority to other interests when circumstances so dictated, as in "extreme cases."²

NONDISCRIMINATION

The convention attempts to deal not only with the general problem of the priority to be given to the child's needs and concerns but also with one associated with it — the discrimination practiced by those who decide whose needs and concerns are to be dealt with.

Inequality in the treatment of children has taken many forms. Some children have been denied the rights enjoyed by others living in the same country because they differed in sex, race, color, culture, or creed; girls have been denied equal schooling and nutrition because of their gender; and others have been victims of a governmental policy of allocating fewer funds to serve areas populated by minorities.³

The convention's response to the problem of discrimination in the treatment of children was to make the best interests principle applicable to all children. This was done through the inclusion of Article 2, which reads:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race,

color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

States Parties 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 family members.

It is important to note that the principle of nondiscrimination does not require that all children receive identical treatment in all cases; rather, the implementation of certain rights will vary from child to child because of differences in age, maturity, and "evolving capacities," as cited in Articles 5 and 12. The convention also recognizes the need for special treatment for children in certain categories: the disabled, for example (Article 23), and those who have been temporarily or permanently deprived of their family environment (Article 20).⁴

THE RELATIVITY OF THE CONVENTION'S OBLIGATIONS AND RIGHTS

A third basic principle running through the convention is that the obligations and rights it sets forth are not absolute but are subject to certain qualifications. Thus, although the main strength of the convention is the fact that it places its adherents under a legal obligation to respect and ensure the convention's rights to every child within their jurisdiction (Article 2), this obligation is qualified by certain limitations on what they can or must do in order to fulfill this undertaking.⁵

One of this obligation's qualifications is contained in Article 3(2), which asserts that, in acting "to ensure the child such protection and care as is necessary for his/her well-being," states parties must take into account the rights and duties of the child's parents, legal guardians, or other individuals legally responsible for the child.

Article 4 provides another example of the qualified nature of the obligations assumed by states parties to the convention by attaching the term "appropriate" to the measures a state is to undertake in its implementation of the convention's rights. The article, thus, provides a convenient rationale for any state's use if it is inclined to ignore or give only pro forma effect to certain standards set by the convention.

In a situation such as this, a state's government could attempt to justify its failure to take positive implementary action by citing a number of real or alleged factors that, in its opinion, would make such action inappropriate: the nation's social and political system, national laws and procedures,

prevailing economic conditions, or the state of public opinion, for example.

A second limitation placed by Article 4 on the obligation of states parties to give effect to the convention's rights relates specifically to the child's economic, social, and cultural rights. According to this article, states parties are to undertake implementary measures in regard to these rights "to the maximum extent of their available resources," a statement that appears to impose on states parties a positive obligation to act. This obligation, however, is limited by the inclusion in this article of two qualifying terms: "maximum" and "available resources." These, obviously, are highly subjective terms that can be interpreted and applied in whatever manner the government of a state party chooses, with the choice depending on that regime's attitude toward the rights in question and the place they occupy on its agenda.

One final qualification of the obligations assumed by states parties to the convention appears in Article 3(2). Under the terms of this provision, parties are committed to ensure the child only "such protection and care as is necessary for his/her well-being," not the well-being itself. In pointing to this distinction, Alston has noted that "to ensure the well-being of the child per se would be an obligation that would go well beyond the capacity of any government."⁶

The relativity that exists in regard to the obligations imposed by the convention also is present concerning the rights it enumerates; like rights in general, those contained in this instrument are not absolute. An example of this aspect of the convention's rights is provided by Article 10, in which the child's right to leave a country is subject to "such restrictions as are prescribed by law and which are necessary to protect the national security, public order, public health or morals or the rights and freedoms of others." The same qualifying language also is used elsewhere in the convention — in Article 14, for example, concerning the child's freedom to "manifest" his or her religion or beliefs.

The relative nature of the convention's rights is demonstrated further by the frequent inclusion of the "national law and procedures" qualification in the statement of various rights. Typical of the use of this formula is the provision regarding the child's separation from parents (Article 9), which states that parties are to ensure that a child is not to be separated from his or her 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.

NOTES

1. Kay Castelle, *In the Child's Best Interest*, 3rd ed. (Philadelphia, Pa.: Defense for Children International — U.S.A., 1990), p. 10.

2. In discussing the question of terminology, Philip Alston, "The Legal Framework of the Convention on the Rights of the Child," in *Bulletin of Human Rights* (Geneva, Switzerland: Centre for Human Rights, 1992), p. 9, contends that "the use of the words 'a primary' should not be interpreted in any way as a rejection of the over-all principle that actions should always be taken in the best interests of the child and the taking into account of the child's rights. On the contrary, the travaux preparatoires reveal unanimous support for this principle."

3. Castelle, *In the Child's Best Interest*, p. 11.

4. Alston, who calls attention to this element in the convention, also has noted that the convention does not rule out positive discrimination: measures of affirmative action, and that an act can be considered one of discrimination if it has this effect: and intention is not necessary as a reason to rule the act to be discriminatory. Alston, "The Legal Framework," p. 6.

5. It should be noted that the obligations of states parties include ensuring that the institutions, services, and facilities responsible for the care and protection of the child "shall conform with standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision" (Article 3[3]).

6. Alston, "The Legal Framework," p. 9.

4

The Right to Life

The convention appeared on the world scene at a time when it was tragically apparent that vast numbers of children around the world were being denied the most basic of all rights — life itself.

The convention came into effect in September 1990, and in a publication appearing that same year, it was noted that more than 38,000 children were dying every day because they lacked food, shelter, or primary health care; that infanticide, the deliberate killing of a child shortly after birth, still was being practiced in certain cultures; and that the taking of children's lives by the police or other governmental personnel, either intentionally or through neglect, was reported to be common in many countries.

The extent, at about this same time, of the denial of the child's right to life was further suggested in reference made, in the course of a 1993 United Nations Commission on Human Rights meeting, to the 200 million children who would not grow to adulthood because their labor had been exploited or because they had been used as a source of organs; to the millions who were dying from malnutrition or curable diseases; and to the thousands of street children who were being assassinated by death squads. Finally, a United Nations Children's Fund report for the period of time overlapping the convention's advent included the observation that "in the wars of the last decade far more children than soldiers have been killed and disabled."¹

The grim picture, thus, drawn of the status of the world's children made it abundantly clear that the child's ability to enjoy the basic right to life could not be taken for granted, that there was a real need for a clear assertion of the child's right to life. This need was met by the inclusion in the convention of Article 6, in which states parties "recognize that every child has the inherent right to life." The convention does more, however, than merely call upon its adherents to concede that the child has this right, because, in the second sentence of Article 6, it places parties under an obligation "to ensure to the maximum extent possible the survival and development of the child."

It should be noted that the convention's assertion of an "inherent right to life" is not to be taken as an attempt to resolve, through an international treaty, the emotionally charged debate over the practice of abortion, because, as Cynthia Price Cohen has observed, "at no time was the issue of abortion per se discussed by the Working Group" responsible for preparing a draft convention.²

The issue with which the group dealt was not the precise moment at which the right to life becomes operative but the wider and highly controversial issue of the rights of the unborn child, which came to the fore in the process of arriving at a definition of "child" in Article 1.

The question of whether "child" was to include the unborn as well as the born was, in effect, left to be answered by implication through a compromise version of Article 1 stating that, "for the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier."

The possibility that this includes the unborn child as well as the born is suggested by the language of Paragraph 9 of the convention's preamble calling attention to the fact that "the child . . . needs safeguards and care, including appropriate legal protection, before as well as after birth."

An even clearer indication that the obligations assumed by states parties in regard to the child's inherent right to life extend to the unborn child is given in Article 24, Paragraph 2(d), which commits parties to ensuring appropriate prenatal care for mothers.

The convention asserts the child's right not only to life but also to life as a distinct personality, possessing a legally recognized identity. Thus, Article 7 states that "the child shall be registered immediately after birth and shall have the right to a name, (and) to acquire a nationality," and Article 8 states that "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."

The need for the inclusion of identity as an element of the child's right to life arose from the fact that, unless an individual has this legally recognized attribute, he or she would be unable to claim the rights available to all persons residing within the jurisdiction of a particular state. These rights include not only that to life itself but to all those that are necessary in order to sustain life and enhance its quality.

The need to include identity within the right to life stemmed also from the harsh fact that nameless children did exist and would probably continue to be a part of the world scene because of practices or situations that would create deprivation or loss of identity. Thus, a child could be denied identity through such practices as the refusal of certain religious bodies to register children born to their members or lose it by being separated from his or her parents through abduction for political purposes, warfare, or conflict within national societies.

It is this problem of lost identity that prompted the insertion in the convention of Article 8(2), stating that "where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity."³

NOTES

1. Kay Castelle, *In the Child's Best Interest*, 3rd ed. (Philadelphia, Pa.: Defense for Children International — U.S.A., 1990), p. 12; UN Economic and Social Council, *Official Records*, Summary Record, 61st Meeting, 49th Session, March 15, 1993, Commission on Human Rights (E/CN.4/1993/SR.61), p. 3; John W. Coleman, Jr., "Poverty: No. 1 Threat to Children," *Response*, April 1995, p. 11.

2. Cynthia Price Cohen, "United Nations Convention on the Rights of the Child — Introductory Note," *The Review* 44 (June 1990): 39.

3. Castelle, *In the Child's Best Interest*, p. 3; Jaime Sergio Cerda, "The Draft Convention on the Rights of the Child: New Rights," *Human Rights Quarterly* 12(1) (February 1990): 115, 116.

5

The Right to Survival and Development

The child's inherent right to life set forth in Article 6 of the convention is given additional emphasis and amplified in the second paragraph of this provision, which places states parties under an obligation "to ensure . . . the survival and development of the child." Here, as with other economic, social, and cultural rights contained in the convention, the obligation is tempered by a qualifying phrase — "to the maximum extent possible."

A number of corollary rights follow from the right to survival and development and are essential for its enjoyment. Thus, the child, under the convention, is entitled not only to the health care necessary for physical survival but also to certain programs, conditions, and opportunities related to the qualitative aspect of survival. To this end, every child, including the disabled, is granted the rights to social security; a standard of living that meets the needs for food, clothing, and shelter; and rest, leisure, and travel.

These survival rights contained in the convention also contribute to the realization of the child's right to development, an entitlement that is further served by the specific right to education and a number of rights relevant to the child's participation in the social and cultural life of his or her national society.

PHYSICAL SURVIVAL: THE RIGHT TO HEALTH

The inclusion in the convention of a right to health as a corollary to and extension of the right to life is based on a simple but cogent premise that the denial of medicine, clean water, or adequate nutrition is as clearly a violation of a person's right to life as is execution by a death squad.¹

The incorporation of this right into the convention also was prompted by evidence of the need for an assertion of this right: for example, that, of the 14 million deaths of children each year, at least two-thirds were preventable through proper treatment in such areas as diarrhea, neonatal tetanus, whooping cough, respiratory infection, and measles and that children faced the new threat to their health in the form of AIDS-infected parents.²

The convention breaks no new ground in international human rights law by asserting a right to health because, as Virginia A. Leary has noted, "'the enjoyment of the highest attainable standard of health' has been recognized as a 'fundamental right' by the international community since the adoption of the Constitution of the World Health Organization in 1946. Numerous international human rights treaties — many of which have been widely ratified — also recognize the right."³

The right to life proclaimed in these instruments and in the convention is not an entitlement to good health as such, this obviously being beyond a government's capacity to guarantee, but to services and programs that are conducive to this end, that is, the medical and health care present or implied in Article 24.

Under this article, states parties recognize the "right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health" and "to ensure that no child is deprived of his or her right of access to such health care services."

What this commitment and right involve is further set forth in Paragraph 2 of Article 24, which stipulates that states parties "shall take appropriate measures":

- to diminish child mortality;
- to ensure medical assistance and health care;
- to combat disease and malnutrition;
- to ensure appropriate pre- and post-natal health care for mothers;
- to ensure universal access to knowledge concerning child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and prevention of accidents;

to develop preventive health care, guidance for parents and family planning education and services; and
to take measures to abolish traditional practices prejudicial to the health of children.

QUALITATIVE SURVIVAL: THE RIGHT TO DEVELOPMENT

The life to which the child is entitled is defined by the convention in qualitative, as well as quantitative, terms. Thus, the convention's intent is that the child not only should have access to the health care that assists physical survival but also should be provided with the necessities and opportunities that make for the kind of life noted in Article 23. Under the terms of this provision, states parties "recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community."

This provision for the disabled child contains an expression of one of the convention's major concerns — that none of the world's children should be denied the right to a life that is more than sheer physical survival.

This concern explains the presence in the convention of Article 27, which calls upon states parties "to recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development." The convention, thus, posits the child's development in these directions as the necessary immediate objective toward the ultimate goal of a life for the child that is more than simply surviving, physically, from day to day.

PHYSICAL DEVELOPMENT

The objective of the physical development of the child is served by Paragraph 3 of Article 27, which obligates states parties "to assist parents and others responsible for the child to implement this right" (to an adequate standard of living) and, in cases of need, "to provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing." The obligation thus assumed by parties is qualified by the phrase "in accordance with national conditions and within their means."

The inclusion of nutrition in the convention's definition of a standard of living adequate for the child's physical development was prompted not

only by the critical link that obviously exists between nutrition and physical development but also by data on the extent to which the world's children were suffering from hunger and malnutrition. In 1990, for example, the percentages of children under five years of age suffering from malnutrition ranged from 10 in Latin America and the Caribbean to 60 in South Asia, while one study's results, released several years prior to this, showed 18 children in this age group dying every minute either directly or indirectly from hunger and starvation.⁴ The obligation of states parties to protect the world's children from this kind of tragedy is contained in Article 24(2c), stating that parties "shall . . . take appropriate measures to combat disease and malnutrition . . . through, inter alia . . . the provision of adequate nutritious foods."

The right to a standard of living adequate for the child's physical development also is served by Article 26, which commits states parties "to recognize for every child the right to benefit from social security, including social insurance." The recognition of this right entails an undertaking by the parties to "take the necessary measures to achieve [its] full realization."

MENTAL DEVELOPMENT

A second objective sought through the right to an adequate standard of living, the child's mental development, is served by the inclusion in the convention of the right to education.

The drafting of the convention occurred at a time when children were not participants in the educational systems of many countries because of a shortage of teachers; when, in some national situations, secondary education was available only to children of a ruling elite; and when many children were enrolled in classes taught by instructors using a language the children could not understand. It was also a time when 25 percent of all children ages 6–11 in low income countries were not in school because they were working and 60 percent of those in the 12–15 year age bracket in these nations were working, not attending school. The children who were unable to share in the educational process because they were working were in this situation for various reasons, including the absence of schools, the failure of parents to understand the value of an education, or poverty levels that made it necessary for children to work — in some cases, to liquidate debts of impoverished parents.

Disabled children, in particular, were being denied an opportunity to realize the benefits of an education, as evidenced by the facts that in 34 of the 51 countries responding to a United Nations Educational, Scientific,

and Cultural Organization survey in 1988, less than 1 percent of the disabled children were involved in special education programs and in 10 others, the percentage was even lower.⁵

The convention's concern that no child should experience the denial of an opportunity for an education exemplified in the situations noted above was expressed in Articles 28 and 29, committing states parties to recognize the right of the child to education on the basis of equal opportunity and setting forth the objectives toward which the child's education is to be directed. In addition, the right of the disabled child to special care, including access to education, is recognized in Article 23.

In recognizing the right of the child to education, states parties commit themselves, under Article 28, to:

make primary education compulsory and available to all;

encourage the development of different forms of secondary education, including general and vocational education, and make them available and accessible to every child, with financial aid if needed;

make higher education accessible to all on the basis of capacity;

make educational and vocational information and guidance available and accessible to all children; and

take measures to encourage regular attendance at schools and the reduction of drop-out rates.

States parties also are obligated (Article 28[2]) to ensure that school discipline is administered "in a manner consistent with the child's dignity and in conformity with the present Convention."

The obligation assumed by a state party in regard to the development of the child through the educational process applies not only to children within its jurisdiction but also to those in other countries. This broader commitment, as expressed in Article 28(3), is to "promote and encourage international cooperation 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." For this purpose, "particular account" is to be taken of the needs of developing countries.

In addition to identifying the specific elements that must be included in a national program that would adequately serve the child's right to education, the convention, in Article 29, defines the objectives toward which this education is to be directed. These goals are:

- the development of the child's personality, talents, and mental and physical abilities to their fullest potential;
- the development of respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations;
- The development of respect for the child's parents, his or her own cultural identity, language, and values, for the national values of the country in which the child is living, the country from which he or she may originate, and civilizations different from his or her own;
- the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and
- the development of respect for the natural environment.

SPIRITUAL AND MORAL DEVELOPMENT

The convention's concern for the child's spiritual and moral development is expressed in Article 14, which obligates states parties to "respect the right of every child to freedom of thought, conscience, and religion." This "freedom to manifest one's religion or beliefs" is subject only to those restrictions that are "prescribed by law and are necessary for the protection of public safety, order, health or morals or the fundamental rights and freedoms of others."

The spiritual and moral development of children falling within specific categories is given special attention in Article 30, which asserts that the right to "profess and practice his or her own religion" may not be denied to a child who is a member of a religious or linguistic minority group or who is indigenous.

SOCIAL DEVELOPMENT

The objective of the child's social development is served through a number of provisions in the convention intended to ensure that this development can occur through the child's participation in the total life of his or her society. If a child is to be able to enjoy this kind of participation, he or she must be able to obtain information relevant to various sectors of social life, hence, the presence in the convention of Article 17, which stipulates that states parties "shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and

moral well-being and physical and mental health.” To this end, states parties assume an obligation, in Article 17, Paragraphs (a) through (d) to:

encourage the mass media to disseminate information and material of social and cultural benefit to the child;

encourage international cooperation in the production, exchange, and dissemination of such information and material from a diversity of cultural, national, and international sources;

encourage the production and dissemination of children’s books; and

encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous.

The right of access to information protected by Article 17 is contained in another provision within the convention designed to enable the child to develop socially through participation in the total life of his or her society. This provision, Article 13, states that the child “shall have the right to freedom of expression: this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.” The only restrictions on this right sanctioned by the convention are those that are “provided by law and are necessary for respect of the rights or reputations of others or for the protection of national order or public health or morals” (Article 13[2a][b]).

The freedom of expression to which the child is entitled under Article 13 is also given legal protection by Article 12. Here, however, the child’s freedom of expression becomes applicable only in “matters affecting the child” and may be exercised only by the child “who is capable of forming his or her own views.” This freedom also is subjected to the qualification that the child’s views are to be “given due weight in accordance with the age and maturity of the child.”

Another participatory right closely linked with the child’s social development is set forth in Article 15, under which states parties recognize the child’s right to freedom of association and to freedom of peaceful assembly, subject only to those restrictions “imposed in conformity with the law and . . . necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

The cultural side of the child’s social development is dealt with in Articles 30 and 31. In the first of these, the concern is with specific categories of children: those who belong to a religious or linguistic minority

group or who are indigenous. These children, according to Article 30, “shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture.” The second of these two provisions, more inclusive in scope, calls upon states parties “to recognize the right of the child . . . to participate freely in cultural life and the arts” and then places them under the obligation “to respect and promote the right of the child to participate fully in cultural and artistic life.” An additional commitment assumed by states parties through Article 31 is “to encourage the provision of appropriate and equal opportunities for cultural [and] artistic activity.”

The social development of the child to which Article 31 contributes through its assertion of the child’s cultural rights also is furthered by another provision within this article, one that has meaning for the social as well as the personal life of the child. Under the terms of this provision, states parties “recognize the right of the child to rest and leisure [and] to engage in recreational activities appropriate to the age of the child.” States parties also undertake to “encourage the provision of appropriate and equal opportunities for . . . recreational and leisure activity.”

NOTES

1. Laurie S. Wiseberg, “The Opening of a Dialogue,” *Health and Human Rights* 1(2) (1995): 121.

2. *Response*, December 1990, pp. 6, 8. Other factors contributed to the presence of the right to life in the convention, a major one being the changed attitudes toward children in many national societies in the direction of perceiving the child as an individual person in his or her own right, rather than merely a part of the family, with only such rights as followed from that position.

3. Virginia Leary, “The Right to Health in International Human Rights Law,” *Health and Human Rights* 1(1) (1994): 25, 26. See pp. 32–34, for additional citations of international instruments.

4. *The State of the World’s Children 1993* (New York: Oxford University Press, 1993), p. 41; *Right to Adequate Food as a Human Right* (Geneva, Switzerland: Centre for Human Rights, 1989), p. 2.

5. Kay Castelle, *In the Child’s Best Interest*, 3rd ed. (Philadelphia, Pa.: Defense for Children International — U.S.A., 1990), p. 19; *A World Safe for Children* (Final Report, Annual Conference, Department of Public Information for Nongovernmental Organizations, September 1990) (New York: United Nations, NGO Department of Public Information, 1990), p. 22; Ture Jonsson,

“The Right to Education with Emphasis on the Situation in Developing Countries,” in *Making Reality of Children’s Rights* (Final Report of the International Conference on the Rights of the Child) (Stockholm, Sweden: Save the Children, 1989), p. 79.

6

The Right to Protection

A major segment of the convention deals with the child's right to protection from threats to his or her physical and mental health and overall well-being emanating from a wide variety of sources. The articles defining this right were drafted at a time when, as one commentator observed, "The need for protection for children is beyond doubt. For more than a decade we have been faced with the unfortunate reality that while politicians pay lip service to the condition of children in the rhetoric of public debate, the analysis of the global balance sheet indicates that over the past decade the situation of children has deteriorated."¹

The need for protection was particularly acute in regard to certain groups of children:

rural children, in families who, together, comprised 70 percent of the world's population living in rural areas and whose children frequently lacked access to the services, resources, and infrastructures necessary for them to realize their full potential;

slum and street children, vulnerable to gambling, drugs, and disease, including AIDS;

girl children, with an illiteracy rate higher than their male counterparts and victims of a globally rampant practice of child prostitution;

child laborers in countries failing to enforce child labor laws;

handicapped children lacking access to basic services and educational facilities;

refugee and stateless children, products of conflict within and between nations; children in prison, victims of flawed national criminal justice systems and subjected to torture, beatings, and the death penalty; child soldiers, compelled to serve at very young ages and at times forcibly taken from their families for this purpose; and children being sexually and in other ways abused, neglected, and exploited and made pawns of questionable or illegal adoption procedures.²

There was no lack of specific examples of the kinds of situations that made the need for protection so compelling. In England and Wales, reports of physical abuse showed a 70 percent increase from 1979 to 1984; over 2.2 million cases of child abuse were registered in the United States in 1988;³ and in Brazil, the killing of street children occurred at the rate of more than 100 children each month in just two cities — São Paulo and Rio de Janeiro — an increase of 70 percent in a year's time.⁴

In Romania, thousands of babies were being sold by parents who felt they were too poor to take care of them,⁵ and the phenomenon of child abuse through sale and trafficking extended even to dealing in children's organs, most notably in Central and South America but also in countries of South Asia and Africa, where children's organs reportedly were being used in the ceremonies of ritual societies.⁶

At the beginning of the 1990s, when the convention became effective, there were more than 15,000 street children in Guatemala,⁷ abandoned, orphaned, or handicapped, victims of ill-treatment at the hands of police or civilians, while in El Salvador a period of armed conflict brought death to minors through torture and left one-half million children orphaned or crippled.⁸

The most prevalent form of mistreatment at the start of the 1990s was the sexual abuse and exploitation of children. This was the thrust of a UN report, which used the restrained term "disquieting" to describe the situation at the national level, with child prostitution becoming "more widespread in Africa, Europe, North America, and in Central and South America, where the problem was linked with the phenomenon of street children."⁹

Child pornography was another form of the sexual exploitation of children to which the UN report called attention, noting that the sale of pornographic videotapes involving children "was becoming increasingly widespread, particularly in North America, but also in Asia and Africa."¹⁰

The report also contained a reference to the "increasingly flagrant" cross-country trafficking in women and children in various regions of the

world, particularly in a number of Asian countries, where the problem was linked with sex tourism “whose practitioners came from . . . Australia, North America, Europe, Japan, and the Middle East.”¹¹

A perhaps more subtle form of sexual exploitation through trafficking in children involved the adoption of children for sexual purposes. The UN found this practice to be in existence in many parts of the world, including Asia, Africa, and Australia, but particularly prevalent in Central and South America and East Europe. The United States was singled out as being a “main receiving country” in the process of cross-country adoption.¹²

Adoption practices and procedures, thus, constituted another area in the life of the child where he or she needed protection. Abuse of the adoption process stemmed from a variety of situations and took many forms; impoverished women living in developing countries, for example, were being paid to travel to developed nations where the children to whom they eventually gave birth could be legally adopted.¹³

The involvement of developed countries in adoption procedures that in reality amounted to preying on children included sponsorship of travel by children from developing countries, thereby satisfying legal requirements for the granting of visas and the ignoring of the criminal elements engaged in cross-country adoption operations.¹⁴ Highly profitable operations of this kind resulted from two factors: the demand for children in countries with declining birth rates and poverty in developing countries.¹⁵

Refugee and abandoned children were particularly vulnerable to abuse and exploitation for sexual or other purposes, and with anywhere from 30 to 100 million street children and more than 10 million child refugees (60–70 percent of the refugee population), this was a major category of children in need of protection.¹⁶

This need was also evident in regard to soldier children, of whom there were “tens of thousands” under the age of 18, some as young as 7 years. Most of these child soldiers were in countries in the south, because this is where most of the wars were being fought at the start of the 1990s. Although some of these children were volunteers responding to the call to fight for their nations’ liberation or to the need for food, clothing, and shelter, many others were victims of forcible recruitment.¹⁷

Juvenile justice systems constituted a final area demonstrating the need for the protection of children. The problem was widespread: in the United States, 16- and 17-year-old children were still subject to the death penalty; flogging was routinely practiced in Hong Kong; numerous cases were on record of the torture of children to obtain a confession or details of political accomplices; equal justice was being denied poor children,

unable to afford legal representation and subjected to sentences harsher than those imposed on richer children charged with similar crimes; rape of children detained with adults was common; and their experience as detainees frequently left children with physical and psychological scars.¹⁸

As a response to the plight of children suffering from these and other forms of abuse and exploitation and as a means of helping to prevent its repetition in the lives of succeeding generations of children, the framers of the convention wrote into this instrument a series of articles dealing with specific areas of a child's life where that life is threatened in one way or another. Taken together, these articles constitute an assertion and definition of the child's right to protection.

The most inclusive statement of this right is Article 19: "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, 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."

The protective measures to be taken by states parties 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, investigation, treatment and follow-up of instances of child maltreatment . . . and, as appropriate for judicial involvement."

The convention, thus, obligates states parties not only to protect the child from abuse and exploitation but also to provide treatment for the victim of such mistreatment, an obligation that is restated in Article 39, which commits states parties to: "take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman, or degrading treatment or punishment; or armed conflicts."

Numerous articles place states parties under an obligation to protect the child from specific forms of abuse and exploitation.

ECONOMIC EXPLOITATION

In Article 32, states parties: "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 education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." In order to implement these provisions, states parties

commit themselves to provide a minimum age or ages for employment, appropriate regulation of hours and conditions, and appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

SEXUAL EXPLOITATION

Article 34 states that “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.” For these purposes, states parties undertake to take “all appropriate measures” to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual activity, and the exploitative use of children in pornographic performances and materials.

TRAFFIC IN CHILDREN

Article 11 states that “States Parties shall take measures to combat the illicit transfer and non-return of children abroad,” and Article 35 says that “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or the traffic in children for any purpose or in any form.”

ABANDONED CHILDREN

Article 20 states that “A child temporarily or permanently deprived of his or her family environment . . . shall be entitled to special protection and assistance provided by the State.”

ADOPTED CHILDREN

Article 21 states that “States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration.” Under this provision, states parties commit themselves to:

ensure that the adoption is 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 legal guardians;

recognize that intercountry adoption may be considered as an alternative means of a child's care if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin; ensure that the child involved in intercountry adoption enjoys safeguards and standards equivalent to those in the case of national adoption; take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved; and promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

CHILDREN INVOLVED IN THE JUVENILE JUSTICE SYSTEM

Article 37 obligates states parties to ensure that:

- no child shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment and that neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below 18 years of age;
- no child shall be deprived of his or her liberty unlawfully or arbitrarily;
- every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner that takes into account the needs of persons of his or her age; in particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, except in exceptional circumstances; and
- every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent, and impartial authority and to a prompt decision on any such action.

Under the companion Article 40, states parties "recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's

reintegration and the child's assuming a constructive role in society." In the service of this right, states parties assume the obligation to ensure that:

no child shall be alleged as, accused of, or recognized as having infringed the penal law by reasons of acts or omissions that were not prohibited by national or international law at the time they were committed and

every child alleged as or accused of having infringed the penal law has at least the following guarantees:

to be presumed innocent until proven guilty according to law;

to be informed promptly and directly of the charges against him or her and to have legal or other assistance in the preparation and presentation of his or her defense;

to have the matter determined without delay by a competent, independent, and impartial authority or judicial body in a fair hearing according to law;

not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent, and impartial authority or judicial body according to law;

to have the free assistance of an interpreter if the child cannot understand or speak the language used; and

to have his or her privacy respected at all stages of the proceedings.

Article 40 also commits states parties to "seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law." This called for the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law and measures for dealing with such children without resorting to judicial proceedings, provided that human rights and legal safeguards are fully respected.

A final provision within Article 40 calls for the availability of a "variety of dispositions" to ensure that children are appropriately dealt with, in view of their circumstances and the offence, including such approaches as foster care, counseling, and probation.

CHILDREN AND DRUGS

Article 33 places states parties under an obligation to take "all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs

and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.”

THE CHILD'S PRIVACY

This is protected by Article 16, which provides that “no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.” The child, according to this article, “has the right to the protection of the law against such interference or attacks.”

NOTES

1. Michael Jupp, “The UN Convention on the Rights of the Child: An Opportunity for Advocates,” *Human Rights Quarterly* 12(1) (February 1990): 131.
2. Vitit Muntarbhorn, “The Convention on the Rights of the Child: Reaching the Unreached?” *Bulletin of Human Rights* 91(2) (1992): 67–70.
3. Kay Castelle, *In the Child's Best Interest*, 3rd ed. (Philadelphia, Pa.: Defense for Children International — U.S.A., 1990), p. 23.
4. UN Economic and Social Council, *Official Records*, “Summary Record of the 61st Meeting,” E/CN.4/1993/SR.61, March 15, 1993, p. 16.
5. UN Economic and Social Council, *Official Records*, “Rights of the Child,” E/CN.4/1992/NGO/45, March 30, 1992, p. 2.
6. UN Economic and Social Council, *Official Records*, “Summary Record of the 56th Meeting,” E/CN.4/1993/SR.56, July 20, 1993, p. 7.
7. UN Economic and Social Council, “Summary Record of the 61st Meeting,” p. 17.
8. UN Economic and Social Council, “Summary Record of the 61st Meeting,” p. 18.
9. UN Economic and Social Council, “Summary Record of the 56th Meeting,” p. 8.
10. *Ibid.*
11. UN Economic and Social Council, “Summary Record of the 56th Meeting,” p. 7.
12. UN Economic and Social Council, “Summary Record of the 56th Meeting,” p. 6.
13. UN Economic and Social Council, “Summary Record of the 61st Meeting,” p. 11.
14. *Ibid.*

15. UN Economic and Social Council, "Summary Record of the 61st Meeting," p. 8.
16. Castelle, *In the Child's Best Interest*, p. 21.
17. UN Economic and Social Council, *Official Records*, "Rights of the Child," E/CN.4/1993/NGO/1, January 15, 1993, p. 2.
18. Castelle, *In the Child's Best Interest*, p. 25.

7

Evaluation of the Convention's Substance

Two questions provide the basis for an evaluation of the substance of the convention: Is the convention too inclusive or insufficiently inclusive of the rights to which the child could and should be entitled? Are the rights contained in the convention clearly set forth?

THE SCOPE OF THE CONVENTION

Is the convention too broad in scope, including some standards that are, in reality, aspirations, not rights? Is the concept of "right" diluted by the inclusion of some provisions that belong in the realm of social policy rather than legal entitlements?

These questions are most likely to be raised in regard to the numerous economic, social, and cultural provisions given the status of rights in the convention, a status that is not acceptable to those who hold to a social and political ideology that recognizes only the civil and political rights that are so strongly upheld by Western-style democracies.

An ideologically motivated restrictive view such as this, however, is difficult to justify when it is recalled that virtually all the major democracies that place heavy emphasis on civil and political rights also accept the validity of the other category of rights. As of December 31, 1994, all of these states except the United States had given clear evidence of this acceptance by adhering to the International Covenant on Economic,

Social, and Cultural Rights and, in the cases of those within the West European system, to the European Social Charter.

The example set by these states should make acceptance of the convention's economic and social rights easier for those who, for ideological reasons, question their presence in this instrument. The same result can follow from an awareness, which can be cultivated, of the practical benefits to be gained through the implementation of these rights. A case in point here is the "right of the child to the enjoyment of the highest attainable standard of health" set forth in Article 24.

The potential impact of this provision was emphasized by the World Bank in its *World Development Report 1993*, containing the conclusion that "improved health . . . increases the enrollment of children in school, makes them better able to learn, and frees for alternative uses resources that would otherwise have to be spent on treating illness."¹

A second consideration giving rise to the question of the desirability of including economic and social rights in the convention is the possibility that these provisions might — and most likely will — be given only pro forma or no compliance by some states parties for any of a number of reasons. Although the existence of this possibility cannot be questioned, it does not appear to be a valid reason to consider the convention's substance to be too broad in scope.

This conclusion follows from the fact that a treaty designed, as is the Convention on the Rights of the Child, to lift the level of human rights observance throughout the world cannot serve this purpose if it contains only those norms that all its parties can or will immediately and completely implement. Imperfect compliance at any point in time is an obvious fact of the life of any human rights treaty, as is its counterpart, that is, the expectation that parties whose degree of compliance at any given time falls short of the optimum level will improve their performance over a period of time.

A development in this direction could occur as a result of any of a number of factors: changes in domestic social and political attitudes, for example, or accession to national political power of persons or parties more sympathetic to the convention, or the development or acquisition of the human and other resources necessary to give full effect to certain standards, particularly those of an economic and social nature.

In view, then, of the preceding considerations, the question is Is the convention too inclusive? can be answered in the negative; it should not be judged as being too broad in scope.

This is not to say, however, that the convention will not continue to be exposed to the charge of being too inclusive. The concept of human rights

is inherently dynamic, constantly evolving in response to the economic, social, and political environment. It can, therefore, be expected that the convention will expand through the addition of new rights — norms that go beyond those existing at any particular time. When this happens, the allegation of “too inclusive” will, in all likelihood, be raised by those who are not ready to accept the moving of certain practices or procedures from the category of social policy into that of legally binding commitments.

The dynamic, evolving nature of human rights, thus, provides a negative answer to the second question: Is the convention sufficiently inclusive? To give any other answer to this question is to make the indefensible assertion that the convention can be considered to be a finished product, inclusive of all the rights to which the child could or should be entitled.

The convention certainly was not judged to be a finished product by those who felt that the treaty, as it emerged from the drafting process, suffered from the omission of some provisions that should have had a place in the convention. These included the right to protection for alien children and for children who are victims of forced internal migration; protection from medical experimentation; safeguards against double jeopardy in juvenile justice systems; in the section on protection against drug abuse, the inclusion of alcohol as a substance to which this protection should apply; and, in Article 14 on the child’s freedom of religion, the inclusion of the child’s freedom to change his or her religion.²

Some or all of these provisions eventually may find their way into the convention, but, if and when they do, they will, in all likelihood, be replaced by other candidates for admission into the list of rights contained in an instrument whose contents reflect their economic, social, and political surroundings.³

THE CLARITY OF THE CONVENTION’S PROVISIONS

The second point to be considered in evaluating the convention’s substantive provisions concerns the clarity with which they are set forth. The question here is: Are the provisions contained in the convention so clearly stated that there can be no doubt as to the nature and extent of the obligations assumed by states parties? A negative answer to this question is prompted by the presence within the convention of provisions whose terms are sufficiently vague as to lend themselves to various interpretations when applied to specific situations. Article 4, for example, states that parties are to take “all appropriate” legislative, administrative, and other

measures to implement the convention's economic, social, and cultural rights "to the maximum extent of their available resources."

Article 10 has an equally broad definition of a party's obligation in the use of the terms "positive, humane and expeditious" to describe the manner in which it is to deal with an application by a child or his or her parents to enter or leave this party's country for the purpose of family reunification.

A third example of an imprecisely stated commitment is provided by Article 12 — to assure the right to freedom of expression for the child "who is capable of forming his/her own views," with "due weight" being given to a child's views "in accordance with the age and maturity" of the child.

Finally, a number of the convention's provisions contain the highly subjective term "appropriate" to indicate the measures to be taken by states parties in order to fulfill their obligations in regard to certain rights.

The presence in the convention of such vaguely phrased provisions can have at least two negative consequences: a state party sincerely desiring to bring its performance up to the convention's standards may feel that it has not been given sufficient guidance for this purpose, and a state party desiring to justify performance that could be considered as falling short of the convention's norms could turn vagueness to its advantage through a self-serving interpretation of particular provisions.

Although the imprecision of some elements in the convention is, thus, a potential source of some serious problems, this fact does not, in itself, constitute a serious indictment of this instrument's substance. This judgment is based on several considerations, the first being the presence within the convention of procedures for dealing with the possible negative consequences of the vagueness of the convention's terminology. These are contained in the reporting system established through Articles 44 and 45, supervised by the Committee on the Rights of the Child created by Article 43.⁴ This system calls for states parties to report "on the measures they have adopted which give effect" to the rights recognized in the convention and "on the progress made on the enjoyment of these rights" and are to indicate "factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention."

Reports are to be submitted by a state party within two years of the convention's entry into effect for it and every five years thereafter, and the committee is authorized to ask a party for information additional to what is presented in its reports in order to gain a clearer understanding of the status of the convention's rights in that country.

The committee's review of these reports and the dialogue it conducts with parties as part of this process provide an opportunity for any party seeking clarification of particular provisions to obtain this kind of guidance from either the committee or any of the specialized UN organs or "other competent bodies" (Article 45[a][b]) that are authorized to participate, in various ways, in the report review process.

The review process also offers an opportunity for the committee to explore the possibility that a state party has used a self-serving interpretation of the convention's norms to justify what could be considered questionable practices and policies in regard to these standards.

In making this kind of inquiry, the committee can use its authority to request additional information from a reporting party. The committee also can benefit from the participation in the review process of the specialized organs and other bodies referred to above — organizations who, because of the kind of work they do, are in a position to assess the domestic situation in a particular state party and, thereby, form some conclusions concerning the accuracy and completeness of its reports.

Although the committee is not a judicial body empowered to deliver judgments on the performance of states parties in relation to the convention's norms and call upon them to take certain corrective steps, it can form opinions on this performance and transmit them, in the form of "suggestions and recommendations," to any state party concerned and to the UN secretary-general (Article 45[d]).

Responses of this nature to the reported performance of states parties could indicate whether, in the committee's opinion, a particular convention term has been so interpreted as to result in an evasion, intentional or otherwise, of a party's obligation under the convention with the impact of any such representation depending on the attitude of the party concerned toward the convention and its norms.

The procedures for coping with the possible consequences of the vagueness of some of the convention's substantive provisions, thus, constitute one reason for concluding that this imprecision is not a serious indictment of the convention. A second reason for this conclusion is the fact that a human rights instrument couched in general terms is preferable to one that is a voluminous catalog of specific terms intended to eliminate all doubts as to what is involved in the various rights. The latter approach, calling for greater specificity, has been advocated, for example, in relation to Article 32. This article proclaims the right of the child to be protected against economic exploitation, a right, it has been asserted, that would be better defined if it identified "some of the more egregious and widely practiced forms of exploitation of children currently in practice." The

result of so doing, the argument goes, would be a “far more detailed and specifically prohibitory article than the Convention’s version.”⁵

Any convention whose rights are, thus, spelled out in great detail, however, would suffer from at least two defects: the inflexibility of what would be, in effect, a legal code and the strong possibility that an instrument so constructed would be accepted as a complete register of all the situations to which particular rights could apply. The defining of rights in detail would, thus, be restrictive in effect, making them incapable of adaptation to changing circumstances and of application to situations not included in their detailed definition.

The rigidity present in an instrument containing highly detailed definitions of rights stands in direct contrast to one, like the Convention on the Rights of the Child, that is couched in such general terms as to give it the flexibility necessary for effectiveness in an ever-changing environment and in a global society composed of a wide variety of social and political systems.

One final aspect of the question of the clarity of the convention’s terms concerns the delineation of jurisdictional lines. This is a problem that inevitably arises in any compact or charter that calls for dual or overlapping responsibilities in prescribed functional areas, and it is a potentially troublesome one for the convention in the matter of the respective rights, duties, and responsibilities of a state party, on the one hand, and of parents, on the other hand, for the total well-being of the child.

Given the nature of dual or overlapping jurisdictions, it is unreasonable to expect the convention to define so clearly the respective roles of state and parents as to remove any doubts as to where one’s rights, duties, and responsibilities begin and those of the other end. The convention obviously does not attempt the impossible; rather, it endeavors to strike a role balance that has the potential for most effectively serving the best interests of the child.

This balance is sought through provisions designed, on the one hand, to protect the prerogatives of parents and others legally responsible for a child’s welfare and, on the other hand, to provide a basis for state intervention into a family’s affairs — the commitments undertaken through adherence to an international legal instrument.

These provisions reflect two propositions: the child’s well-being normally is best served through the assumption, by parents or legal guardians, of primary responsibility for the child, but there are and will be times and circumstances when parents or others in a legal position to do so cannot or will not adequately discharge this responsibility; when

this situation arises, intervention by the state in the best interests of the child is both necessary and desirable.

These two propositions find expression in a number of the convention's provisions. Thus, Article 3(2) commits states parties "to ensure the child such protection and care as is necessary for his or her well-being" but also asserts that, in the discharge of this commitment, a state party is to "take into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her."

The two basic propositions also undergird Article 9, which deals with the question of the separation of a child from his or her parents. Although this article protects the rights of parents through the obligation it imposes on states parties "to ensure that a child shall not be separated from his or her parents against their will," it also attaches this condition: "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" (Paragraph 1).

The convention's effort to strike an effective balance between parental and state responsibility for the child is further illustrated by its inclusion of two provisions presented in sequence. The first of these, Article 18, recognizes that "parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child," with states parties being called upon to "render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities" and to "ensure the development of institutions, facilities and service for the care of children" (Paragraphs 1, 21).

Although Article 18, thus, emphasizes the primacy of parents in matters affecting the child, the following provision, Article 19, stresses the place of states parties in seeing that the child's welfare is ensured. Under this article, states parties are obligated to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, 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" (Paragraph 1). This provision clearly reflects the fact that there are times when parents or legal guardians fail to comply with the provision in Article 18(1) that, in fulfilling their "primary responsibility for the upbringing and development of the child . . . the best interests of the child will be their basic concern."

One final provision in the convention may be cited to illustrate the effort made by this instrument to establish the principle that the well-being of the child is the responsibility both of parents and states parties.

This is Article 27, concerning the right of every child to “a standard of living adequate for the child’s physical, mental, spiritual, moral and social development” (Paragraph 1).

The article continues with the statement that “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” (Paragraph 2). The place of a state party in this regard then is noted in Paragraph 3, which commits states parties “to take appropriate measures to assist parents and others responsible for the child to implement [the right to an adequate standard of living] and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”

It can be expected that the interpretation given at any time to the balance struck between the respective roles of parents or guardians and the state will reflect particular biases. Those who view with alarm any program, policy, or legal instrument that bestows significant powers on the state and its agencies undoubtedly will place particular emphasis on those passages in the convention that call for certain state actions on behalf of the child and see them as encouraging governmental intrusion into family relationships.

Typical of this approach to the convention’s terms is the comment that Article 12, on the child’s right to freedom of expression, will open the door to laws preventing parents “from restricting their children from getting tattooed, wearing provocative clothing, or saying what they please to authority figures.” A similar negative view is taken of Article 15, guaranteeing the child’s right of association, a right that is said to imply that parents would not be allowed to restrict a child’s choice of friends, for example, “a 14-year old daughter wanting to date an 18-year old dropout with a police record.”

A final example of the negative interpretation that can be anticipated in regard to provisions concerning action by states parties concerns Article 19, dealing with protection by the state against all forms of child abuse. An example of such treatment of this provision is the observation that “given what many ‘helping’ professionals consider inappropriate discipline, this might well include spanking, confining a child to his room and putting a child to bed early.”⁶

Comments such as these illustrate the possibility that the role balance sought by the convention could be distorted by those who are strongly biased in the direction of the freedom of parents to exercise absolute control over all matters relating to their children. Heavy emphasis, therefore, is placed on the powers of the state under the convention while the

balancing provisions, supporting parental rights and responsibilities, are ignored.

The comments noted above also illustrate the manner in which the same bias can distort the convention's balancing provisions through what could be viewed as unreasonable interpretations of the powers given the state under the convention, interpretations that are not likely to be given to these provisions by the legislative, administrative, and other authorities responsible for their implementation.

It also is possible that the role balance could be distorted by those whose biases lie in the opposite direction, in favor of a more prominent place for the state in matters affecting the child. Carried to its extreme, this interpretation of the convention's terms relative to the state's responsibilities would create a form of totalitarianism that would mean the end of the family as an institution with a life of its own. In a situation such as this, for example, the state, not parents, would make decisions even in such critical matters as the number of children to be born to particular parents or which children should survive after either conception or birth.

Although there are, thus, some dangers of extremism in the interpretation of the inevitably imprecise provisions used to balance the respective roles of parents and state, there also are positive values in provisions so framed. Segments of a national society desiring to strengthen the hand of parents in the upbringing of their children can, for example, use their state's commitment to respect parents' responsibilities to argue for programs that will increase their ability to choose the schools their children will attend. Child advocates can appeal to their state's commitments under the convention in calling for more positive state action on behalf of children living in unwholesome or even threatening home or other life situations or for improved facilities and programs designed to meet the mental, physical, and social needs of children and to contribute to their development in these areas.

NOTES

1. Cited by Virginia Leary, "The Right to Health in International Human Rights Law," *Health and Human Rights* 1(1) (1994): 46.

2. Cynthia Price Cohen, "The United Nations Convention on the Rights of the Child," *The Review* 44 (June 1990): 40; Walter H. Bennett, Jr., "A Critique of the Emerging Convention on the Rights of the Child," *Cornell International Law Journal* 20(1) (Winter 1987): 12. The juvenile justice articles are 37 and 40 and the provision concerning drug abuse is Article 33. David A. Balton, "The

Convention on the Rights of the Child: Prospects for International Enforcement,” *Human Rights Quarterly* 12(1) (February 1990): 124.

3. Changes in the convention can be made through an amending procedure described in Article 50, under which any party may propose an amendment to the convention. The proposed amendment is acted on in a conference convened by the secretary-general if one-third of the states parties, having received the proposal, indicate that they favor a conference. If the proposal is adopted by majority vote, it goes to the UN General Assembly and enters into effect if it is approved by the assembly and two-thirds of the states parties. The new provision is binding on those parties who have accepted it, and nonaccepting parties remain committed to the convention in its previous form and to any previously accepted amendments.

4. The report system and the committee and its functions will be described and evaluated in that part of the book dealing with the implementation of the convention.

5. Bennett, “A Critique,” p. 12.

6. The quoted observations presented above were made by John Rosemond, identifying a family psychologist in private practice in North Carolina, in a syndicated column appearing in Knight-Ridder newspapers at various times in May 1995.

III

THE IMPLEMENTATION OF THE CONVENTION'S PROVISIONS

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8

General Considerations

The implementation of the convention's provisions is primarily the responsibility of the states parties to the convention, as it must be, given a global society in which effective power resides in sovereign states. States parties have assumed this responsibility by adhering to an instrument that contains legally binding commitments — agreements to take specified actions to give effect to the convention's standards.

The complementary responsibility residing primarily with states parties is, however, not theirs exclusively, because the same convention that prescribes the standards that states parties undertake to enforce also establishes procedures and mechanisms to function in support of these standards. The inclusion of these complementary provisions within the convention is an expression of the belief that the enforcement of human rights cannot and should not be left solely to national political systems. This belief is based on the fact, as noted by David A. Balton, "that a sober assessment of the human rights situation throughout the world would reveal the ritual failure of states parties to comply with standards established in instruments such as the Convention on the Rights of the Child."¹

The convention's response to this need for complementary mechanisms and procedures on the international level is contained in Articles 43, 44, and 45. These articles deal, respectively, with the Committee on the Rights of the Child, the program for reports from states parties to the convention, and the role of the specialized agencies related to the United

Nations and of other organs in “fostering the effective implementation” of the convention. Article 45 also sets forth some functions to be performed by the committee. The contents of these articles will be noted in greater detail in a later section of this part of the book.

The convention’s supplementary system is designed not only to monitor the performance of states parties in relation to the convention’s norms but also to encourage them to lift the level of their performance and to provide assistance to them for this purpose. The service of this objective involves the identification, principally through parties’ reports, of the problems and difficulties they encounter in the process of implementing the convention’s standards; a search, through the dialogue that accompanies the review of reports, for ways of dealing with these problems and difficulties; and the offer of technical assistance through the various specialized agencies that participate in the convention’s supplementary procedures.

The convention also offers a kind of encouragement to states parties by attaching such phrases as “progressive realization,” “to the maximum extent of available resources,” and “within the framework of international cooperation” to the statements of the economic, social, and cultural rights contained in this instrument. These phrases, found in Articles 4 and 24 and the final preambular paragraph, have particular significance for developing countries.

NOTE

1. David A. Balton, “The Convention on the Rights of the Child: Prospects for International Enforcement,” *Human Rights Quarterly* 12(1) (February 1990): 129. This assessment of the human rights performance of states is validated in such documents as the annual *Country Reports on Human Rights Practices* prepared by the U.S. Department of State and reports by Amnesty International and Human Rights Watch.

9

The Committee on the Rights of the Child

In the Polish proposal that provided the basis for the discussions leading to the formulation of the Convention on the Rights of the Child, responsibility for overseeing the implementation of the convention's standards was vested in the United Nations Economic and Social Council (ECOSOC).

This initial formula was revised by the addition of a provision calling for a group of global experts to examine the periodic reports submitted by states parties to the convention. This review would provide the basis for a report by the group to ECOSOC, and the council then would make suggestions and recommendations to states parties and to the UN General Assembly. The council also would be authorized to ask parties for additional reports on specific issues relative to the convention.

A somewhat similar complementary proposal submitted by Canada also included the establishment of a group of experts, elected by ECOSOC, to receive periodic reports from states parties on steps taken to implement the convention and to make comments on these reports for transmission to the parties concerned. Observations and suggestions concerning the implementation of the convention also could be made by ECOSOC for submission to the UN General Assembly and states parties.

Included in the Canadian proposal was a provision enabling the specialized agencies related to the UN to make comments on the experts' observations submitted to ECOSOC. The agencies also would be given

the opportunity to report on the implementary efforts put forth by states parties in regard to those convention rights falling within the agencies' particular functional areas.¹

The implementary system emerging from the convention's preparatory phase contained features closely resembling these proposals, with the main element being a Committee on the Rights of the Child. This committee was created to perform, basically, the functions ascribed to the group of experts identified in the Polish and Canadian submissions but bearing the name present in proposals submitted by the ad hoc group of nongovernmental organizations (NGOs) related to the UN on the Convention on the Rights of the Child.

THE COMMITTEE'S STRUCTURE

Article 43 of the convention establishes a Committee on the Rights of the Child "for the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention." According to Paragraph 2 of this article, the committee is to consist of "ten experts of high moral standing and recognized competence in the field covered by the Convention." The insertion of "competence" in this definition was designed to ensure a committee that would be capable of carrying through one of the convention's principal implementary mechanisms: a constructive dialogue between the committee and a state party whose report is being reviewed by the committee.

As stated in Paragraphs 2 and 3 of Article 43, committee members are to be elected by states parties, choosing from a list of candidates submitted by parties, each of whom is entitled to nominate one of its nationals. Once elected, however, committee members are mandated "to serve in their personal capacity," not as representatives of the states who presented their names for election. The convention, thus, contains at least a formal safeguard against the intrusion of national political interests into committee proceedings, and committee members give their assent to this proscription in making the following declaration on assuming office: "I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Rights of the Child honourably, faithfully, impartially and conscientiously."²

This section of the convention also stipulates that, in the election of committee members, consideration is to be given to "equitable geographical distribution as well as to the principal legal systems," a prescription designed to ensure that the review of a state party's report will include comments on that report from committee members who are familiar with

the kind of background against which it was written. The availability of such informed observations can be of particular significance when the review focuses on the problems and difficulties that, according to the report, impede the implementation of the convention's norms. Such observations also can help a particular state party to see how it can implement the convention's norms.

Subsequent paragraphs (6–9) set a member's term of office at four years, with eligibility for reelection; provide for the appointment by a state party of one of its nationals to replace a committee member from that state who dies, resigns, or "for any other cause" can no longer perform his or her duties; and authorizes the committee to establish its own rules of procedure and elect its own officers for two-year terms.

The normal meeting place for the committee is set, by Paragraph 10, at the UN headquarters, with the committee granted the privilege of substituting "any other convenient place" for its annual sessions. The same paragraph gives the responsibility for deciding the length of these meetings to the states parties, subject to approval by the UN General Assembly. States parties also are empowered to review this decision "if necessary."

Paragraph 11 calls upon the UN secretary-general "to provide the necessary staff and facilities for the effective performance of the functions of the Committee," and the final paragraph, 12, of Article 43 states that the members of the committee "shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide."

The decision to designate UN resources as the basis for the committee's financial support (rather than placing the responsibility for this support in the hands of states parties) reflected the viewpoint expressed by the NGOs' Ad Hoc Group on the Convention on the Rights of the Child that "the world community has already recognized its special obligation to children in such documents as the Declaration on the Rights of the Child, and it would be a negation of that special obligation if children's rights were left to the vagaries of the financial resources of states already parties."³

The committee called for and described in Article 43 was instituted through the election conducted by states parties to the convention in their first meeting, February 27, 1991, at UN headquarters. Of the ten persons chosen, three were from Africa (Egypt, Zimbabwe, Burkina Faso), three from Latin America (Peru, Barbados, Brazil), two from West Europe (Portugal, Sweden), and one each from Asia (Philippines) and East Europe (Soviet Union).

This committee held its first meeting the following September and October, during which time it elected its officers and adopted its provisional rules of procedure, the general guidelines for the form and content of the initial reports to be submitted by states parties to the convention, and its first report.

The structural framework for the committee's work was completed in December 1991, when the UN General Assembly set the schedule for committee sessions at two per year, each of two or three weeks' duration, with each session preceded by a preliminary review of states parties' reports by a pre-session working group.⁴

THE COMMITTEE'S FUNCTIONS

As stated in Article 43 of the convention, the Committee on the Rights of the Child was established "to examine the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention." The functions to be performed by the Committee on the Rights of the Child in order to serve this purpose are outlined in Articles 44 and 45. The first of these deals with the system of reports to the committee from states parties, the second with the relation of the UN's specialized agencies and other bodies to the committee's work.

Article 45 also authorizes the committee to recommend that the General Assembly request the secretary-general to undertake special studies on "specific issues relating to the rights of the child" and to make "suggestions and general recommendations based on information received pursuant to Articles 44 and 45," to be transmitted to any state party concerned and reported to the General Assembly.

As prescribed in Article 44, states parties are to submit reports to the committee through the secretary-general "on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of these rights." A state party's report is to be made within two years of the convention's entering into force for this party, and subsequent reports are due every five years. Reports are to "contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned," and, if the committee so desires, it can ask a reporting party for additional information.

In its first paragraph, Article 45 places the relationship of certain UN agencies and organs and other bodies to the committee in two categories: mandated and on committee invitation. It is, thus, stipulated that, when the committee is considering the implementation of any of the convention's

provisions that “fall within the mandate” of a particular specialized agency, the United Nations Children’s Fund, or other UN organ, that body “shall be entitled to be represented.” It is only on the committee’s invitation, however, that other bodies are to share in its implementary work. This invitation may be extended to the specialized agencies, the United Nations Children’s Fund, and such “other competent bodies” as the Committee “considers appropriate” for the purposes of giving “expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates.”

The committee also may invite the specialized agencies, the United Nations Children’s Fund, and other UN organs “to submit reports on the implementation of the Convention in areas falling within the scope of their activities.”⁵

From the foregoing, it is apparent that the committee’s functions fall within three categories: monitoring the performance of states parties in regard to the convention’s standards, assisting these parties to lift the level of their performance, and involving other agencies and organizations, within and outside the United Nations, in the process of implementing the rights set forth in the convention.

The focal point of these three functions is the Provisional Rules of Procedure⁶ that guide the committee in the discharge of its functions were adopted in its first meeting (September and October 1991) at the UN office in Geneva. Part one of these guidelines set forth general rules for the conduct of committee proceedings, and part two concerned the committee’s functions.

GENERAL RULES OF CONDUCT

The first part of the committee’s provisional rules had 14 subdivisions.

Sessions

Rules 1–4 called for sessions to be held “as may be required for the effective performance of the Committee’s functions,” normally twice annually, at dates decided by the committee in consultation with the UN secretary-general. Special sessions could be convened “by decision of the Committee” through action by the chairperson in consultation with the other officers or at the request either of a majority of the committee members or of a state party to the convention.

UN headquarters was designated as the place for holding committee sessions. Another site could be chosen by the committee in consultation with the secretary-general.

Agenda

Rule 6 stipulated that the provisional agenda for each regular session was to be prepared by the secretary-general in consultation with the committee chairperson and was to include items decided upon by the committee at a previous session plus those proposed by the chairperson, a committee member, or a state party to the convention. The agenda also could include any item proposed by the secretary-general “relating to his functions under the Convention or the Committee’s Rules of Procedure.”

Under Rule 7, the provisional agenda for a special session was limited to those items that were proposed for that session.

Rule 9 provided for the revision of the agenda for a regular session by the committee through deleting or deferring items or adding “urgent or important items.”

Members of the Committee

Rule 11 followed Article 43 of the convention in defining the committee’s membership as ten “independent experts,” chosen (Rule 12) for four-year terms with eligibility for reelection.

The procedure for filling “casual vacancies” as prescribed by Rule 14 called for notification to the secretary-general of the death, resignation, or declaration by a member of his or her inability to perform the duties of a committee member or for similar notification if, “in the unanimous opinion of the other members, a member has ceased to carry out his/her functions for any cause other than absence of a temporary nature,” in which case the secretary-general was to declare that seat to be vacant.

Rule 14 further stipulated that, in the event of a vacancy in the committee’s membership, the state party whose national had ceased to be a member was to appoint “another expert from among its nationals” to complete the unexpired term, subject to approval by the committee.

Under Rule 15, each member, upon assuming his or her duties, was required to make “the following solemn declaration in open Committee”: “I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Rights of the Child honourably, faithfully, impartially and conscientiously.”

Officers

Rule 16 directed the committee to elect, from its membership, a chairperson, three vice-chairpersons, and a rapporteur. Their term of office was set by Rule 17 at two years, with eligibility for reelection.

Rule 21 provided for a possible vacancy in a committee office by stating that, if an officer “ceases or declares his or her inability to continue serving” as an officer, a new officer was to be elected to fill the unexpired term.

Secretariat

Rule 22 placed on the secretary-general the responsibility for providing the secretariat for the committee and any subsidiary bodies it establishes and for providing the committee with “the necessary staff and facilities for the effective performance of its functions.”

Rule 23 stipulated that the secretary-general or his representative was to be present at all committee sessions and could make oral or written statements at meetings of the committee or its subsidiary bodies, subject to the powers of the committee chairperson as defined in a later section of the rules.

Under Rule 25, the secretary-general was made responsible for keeping the committee members informed of any questions that might be brought before it or of any other developments that might “be of relevance to the Committee.”

A final responsibility placed on the secretary-general by Rule 26 was that of preparing and circulating to the committee members an estimate of the cost of any proposal involving expenditures before the committee approved the proposal. This rule further stated that it was the duty of the chairperson to call the committee’s attention to this estimate and to invite discussion on it when the proposal was under consideration.

Languages

Rule 27 designated Chinese, English, French, Russian, and Spanish as official languages and English, French, and Spanish as working languages. Under Rule 28, statements made in any official language were to be interpreted into the other official languages.

Rule 29 placed on any person who addressed the committee in a language other than one of the official languages the responsibility for providing for interpretation into and from one of the working languages.

Interpretation into the other official languages by secretariat interpreters was to be based on the interpretation given in the first working language.

The committee's summary record of meetings, according to Rule 30, were to be drawn up in the working languages, with the committee authorized to issue any such records in the other official languages.

Rule 31 stipulated that all committee decisions were to be made available in the official languages and that all official committee documents were to be issued in the working languages. If the committee so decided, any official documents could be issued in the other official languages.

Public and Private Meetings

Rule 32 mandated that all meetings of the committee and its subsidiary bodies were to be held in public, unless the committee decided otherwise.

Rule 33 gave the committee and its subsidiary bodies the privilege of issuing a communique, through the secretary-general, at the close of a private meeting "for the use of the information media and the general public."

Rule 34 incorporated the contents of convention Article 45(a), entitling the specialized agencies, the United Nations Children's Fund, and other UN organs to be represented "at the consideration of the implementation of such provisions of the Convention that fall within the scope of their mandate." Rule 34 also authorized the committee to invite these bodies to participate in private meetings of the committee or its subsidiary bodies and to invite "other competent bodies concerned" to participate in public or private meetings of the committee or its subsidiary bodies.

Records

Rule 35 directed the secretariat to prepare summary records of the committee's public and private meetings and to distribute these "as soon as possible" to committee members and other participants in the meetings. Corrections could be submitted within three days of the receipt of the records. If there was any disagreement concerning such corrections, this could be settled by the chairperson or, if continued, by committee decision.

As stated in Rule 36, summary records of public meetings were to be available for general distribution, but those pertaining to private meetings were to be distributed only to committee members and other participants in the meetings, unless otherwise decided by the committee.

Distribution of Reports and Other Official Documents of the Committee

Under Rule 37, reports, decisions, and all other official documents of the committee and its subsidiary bodies were designated as documents for general distribution unless otherwise decided by the committee.

Rule 37 further provided that reports and information given to the committee by the specialized agencies, the United Nations Children's Fund, or other UN organs and competent bodies (convention Article 45[a] and Rule 70) were to be distributed by the secretariat to all committee members and, if the committee so decided, to members of its subsidiary bodies, states parties concerned, and other participants at the meetings. Reports and additional information submitted by states parties in connection with their reports to the committee were designated for general distribution.

Conduct of Business

Rule 38 defined a quorum as six committee members.

The powers of the chairperson, as defined in Rule 39, in addition to those given by the convention and other committee rules, were to "declare the opening and closing of each meeting, direct the discussion, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions." Additionally, the chairperson was empowered to "have control of the proceedings . . . and over the maintenance of order"; propose time limits for speakers, on the number of times each person could speak on any question, and the closure of the list of speakers; rule on points of order; and propose adjournment or closure of debate or adjournment or suspension of a meeting. Finally, the chairperson was authorized to call a speaker to order if his or her remarks were "not relevant to the subject under discussion."

Rule 40 concerned points of order, which could be raised by a member at any time during the discussion of "any matter," with the chairperson directed to make an "immediate" decision on the point. This decision could be appealed, with a vote to be taken "immediately" on this appeal. A majority vote of the members present was required to overrule the chairperson's decision.

Rule 41 authorized the committee to set a limit on the time to be allowed each speaker on any question and the chairperson to call to order, "without delay," any speaker who exceeded the allotted time.

Rule 42 dealt with the list of speakers, which was to be announced by the chairperson during the course of a debate and declared closed by the chairperson, with the consent of the committee.

Rule 43 gave each member the privilege of moving for the suspension or adjournment of the meeting during the discussion of any item. Any such motion was to be put “immediately” to the vote, with no discussion.

Rule 44 gave a similar privilege to each member, that is, to move for the adjournment of debate on an item under discussion. The mover could speak to the motion, as could two other members — one in favor of the motion and one opposed — after which the motion was “immediately” to be put to the vote.

Under Rule 45, closure of debate on an item under discussion could be moved by a member at any time during debate, regardless of whether any other member or representative had indicated a desire to speak. The motion could be addressed by only two members opposing closure, “immediately” after which there was to be a vote on the motion.

The order of motions was set by Rule 46 as follows: to suspend the meeting, to adjourn the meeting, to adjourn the debate on the item under discussion, and to close the debate on the item under discussion.

Rules 47 and 48 dealt with proposals, stating that, unless otherwise decided by the committee, substantive proposals, amendments, and motions submitted by members were to be introduced in writing. If any member presented a motion calling for a decision on the committee’s competence to adopt a proposal submitted to it, this motion was to be “immediately” put to vote, before action was taken on the proposal.

Rule 48 stipulated that the proposer of a motion could withdraw the motion at any time before the start of a vote on it if the motion had not been amended. Any member was privileged to reintroduce a withdrawn motion.

Voting

Under Rules 51 and 52, each committee member was to have one vote, and unless otherwise provided in the convention or the rules, committee decisions were to be made by a majority of the members present. A footnote to Rule 52 recorded the view of committee members that “its method of work should normally allow for attempts to reach decisions by consensus before voting, provided that the Convention and the rules of procedure were observed.”

Under Rule 53, if a vote was equally divided on any matter other than elections, the proposal was to be regarded as rejected.

Voting, according to Rule 54, was to be by a show of hands, unless a roll-call vote was requested by members. Members were permitted (Rule 56) to make brief statements before or after the vote was taken. Such statements by members were to consist “solely of explanations of their votes.”

Elections

Rule 60 stipulated that elections were to be by secret ballot unless the committee decided otherwise in the case of elections to fill a place for which there was only one candidate. Rules 61 and 62 presented, in detail, the procedures to be followed when only one elective place was to be filled (Rule 61) and when the election involved two or more places (Rule 62).

Subsidiary Bodies

Rule 63 empowered the committee to “set up such subcommittees and other ad hoc subsidiary bodies as it deems necessary and define their composition and mandates,” subject, “whenever applicable,” to the convention’s provisions and the committee’s rule (Rule 26) concerning the secretary-general’s submission of relevant cost estimates. Each subsidiary body was authorized to elect its own officers and adopt its own rules of procedure.

Reports of the Committee

Rule 64 mandated the submission of biennial reports on its activities under the convention to the General Assembly, through the ECOSOC.

Rule 65 authorized the committee or its subsidiary bodies to issue, for general distribution, other reports on the committee’s activities. Under this rule, other reports, for general distribution, could be issued by the committee in order to “highlight specific problems in the field of the rights of the child.”

FUNCTIONS OF THE COMMITTEE

The major concern of part two of the committee’s provisional rules of procedure was the committee’s relationship to the system of reports from states parties, as set forth in Articles 44 and 45 of the convention.

Submission and Nonsubmission of Reports by States Parties

Rule 66 incorporated the stipulation of convention Article 44 that each state party was to submit an initial report within two years of the convention's entry into force for it and every five years thereafter and added the provisions that the committee could request "additional reports or information in the intervening period" and was to indicate to the states parties, through the secretary-general, "the form and contents of reports or information to be supplied to the Committee."

Rule 67 directed the secretary-general to notify the committee, at each session, "of all cases of non-submission of reports or additional information under Article 44 of the Convention and Rule 66 of these Rules." In such cases, under this rule, the committee's response was to be a reminder to the state party concerned, through the secretary-general, of the material that was to be submitted and "undertake any other efforts in a spirit of dialogue between the State concerned and the Committee."

If the state concerned did not submit the requested material in response to these efforts, the committee was directed by Rule 67 to "consider the situation as it deems necessary and include a reference to this effect in its report to the General Assembly."

Attendance by States Parties at the Examination of Reports

Rule 68 directed the committee to notify the states parties, through the secretary-general, "as early as possible, of the opening date, duration and place of the session at which their respective reports will be examined." Representatives of the states parties were to be invited to be present when the committee was examining their reports.

This rule also authorized the committee to inform a state party from which it wants additional information that it may have a representative present at a specified meeting. This invitation was extended on the presumption, as the rule stated, that this representative could answer the committee's questions, make statements on reports already submitted by his or her state, and submit additional information from that state.

Request for Additional Reports or Information

Rule 69 amplified the authority given the committee by convention Article 44 to request additional information from a reporting state party by

empowering it to “indicate the time-limit within which such additional report or information should be supplied.”

Request for Other Reports or Advice

In keeping with convention Article 45, Rule 70 authorized the committee to invite the specialized agencies, the United Nations Children’s Fund, and other UN organs to submit reports on the implementation of the convention in areas “falling within the scope of their activities” and to invite the agencies, the fund, and “other competent bodies as it may consider appropriate” to provide the committee with “expert advice” on such implementation. Rule 70 also stated that the committee could “indicate . . . the time-limit within such reports or advice should be supplied to the Committee.”

Suggestions and General Recommendations on a State Party’s Report

Also in keeping with convention Article 45, Rule 71 gave the committee authority to make “suggestions and general recommendations on the implementation of the convention” by a reporting state, based on information obtained from that state’s report and the sources noted in Rule 70, and to transmit these reactions to the state concerned through the secretary-general for that state’s comments. Under this rule, the committee could set the time limit for the submission of such comments, and these comments, together with the committee’s suggestions and recommendations, could be included in the committee’s reports to the General Assembly.

Other General Recommendations

Rule 72 empowered the committee to make “other general recommendations based on information received pursuant to Articles 44 and 45 of the Convention,” including these in its reports to the General Assembly, together with any comments it may have received from states parties.

General Comments on the Convention

Another privilege extended to the committee, under Rule 73, was “to prepare general comments based on the articles and provisions of the Convention with a view to promoting its further implementation and

assisting the States Parties in fulfilling their reporting obligations,” including these in its reports to the General Assembly.

Transmission of States Parties’ Reports that Contain a Request or Indicate a Need for Technical Advice or Assistance

Rule 74, following convention Article 45, authorized the committee to make this transmission to the specialized agencies, the United Nations Children’s Fund, and “other competent bodies,” including, in this sending, any “observations or suggestions” the committee might have to offer on the requests or indications. Under this rule, the committee also could request “information on the technical advice or assistance provided and the progress achieved.”

NOTES

1. “The Convention on the Rights of the Child,” *The Review* 36 (June 1986): 30.

2. Convention on the Rights of the Child, Committee on the Rights of the Child (hereafter cited as CRC/C), *Official Records*, “Provisional Agenda and Annotations,” Note by the Secretary-General, CRC/C/42, March 17, 1995, p. 3. One committee member has expressed the opinion that the quality of the committee’s work could be improved by adding experience with “real situations,” a background in the nongovernmental community, and a capacity for “overview” to the qualifications for committee membership and by providing education and training experiences for persons elected to this position (Thomas Hammarberg, letter to author, January 29, 1996).

3. UN Economic and Social Council, *Official Records*, “Question of a Convention on the Rights of the Child,” Report of the Working Group on a Convention, E/CN.4/1989/48, March 2, 1989, pp. 119–24.

4. UN Economic and Social Council, *Official Records*, “Status of the Convention on the Rights of the Child,” Report of the Secretary-General, E/CN.4/1992/54, January 7, 1992, p. 2. The General Assembly action noted here followed from committee recommendations.

5. A U.S. proposal to substitute “other competent bodies as (the Committee) may deem appropriate” for “other UN organs” in order to allow NGOs to submit reports was rejected. UN Economic and Social Council, *Official Records*, “Question of a Convention on the Rights of the Child,” pp. 126, 127.

6. UN Economic and Social Council, *Official Records*, “Status of the Convention on the Rights of the Child,” p. 2; Committee on the Rights of

the Child, Convention on the Rights of the Child, *Official Records*, “Provisional Rules of Procedure,” CRC/C/4, November 14, 1991.

10

The Committee on the Rights of the Child at Work: Sessions

Some insights into what the Committee on the Rights of the Child actually does in the process of discharging its implementary responsibilities can be gained by reviewing the record of a typical committee session. The session chosen for this purpose was the fifth, held at Geneva, January 10–28, 1994.¹

All ten members of the committee were present for this session, during which 26 meetings (105–130) were held. Of these ten members, three were from Africa (Burkina Faso, Egypt, Zimbabwe), three from Latin America (Barbados, Brazil, Peru), two from West Europe (Portugal, Sweden), and one each from Asia (Philippines) and East Europe (Russian Federation). Also attending were representatives of the United Nations Children's Fund; the Office of the UN High Commissioner for Refugees; the International Labour Organization; the United Nations Educational, Scientific, and Cultural Organization (UNESCO); the World Health Organization; the International Criminal Police Organization; the Indigenous Peoples' Documentation Center; the Nongovernmental Organization Group for the Convention on the Rights of the Child; and One World Productions. Nongovernmental organizations in attendance in Category 1 were the International Movement ATD Fourth World, Soroptimist International, and Zonta International and in Category 2 were Defence for Children International, Friends (Quakers) World Committee for Consultation, International Association of Penal Law, International

Catholic Child Bureau, International Federation of Women in Legal Careers, International Federation Terre des Hommes, and International Service for Human Rights, and, on the Roster, World Organization Against Torture.²

PRESESSIONAL WORKING GROUP

The committee's session was preceded by a meeting of the preessional working group created, in its first session, to assist the committee in its review of reports submitted by states parties. In this meeting, held in Geneva, November 15–19, 1993, the group examined the lists of issues it had been given by committee members relative to the initial reports from five countries (Belarus, Colombia, France, Pakistan, and Romania). The group also dealt with lists of issues prepared in the previous preessional meeting relative to initial reports from Mexico and Namibia.

These lists were sent to the permanent missions of the states concerned together with a note stating the committee's desire to have written answers to these issues by the end of 1993 and expressing the working group's belief that "the constructive dialogue which the Committee wishes to have with representatives of the reporting States can be facilitated by making the list [sent to a particular State] and the written answers to it available in advance of the Committee's session."

The report on this committee session also noted that the preessional working group had decided that, whenever possible, it should establish informal contacts with the permanent missions of states whose reports were to be considered at forthcoming sessions. Through such contacts, states could be informed concerning the committee's procedure for this consideration and helped to have a clearer understanding of the purposes to be served through the committee's dialogue with representatives of the states concerned.³

CONSIDERATION OF REPORTS FROM STATES PARTIES

The major agenda item for this committee session was the consideration of initial reports from six states parties: Mexico, Namibia, Colombia, Romania, Pakistan, and Belarus. The review of a seventh report, from France, was also scheduled for this session but was postponed at the request of this state.

The committee also granted Pakistan's request for the postponement of consideration of its report. Some members of the committee, however,

met informally with a representative of the Pakistani government who was in Geneva. This meeting provided an opportunity for Pakistan's representative to submit written information in reply to issues the committee had submitted to his government and to be informed concerning the committee's procedure for the consideration of reports.

Thirteen of the 26 meetings held during this session were devoted to the consideration of the reports from the other five parties — Mexico, Namibia, Colombia, Romania, and Belarus — all of whom had representatives present to participate in the examination of their states' reports.

This examination led to the committee's adoption of a set of concluding observations, in which the committee noted the positive aspects of the reporting state's performance in relation to the convention's standards and the factors and difficulties hampering its implementation of the convention. In these observations, the committee also identified those features of a state's laws, regulations, and practices that were of particular concern to the committee because of their actual or possible incompatibility with the convention.

In the case of Romania, for example, the committee was "particularly concerned" as to whether there were adequate measures to protect children from being victims of economic reforms; the occurrence of child abuse and neglect; the growing number of children living or working in the streets; the situation of children of minorities, with the low school attendance of gypsy children being a "serious problem"; and the lack of adequate training of social workers, law enforcement officials, and judicial personnel concerning the principles and provisions of the convention.

A final section of the observations contained the committee's suggestions and recommendations concerning actions that a state should or could take in order to improve its performance in relation to the convention.

Thus, the recommendations addressed to the Mexican government included calls for more intensified action against all violence leading to ill-treatment of children, particularly at the hands of members of the police force, security services, and the military; for "urgent measures" to combat discrimination against children living or working in the streets and belonging to indigenous communities; and for "due consideration" to be given to the convention's provisions on adoption, with intercountry adoption to be viewed as a measure of last resort.⁴

COOPERATION WITH OTHER UNITED NATIONS ORGANS, SPECIALIZED AGENCIES, AND OTHER BODIES

The committee's agenda for its fifth session included an item relating to another important aspect of the committee's work — cooperation with other UN bodies and specialized agencies. An example of this cooperation noted in the record of the fifth session was an informal meeting in Geneva involving the committee and specialized agencies, held for the purpose of considering "ways and areas in which existing cooperation could be strengthened to enhance the protection and promotion of the rights of the child."

One such area included in the discussion was the sharing of available information having relevance for the study of country situations and specific topics concerning child's rights. In this connection, reference was made to the steps already taken to create an information and documentation network on the rights of the child that would involve the committee, UN organs, specialized agencies, and other competent bodies, a project whose importance "had been reaffirmed on many occasions" by the committee.

The question of a cooperative approach to the obtaining of essential information was also the subject of two other agenda items concerning a system of documentation and information and the question of indicators — basic statistical data and information from states parties that the committee needed to have in order to determine how well the states were applying the convention's provisions.

As noted in the discussion of these items, one way in which the objective of cooperation for information purposes could be served was the establishment of links between the projected data base at the UN's Centre for Human Rights and the data bases of other UN organs, for example, the "vast database" that the United Nations Children's Fund was currently creating, to which members of the committee would have access.

The place given to cooperation with UN organs, specialized agencies, and other bodies in the committee's complementary endeavors is also of great importance to the committee in another aspect of its complementary work dealt with in this session, that is, education, which the committee considers to be "an essential element of an overall human rights strategy . . . to create awareness of, promote respect for and effective protection of the rights of the child, and to prevent violations of those rights."

As this session's record noted, three committee members had met informally with representatives of UNESCO in order to strengthen the

educational component of the committee'splementary work. This November 1993 meeting in Paris provided an opportunity to consider ways to "enhance international cooperation in the field of education and to envisage ways of improving the system of implementation of the Convention . . . in this area."

One of the specific channels for future cooperation cited in this informal session was participation by UNESCO in meetings of the committee's preessional working group. This involvement was seen as a way to facilitate the sharing of information relevant to the committee's work and to arrive at a common approach to programs of technical advice or assistance to states parties on national or regional levels.

The importance of cooperation with other agencies in the committee'splementary work also was noted in its discussion of four other items on its agenda for this session: the sale of children, child prostitution, and child pornography; the economic exploitation of children; the environment; and offences against minors.

In connection with the first of these concerns, the committee noted "the close and fruitful cooperation developed with the Special Rapporteur of the [UN] Commission on Human Rights," an example being the rapporteur's participation in the discussion of this topic in the committee's fourth session.

The issue of the economic exploitation of children also was being dealt with by the committee in cooperation with a special rapporteur, in this case, the one designated by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. The committee's fifth session discussion of this topic led to a decision to inform the special rapporteur of "all the steps it had taken in this regard and to express its interest in maintaining close cooperation with her" and to the adoption of two proposals of a committee working group.

The first working group proposal called for the compilation of a dossier of material, *inter alia*, on the economic exploitation of children, to be produced and distributed "in close cooperation" with the International labour Organization. The second proposal called for a set of recommendations for initiatives "designed to improve the system of prevention, protection and rehabilitation regarding children in situations of economic exploitation."

In connection with the third issue, the environment, the committee took note of a letter received from the Assistant Secretary-General for Human Rights concerning the mandate concerning human rights and the environment that had been given to the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of

Minorities. In response to this letter, the committee “noted with appreciation” that this special rapporteur had included, in her second progress report, “relevant information from States Parties’ reports indicating their concern for children and the state of the environment.” The committee then decided to share with the rapporteur the specific measures relative to the environment that had been brought to its attention through the initial reports submitted to the committee by states parties.

The committee’s interest in the question of offences against minors had led to an exchange of views with Interpol’s Standing Working Party on this issue; when, in the fifth session, the committee decided to develop plans for national and regional action to protect the child’s rights in this area, in “close cooperation” with other agencies, Interpol was included in the list of such bodies.⁵

OTHER ACTIONS TAKEN BY THE COMMITTEE

Other actions taken in this session, illustrative of the kinds of work done by the committee, included preparations for a day of general discussion and the adoption of three resolutions under the heading of “Conclusions and Recommendations.”

The committee adopted “The Role of the Family in the Promotion of the Rights of the Child” as the theme for the general discussion to be held October 10, 1994, and decided that invitations to participate in this event were to be sent to the Human Rights Committee, the Committee on Economic, Social, and Cultural Rights, and the Committee on the Elimination of Discrimination Against Women.

Two of the committee’s resolutions concerned the organization of its work. The first of these was inspired by the committee’s “increasingly heavy workload” and the need to avoid the creation of “an undesirable backlog” in the consideration of states parties’ reports. The committee’s response to this problem was a request to the secretary-general to convene a meeting of the states parties to the convention for the purpose of increasing to three the number of annual sessions of the committee and its presessional working group. The committee’s response also included a request to the General Assembly that it approve “any such determination that may be adopted by the States Parties.”

The second organizational action reaffirmed the decision, taken at its fourth session, to hold a special committee session in 1994 in order to prevent a backlog of unconsidered reports from states parties and to be in a position to submit the required biennial report to the General Assembly

in its 1994 session. The call for a special 1994 session also applied to the committee's presessional working group.

The committee's third resolution concerned the committee's participation in programs and activities of other UN agencies and treaty bodies as a means of developing effective communication and dialogue with them. With this objective in mind, the committee decided to be represented at "and to follow closely" the preparatory process of the World Summit for Social Development to be held March 1995 in Denmark and the World Conference on Women in Beijing, China, the same year.

The committee also decided to send representatives to the 1994 International Conference on Population Development in Cairo, Egypt, and reaffirmed "the importance it attached" to its participation in the 1994 meeting in Geneva of experts on the application of international standards for the rights of detained juveniles.

The final decision contained in this resolution was to "follow closely" the 1994 discussions of the Committee on Economic, Social, and Cultural Rights on social safety nets for situations of major structural adjustments and transitions to free market economies, items the committee felt to be significant for its dialogue with states parties to the convention.⁶

NOTES

1. The basic source of information on the work of the committee in its fifth session is Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Fifth Session," CRC/C/24, March 8, 1994.

2. Information on attendance by committee members and others is given in the committee report, Committee on the Rights of the Child, Convention on the Rights of the Child, "Report on the Fifth Session," pp. 7, 8, and the committee's membership is listed there on p. 51. Nongovernmental organizations holding consultative status with the UN Economic and Social Council are grouped as follows: Category 1, those with a basic interest in most of the council's activities; Category 2, those with special competence and specific concern with only a few of these activities; and, placed on the Roster for ad hoc consultations, those who have a significant contribution to make to the council's work.

3. Committee on the Rights of the Child, Convention on the Rights of the Child, "Report on the Fifth Session," p. 9.

4. Committee on the Rights of the Child, Convention on the Rights of the Child, "Report on the Fifth Session," pp. 12-27. The process of reviewing parties' reports is dealt with in the chapter on the report system, which also includes details illustrative of points mentioned in this chapter's summary of the committee's consideration of reports.

5. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Summary Record of the 108th Meeting,” CRC/C/SR.108, March 6, 1995, p. 2; Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Summary Record of the 123rd Meeting,” CRC/C/SR.123, February 1, 1994, *passim*.

6. Committee on the Rights of the Child, Convention on the Rights of the Child, “Report on the Fifth Session,” pp. 4–6, 43.

11

The Committee on the Rights of the Child at Work: Conclusions and Recommendations

In addition to the suggestions and recommendations made to states parties as part of its concluding observations on their reports, the committee adopts conclusions and recommendations on a wide range of subjects, as illustrated by the actions taken by the committee in its first eight sessions under 11 headings.¹

ORGANIZATION OF WORK

Four actions were taken under this heading.

In its first session, the committee requested the General Assembly to authorize the secretary-general to schedule at least two regular committee sessions annually, with the second to be preceded by a one-week meeting of a working group of the whole to prepare for the consideration of the first round of states parties' reports. Additionally, it requested the General Assembly's authorization of a pre-session working group to meet about two months prior to each committee session to conduct a preliminary review of parties' reports and to consider questions relating to technical assistance and international cooperation for the convention's implementation.

In its fourth session, the committee called for a special committee session in 1994, to be preceded by a meeting of its working group, in order to prevent the development of a backlog of parties' reports.

In its fifth session, the committee requested the secretary-general to convene a meeting of states parties to review the duration of committee meetings and to increase to three the number of annual sessions of the committee and its working group and to request the General Assembly to approve the action taken by the parties.

In its fifth session, the committee reaffirmed the “importance and urgency” of the special session requested for 1994 as an essential means of dealing with the committee’s workload.

STRENGTHENING THE SUPPORT OF THE COMMITTEE

In its fourth session, the committee, anticipating an “unprecedented number” of states parties’ reports, requested the secretary-general to strengthen the support to the committee and provide it with a minimum of two additional professional and one general services posts.

INFORMAL REGIONAL MEETINGS

Three actions were taken under this heading.

In its second session, the committee welcomed the opportunity to hold the first regional meeting in Quito, Ecuador; expressed thanks to the host government for “the warm welcome” extended at this meeting; recognized the importance of such meetings for the promotion of the rights of the child; and welcomed the possibility of other informal regional meetings, annually when possible.

In its fourth session, the committee emphasized the decisive role of informal regional meetings to promote the rights of the child, recognized the importance of such meetings to achieve universal ratification of the convention and its effective implementation, and welcomed the possibility of future annual meetings when possible.

In its seventh session, the committee reaffirmed the action taken in the fourth session and welcomed the possibility of undertaking future trips by some of its members to particular countries to encourage the universal ratification of the convention and contribute to its effective implementation and to ensure a follow-up to the committee’s consideration of the reports of the states visited.

SOURCES OF INFORMATION

Two actions were taken under this heading.

In its first session, the committee made a series of requests:

- that the secretary-general establish a committee resource room to facilitate its access to information essential to its functioning;
- that the secretariat report, at the start of each committee session, on action on committee decisions taken at its previous session;
- that the secretariat organize country files and prepare analytical studies of information regarding states parties whose reports are scheduled for committee consideration (this was repeated in the second session, as were the preceding two requests);
- that the secretariat provide a documentary basis for a comprehensive report on developments relevant to the committee's work occurring since the previous session;
- that the secretariat submit, at the beginning of each committee session, a list of reports submitted and of those pending;
- that the secretariat provide the committee with an updated list of reservations to the convention and of objections to reservations;
- that the secretariat provide a compilation of international instruments relevant to the committee's work and of relevant recommendations and resolutions adopted by various UN organs and specialized agencies;
- that the secretariat provide the committee with a compilation of general comments and recommendations adopted by various human rights treaty bodies; and
- that the secretary-general strengthen the training activities related to the convention's implementation and to consider organizing seminars and workshops on the national level to train persons involved in preparing states parties' reports.

In its second session, the committee renewed three first-session requests addressed to the secretary-general and added a request that he encourage UN bodies, specialized agencies, and other competent bodies to provide the committee with information essential to its performance.

Also, the committee expressed concern for the delay in implementing the recommendations of a task force on computerization for the benefit of treaty bodies and the reporting system and established a committee working group to consider the question of information and computerization in cooperation with the Centre for Human Rights, UN bodies, and other competent bodies.

PUBLIC INFORMATION ACTIVITIES

Four actions were taken under this heading.

In its first session, the committee requested the secretary-general to ensure that the United Nations Information Centres make the committee's documents freely available for general distribution, with special attention to reports submitted to the committee by the state hosting a particular center and to provide for and encourage the dissemination of information on the convention and the committee. The first part of this action was repeated in the second and third sessions, and the second was repeated in the second session.

In its second session, the committee welcomed the publication of an issue of the *Bulletin of Human Rights* on the topic of the rights of the child and requested the secretary-general to provide for and encourage the dissemination of information on the convention and the committee, considering, for this purpose, the translation of the convention into different languages; the inclusion in the "Manual on Human Rights Reporting" of a chapter on the mechanism established under the convention; a priority for the completion and issuance of the "Travaux préparatoires" and the "Commentary on the Convention on the Rights of the Child"; and the issuing of a special publication for children on the convention's principles and provisions.

Also, the committee requested the secretary-general to strengthen the training activities related to the convention's implementation, including the training of persons involved in the preparation of reports by states parties and encouraged the secretary-general to consider providing training and technical assistance to national institutions acting in the field of the rights of the child and to consider the implementation of the convention as a priority matter within the fellowship program.

Finally, the committee invited states parties to pay particular attention to the need to translate and publish the convention in the various local languages.

In its third session, the committee repeated action taken in the first two sessions concerning the availability of committee documents and recommended, for this purpose, that "serious consideration" be given to the issuing of a compilation for each state party containing that party's report, the summary records of its consideration by the committee, and the committee's concluding observations on the report.

In its sixth session, the committee requested the secretary-general to ensure the translation of the committee's report on each session into the official UN languages.

DOCUMENTATION UNIT ON THE RIGHTS OF THE CHILD

In its third session, the committee adopted a recommendation calling for consideration to be given to the establishment within the Centre for Human Rights of a documentation unit to follow and assist the committee's activities and those of the Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution, and pornography and of the Working Group on Contemporary Forms of Slavery of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

RELATIONS WITH OTHER UNITED NATIONS ORGANS AND TREATY BODIES

Seven actions were taken under this heading.

In its first session, the committee:

- welcomed and endorsed the recommendations by the Committee on Economic, Social, and Cultural Rights to hold a meeting with that committee and with members of other committees having an interest in the rights of the child;
- welcomed the opportunity to participate in future meetings of persons chairing human rights treaty bodies, an action repeated in the second session;
- welcomed the possibility of participating in the seminar of experts on appropriate indicators to measure achievements in the realization of economic, social, and cultural rights (repeated in the second session); and
- decided to follow the meetings and activities of other human rights treaty bodies (repeated in the second session).

In its second session, the committee:

- welcomed the opportunity to participate in the meeting of experts on the application of international standards concerning the rights of detained juveniles (repeated in the third and fifth sessions);
- expressed the hope that adequate resources would be provided to enable the committee to develop effective communication with other human rights bodies (repeated in the ensuing three sessions);
- invited the special rapporteurs appointed by other human rights bodies to take the Convention on the Rights of the Child into consideration as they discharged their respective mandates (repeated in the fourth session); and

welcomed the opportunity to start a dialogue with the special rapporteur on the sale of children and expressed willingness to pursue this dialogue.

In its third session, the committee:

decided to follow closely the preparation for the International Year of the Family and, in its framework, to strengthen the committee's cooperation with the Centre for Social Development and Humanitarian Affairs (repeated in the fourth session) and

requested the Special Rapporteur of the Commission on Human Rights on the situation in the territory of the former Yugoslavia to take the Convention on the Rights of the Child into consideration in fulfilling his mandate and in his future reports.

In its fourth session, the committee:

requested the secretariat to transmit the committee's reports to the special rapporteurs and working groups established by the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities and

recognized the importance of being associated with the preparatory process for the 1995 World Conference on Women and decided to devote a future meeting to consider its contribution to this event (repeated in the fifth session).

In its fifth session, the committee asked to be represented at and follow preparations for the 1995 World Summit for Social Development and reaffirmed actions taken in previous sessions.

In its sixth session, the committee:

welcomed the decision of the Commission on Human Rights to establish an open-ended working group to elaborate a draft protocol to the convention on children in armed conflicts, using as a basis the committee's preliminary draft, and to submit its comments on this issue and

submitted its comments on guidelines for a possible draft of an optional protocol to the convention on the sale of children, child prostitution, and child pornography; reaffirmed the framework created by the convention to deal with situations involving these problems and to take preventive and corrective measures; stressed the "decisive political commitment" expressed by an unprecedented number of states to the convention's effective implementation; and reaffirmed that states parties should take "all appropriate measures" to ensure and respect the convention's rights.

MEETING OF PERSONS CHAIRING THE HUMAN RIGHTS TREATY BODIES

In its second session, a decision was made to bring the following issues to the attention of the fourth meeting of persons chairing the human rights treaty bodies:

- the innovative experience of informal regional meetings as a means to promote greater awareness of the convention and its implementary system and to give the committee a better understanding of a region;
- the need for the fourth meeting to give particular consideration to the computerization of the work of treaty-monitoring bodies and the adoption of “adequate and urgent” recommendations;
- the need for the secretary-general to make the committee’s documents freely available in the United Nations Information Centres or the offices of the United Nations Development Program and to consider providing training and assistance to national institutions acting in the field of the rights of the child;
- in connection with the issue of reservations and declarations accompanying ratifications of the convention, the importance of a holistic approach to the rights of the child, all of which are interrelated; and
- the relevance of handling the question of reservations and declarations in the committee’s dialogue with states parties during the consideration of their reports.

WORLD CONFERENCE ON HUMAN RIGHTS — RECOMMENDATIONS TO THE PREPARATORY COMMITTEE

Two actions were taken under this heading. In its first session, the committee recommended:

- the inclusion in the agenda of an item relating to the activities of the human rights treaty bodies;
- the organization of the agenda in a manner that would give “due emphasis” to the rights of the child;
- the inclusion of the improving of the effectiveness of treaty bodies and the strengthening of the material and human resources of the Centre for Human Rights in the agenda;
- the inviting of all United Nations human rights treaty bodies to the conference;

the convening of members of human rights treaty bodies as part of the preparation for the conference; and

the holding of national, regional, and international workshops and seminars in preparation for the conference.

In its third session, the committee designated its chairperson and rapporteur as its representatives to the fourth session of the Preparatory Committee for the World Conference and recommended that this committee consider the issue of the involvement of children in armed conflicts.

CHILDREN IN ARMED CONFLICTS

Three actions were taken under this heading.

In its third session, the committee recommended that the General Assembly request the secretary-general to undertake a study on ways and means to improve the protection of children “from the adverse effects” of armed conflicts.

In its fourth session, the committee requested the secretary-general to transmit to the Commission on Human Rights the committee’s preliminary draft protocol on the protection of children in armed conflicts.

In its seventh session, the committee welcomed and offered to cooperate with the expert appointed by the secretary-general to make a “comprehensive study” of ways to improve the protection of children in armed conflicts.

ADVISORY SERVICES AND TECHNICAL ASSISTANCE

In its seventh session, the committee:

reaffirmed the importance of identifying, in connection with its consideration of states parties’ reports, specific areas in which technical advice or assistance would be appropriate;

reaffirmed its willingness to cooperate with the Centre for Human Rights and other relevant bodies;

welcomed the invitation from the Commission on Human Rights to submit proposals for specific technical assistance programs;

decided to continue to identify, in its concluding observations on parties’ reports, main areas in which technical assistance or advice would be appropriate; and

decided to bring its recommendations concerning technical advice or assistance to the attention of concerned bodies.

NOTE

1. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Compilation of the Conclusions and Recommendations Adopted by the Committee on the Rights of the Child," CRC/C/19/Rev. 4, February 28, 1995.

12

Evaluation of the Committee on the Rights of the Child

The experience of the first years of the life of the Convention on the Rights of the Child provides a good basis for an evaluation of the Committee on the Rights of the Child, established to “examine the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention” (Article 43).

This appraisal will explore two points concerning the committee: the conditions under which it functions and its performance, presenting both their negative and positive aspects.

THE CONDITIONS UNDER WHICH THE COMMITTEE FUNCTIONS

The principal condition affecting the committee’s ability to serve effectively as the convention’s major implementary organ is the scope of its assignment. As of the end of 1994, this instrument had 170 adherents, 29 more than the convention dealing with racial discrimination, which ranked second among the UN’s human rights treaties in this regard. To compound the problem, the committee was expected to monitor the performance of all 170 parties under a convention that covers a wider variety of rights than any of its companion treaties within the UN framework.¹

Although overseeing the performance of parties is the committee's foremost responsibility, it is not the only one; under Article 45(b) of the convention, the committee also is mandated to transmit to the UN specialized agencies, the United Nations Children's Fund, and other competent bodies "any reports from States Parties which contain a request, or indicate a need for technical advice or assistance along with the Committee's observations and suggestions, if any."

This involvement of the committee in technical assistance, as one observer has noted, constitutes "a change in the very concept of a treaty monitoring body. The role of the Committee is not only to evaluate the efforts made by States to fulfill their obligations under the convention, but also to help them, when appropriate, to obtain assistance needed to overcome obstacles to full implementation."

The wisdom of placing this additional burden on the committee has been questioned by those who feel that the committee has "an enormous amount of work to do in monitoring, and assuming a second function would adversely affect its ability to carry out its monitoring function effectively." The fact that "development assistance is a complicated area, in which committee members have little expertise" is seen as lending strength to the possibility that this "adverse effect" would, indeed, be felt.²

The desire to prevent this from happening may be one reason why the committee has taken action under Article 45(b) only rarely — in regard to just 13 states over a four-session period.³

The existence of a possible negative impact on the committee's ability to perform its monitoring duties, however, does not alter the fact that looking for cases in which there is a need for technical advice and assistance stands as one of the committee's responsibilities; therefore, it imparts added significance to the problem of the workload that confronts the committee.

The magnitude of the committee's task has a number of implications for its work. One of these, in the words of committee member Thomas Hammarberg, is that "there is no practical possibility for the Committee to monitor in detail the implementation of the Convention in each country."⁴

The scope of its responsibilities, thus, demands a lowering of expectations concerning the committee's performance as a treaty-monitoring body. It also creates a situation in which the question of the committee's ability, in terms of time and personnel, to give adequate attention to all areas of its work is one of "very great importance."⁵

Considerable significance, thus, attaches to the efforts made to deal with the problems of time and personnel and, thereby, improve the

committee's ability to cope with its workload. The response to the first of these problems included proposals to give the committee more working time by increasing the number of its annual sessions from two to three and to enable it to function more efficiently by limiting the time to be spent on a party's report. Two approaches were taken to the personnel problem: proposals to expand the committee's membership from 10 to 18 and a request to the UN Centre for Human Rights asking that more posts and services be made available to the committee.⁶

A second condition affecting the committee's ability to serve effectively as the convention's major implementary organ is its terms of reference, the mandate under which it operates. This mandate, for example, does not include the authority to receive individual complaints, alleging that states either have failed to take certain steps called for by the convention or have acted in ways that are proscribed by this instrument.

The committee's terms of reference, moreover, are silent on the question of what the committee can do in regard to the nonsubmission by states of the reports they are obligated to make concerning their performance as parties to the convention; it is only by implication that they authorize the committee to deliver a finding that a given report contains evidence of noncompliance with the convention's standards.

These last two limiting aspects of the committee's mandate have, however, been overcome at least partly by the approach the committee has taken to its task, as the next section indicates.

THE COMMITTEE'S PERFORMANCE

A review of the committee's performance through its first eight sessions reveals a tendency to take an aggressive, expansive approach to its terms of reference. Thus, the absence of any reference in its mandate to action to be taken in regard to the nonsubmission of parties' reports led the committee to include this function in its rules of procedure, together with a listing of steps to be taken to put it into effect.

Rule 67 stipulates that, after receiving notice from the UN secretary-general that certain reports have not been received by their due dates, the committee is to send appropriate reminders to these states through the office of the secretary-general and "undertake any other efforts in a spirit of dialogue" between the states concerned and the committee.

If any delinquent state fails to respond to these initial steps, the committee is empowered "to consider the situation as it deems necessary and include a reference to this effect in its report to the General Assembly."

Again, in what could be called a form of committee activism, this body displayed an inclination to assume a judgmental role that is present only by implication in its terms of reference. These terms include the authority, under Article 45(d), to “make suggestions and general recommendations based on information received pursuant to Articles 44 and 45” concerning the system of reports from states parties.

“Suggestions and recommendations” obviously do not have the force of a “guilty” verdict returned by a duly constituted court, but it is just as obvious that they are made only as responses to situations that the committee finds to fall short of convention standards, a process that is clearly judgmental in nature.

What may follow, by way of international-level action to give effect to such judgments expressed by the committee, is severely limited by the committee’s mandate, one that does not empower it to take any direct action either on the basis of its examination of parties’ reports or on the requests it receives for “urgent intervention” in particular situations.

The only enforcement that can be given to the committee’s findings through the convention’s implementary procedures is any action that the UN General Assembly may decide to take after it has received the committee’s suggestions and recommendations, which, according to Article 45(d), “shall” be reported by the committee to the General Assembly.

The facts that the committee is not a court and that its findings lack the support of a law enforcement establishment do not negate a conclusion that follows from a review of the committee’s performance: that the committee does, indeed, find states in violation or neglect of the convention’s standards and declares this finding either explicitly, by declarations of noncompliance, or implicitly, through suggestions and recommendations.

Nonconformity with convention standards was declared, for example, in regard to the long periods of imprisonment for delinquent children called for in Vietnam’s national penal laws and to Sudan’s law permitting punishment by whipping, and a similar judgment was given concerning Belarus’s denial to children of the opportunity to engage in political activities.⁷

In addition to flat declarations of noncompliance such as these, the committee’s records contain a vast array of suggestions, recommendations, and statements of “matters of concern” that express the committee’s feeling that deficiencies have been found in the laws and practices of states parties to the convention.

The committee's practice of delivering cautiously worded statements that are strongly suggestive of noncompliance is seen in such comments as those made on the report from France — that there was “a possibility that legislation might not fully reflect the Convention's provisions concerning the child's right to know its origin” and that there was a “possible inconsistency between legislation and practice concerning juvenile justice and Convention Articles 37 and 40.” The committee also expressed “concern” about the impact of legislation adopted on the nationality, entrance, and residence of foreigners, refugees, asylum seekers, and family reunification on children's rights as set forth in the convention's Articles 7, 9, 10, and 22 and its general principles.⁸

The committee's practice of directly or indirectly stating that a party's laws and practices do not comply with the convention's standards at certain points is evidence that this body's examination of reports is thorough. It also demonstrates that the committee is fulfilling its responsibility to view parties' reports critically, and this approach is essential if the review process is to be the means of helping states to see where changes must be made if they are to provide, to the greatest extent possible, for the well-being of the children within their jurisdiction.

The committee's critical approach to a party's report is taken in respect not only to what it says about this state's laws and practices but also to the “factors and difficulties” it presents as standing in the way of this party's fulfilling its obligations under the convention, presentations that committee members “seldom” accept at face value.⁹

There are a number of ways through which the committee's ability and readiness to take this approach to parties' reports, and the credibility of what this approach produces, could be increased: closer contacts could be effected with countries whose reports are scheduled for review, through visits to these countries by committee members; the use of special rapporteurs; or the development of stronger relationships with the nongovernmental organizations in the targeted nations. Procedures such as these could provide the committee with the kinds of background information that would enable them to judge the contents of reports more accurately.

The committee also would be placed in a better position to take a meaningful critical look at parties' reports by improved techniques and processes for storing and retrieving basic data on the states parties to the convention. This is an objective whose attainment requires a high level of cooperation among all the agencies and “other competent bodies” cited in Article 45 as potential participants in the committee's report review process.¹⁰

NOTES

1. Dan O'Donnell, "Two Steps Forward . . . One Step Backward?" *Monitor* 8 (1991): 4.

2. See *ibid.*, p. 8, for the comments quoted in this discussion of the committee and technical assistance.

3. Members of the committee in response to the author's questionnaire; Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Note by the Secretary-General," CRC/C/30, May 30, 1994, entire.

4. "Report on Other Meetings and Activities," in *General Assembly Official Records*, World Conference on Human Rights, A/CONV.157/PC/42/Add.2, April 20, 1993, p. 5.

5. This is the judgment expressed by committee members in response to the author's questionnaire.

6. The proposals concerning the time factor were put into effect. The approaches to the personnel problem were still pending as of the spring of 1995. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Summary Record (Partial) of the 210th Meeting," CRC/C/SR.210, May 26, 1995, pp. 2, 5, 6. On the question of additional personnel from the Centre for Human Rights, it should be noted that this committee already had been given more of this kind of assistance than any other treaty-monitoring body (O'Donnell, "Two Steps Forward," p. 6).

7. These actions are noted in Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations of the Committee on the Rights of the Child: Viet Nam," CRC/C/15/Add.3, February 18, 1993, p. 2; Bruce Abramson, "First State Reports," *Monitor* 10(1-2) (1993): 24; "Five Countries Under Scrutiny" (news item), *Monitor* 11(1) (1994): 13.

8. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations of the Committee on the Rights of the Child: France," CRC/C/15/Add.20, April 25, 1994, pp. 2-4.

9. Members' responses to the author's questionnaire.

10. These proposals have been included in a January 1996 memo to the Committee on the Rights of the Child by committee member Thomas Hammarberg.

13

The Convention's Report System

The convention's program for the implementation of its standards centers on a system of reports from states parties to the convention concerning their performance in regard to these norms, with the Committee on the Rights of the Child designated as the body responsible for the management of this system.

In the officially stated opinion of the committee, the report system "entails an ongoing reaffirmation by States Parties of their commitment to respect and ensure the observance of the rights set forth in the Convention and serves as the essential vehicle for the establishment of a meaningful dialogue between the States Parties and the Committee."

An additional significance of the report system, in the committee's judgment, is that the process of preparing a report "offers an important occasion for conducting a comprehensive review of the various measures undertaken to harmonize national law and policy with the Convention and to monitor progress made in the enjoyment of the rights set forth in the Convention."

The process of preparing a report also is seen as "one that encourages and facilitates popular participation and public scrutiny of government policies."¹

The basis for this implementary program is Article 44 of the convention, through which states parties "undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the

measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of these rights.” These reports are to be submitted within two years of the convention’s entry into force for a particular party and every five years thereafter.

Article 44 further defines the ground to be covered in the reports by stipulating that “reports . . . shall indicate factors and difficulties, if any, affecting the degree of fulfillment of obligations under the present Convention . . . [and] contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.” If the committee considers a report to be deficient at this point, it may request additional information from the reporting state.

The committee also is empowered, under Article 45, to transmit any reports from states parties that “contain a request, or indicate a need for technical advice or assistance” to the specialized agencies, the United Nations Children’s Fund, or other “competent bodies.”

The functioning of the report system is broadened by the provision in Article 45 stipulating that the committee may invite the specialized agencies, the United Nations Children’s Fund, and other UN organs to submit reports “on the implementation of the Convention in areas falling within the scope of their activities.”

The Provisional Rules of Procedure adopted by the committee to govern its procedure in dealing with reports,² the Guidelines issued by the committee for the use of states parties in preparing their reports, and the experience of the first years in the life of the report system will be the focus of the discussion in this part of the book. A concluding review of the committee’s handling of one country’s initial report will provide additional insights into the way the report system operates.

THE COMMITTEE’S PROVISIONAL RULES OF PROCEDURE

Section 15 of the committee’s Provisional Rules of Procedure incorporates and supplements the procedures set forth in Articles 44 and 45 of the convention for the handling of reports from states parties.

The first such supplementary item is Rule 67, which concerns the nonsubmission of reports and requested additional information. Such cases are to be reported to the committee by the secretary-general at each session, with the committee then sending to the parties concerned, through the secretary-general, a reminder of the report or additional information that needs to be submitted.

Committee practice has been to accompany the reminder with information regarding the technical assistance and advisory services available to states parties on request. This information is supplied on the assumption that, in some cases, the failure to submit reports may be because governmental personnel lack the experience or training required to perform the task of preparing reports of this kind.

Rule 67 also directs the committee to “undertake any other efforts [to obtain the report/information in question] in a spirit of dialogue between the State concerned and the Committee.” If a state party does not respond to the reminder or other efforts, the committee then is to “consider the situation as it deems necessary” and include a reference to this effect in its report to the General Assembly.

In an apparent expansion of this rule, the committee has taken the position that the persistent failure by a state party to submit the required material does not necessarily prevent the committee from considering the situation in this country in regard to the implementation of the convention's standards. In such a case, the committee may proceed with this consideration on the basis of the information it has at hand, giving advance notice to the party concerned of its intention.

Rule 68 states that the committee is to notify states parties of the time and place set for the examination of their reports and invite them to have representatives present for this review. The same invitation is extended to states from whom additional information has been requested with the assumption that such representatives will be able to answer questions from the committee and amplify reports previously submitted.

Rule 69 supplements the provision in Article 44 authorizing the committee to request additional information from states parties concerning their implementation of the convention by stating that the committee “may indicate the time-limit within which such additional report or information should be supplied.”

The privilege of setting a time limit also is granted to the committee by Rule 70 in regard to the submission of reports or advice from the agencies, bodies, and organs identified in Article 45.

The authority given the committee by Article 45 to make “suggestions and general recommendations based on information received pursuant to Articles 44 and 45” and to transmit them “to any State Party concerned” is made a bit more specific by Rule 71, which states that these suggestions and general recommendations may be made “on the implementation of the Convention by the reporting State.”³

THE COMMITTEE'S GUIDELINES FOR THE SUBMISSION OF REPORTS

Although the convention calls for reports of two types, initial and periodic, the guidelines adopted by the committee in its first session (October 1991) apply only to the preparation by states parties of their initial reports on their implementation of the convention's standards.⁴

In the process of composing these guidelines, the committee rejected the kind used by some treaty-monitoring bodies calling for specific information in regard to each of the rights and freedoms set forth in a particular treaty, preferring a less lengthy instrument setting forth the kind of information desired in general terms. Members of the committee rejected the more detailed type of guidelines because they felt that they could not devise a set of detailed guidelines that would be of practical usefulness in dealing with states exhibiting the great economic, social, cultural, and political differences that characterize the parties to the convention. It also was felt that the length of such an instrument would discourage its use.

The guidelines adopted by the committee give reporting states considerably more freedom in the choice of information to be provided than would exist if the instrument called for detailed, specific material. This could have a positive effect in that reporting states might supply useful information that would not have been elicited by an instrument calling for certain specific material. However, the more general type of guidelines chosen by the committee presents the risk that reporting states will "focus on law at the expense of social/economic data or emphasize governmental actions and policies without providing a balanced assessment of the [country's] overall situation, including the persistence of social/economic/cultural factors that limit, condition, or prevent the full enjoyment of human rights."⁵

The reporting freedom offered by the committee's guidelines, however, is, at least to some extent, circumscribed by the guidelines' requirement that reports follow a prescribed structure. This structure calls for parties to submit information under eight headings, to which are attached some defining elaborations. In all but the first two of these headings, the guidelines call for information on legislative, judicial, administrative, or other measures in force and, in some cases, foreseen; factors and difficulties encountered and progress achieved in implementing the provisions of the convention; and, in several cases, implementation priorities and specific goals for the future.

The headings and amplifying definitions, with relevant articles, are as follows.

General Measures of Implementation

This section of the report is to contain “relevant information” pursuant to Article 4, which states that parties are to undertake “all appropriate legislative, administrative, and other measures” to implement the Convention’s rights.”

For this purpose, the report is to include information on measures taken to harmonize national law and policy with the convention’s provisions and information on existing or planned mechanisms at the national or local level to coordinate policies relating to children and to monitor the convention’s implementation.

Additionally, the report is to describe the existing or planned measures to make the convention’s principles and provisions widely known to both children and adults, as required by Article 42, and, pursuant to Article 44, Paragraph 6, to make the party’s reports “widely available” throughout the country.

Definition of the Child

With Article 1 in mind, with its definition of the child as “every human being below the age of eighteen, unless under the law applicable to the child, majority is attained earlier,” this section calls for information on how a party’s laws and regulations define a child.

Specifically, the report is to indicate the age when majority is attained and the minimum age for such purposes as legal or medical counseling without parental consent, end of compulsory education, part- and full-time and hazardous employment, sexual consent, marriage, voluntary enlistment in armed forces, voluntary testimony in court, criminal liability, deprivation of liberty, imprisonment, and consumption of alcohol or other controlled substances.

General Principles

The information requested in this section applies to nondiscrimination in the ensuring of the convention’s rights (Article 2); best interests of the child (Article 3); right to life, survival, and development (Article 6); and respect for the views of the child (Article 12). States parties also are encouraged to include in this part of their reports information on the application of these principles in the implementation of articles cited in other sections of the guidelines.

Civil Rights and Freedoms

Under this heading, information is to be provided on name and nationality (Article 7); preservation of identity (Article 8); expression (Article 13); access to appropriate information (Article 17); thought, conscience, and religion (Article 14); association and peaceful assembly (Article 15); protection of privacy (Article 16); and nonsubjection to torture or other cruel, inhuman, or degrading treatment or punishment (Article 37[a]).

Family Environment and Alternative Care

In supplying information in this section of their reports, states parties are to indicate how the principles of “best interests of the child” and “respect for the views of the child” are reflected in the measures taken under this heading in respect to parental guidance (Article 5); parental responsibilities (Article 18, Paragraphs 1, 2); separation from parents (Article 9); family reunification (Article 10); recovery of maintenance for the child (Article 27, Paragraph 4); children deprived of a family environment (Article 20); adoption (Article 21); illicit transfer and nonreturn (Article 11); abuse and neglect (Article 19), including physical and psychological recovery and social reintegration (Article 39); and periodic review of placement (Article 25).

In addition, parties are asked to provide information on the numbers of children per year within the reporting period in each of these groups, disaggregated by age group, sex, ethnic or national background, and rural or urban environment: homeless children, abused or neglected children taken into protective custody, children placed in foster care, children placed in institutional care, children placed through domestic adoption, and children entering or leaving the country through intercountry adoption.

Basic Health and Welfare

Information under this heading is to apply to survival and development (Article 6, Paragraph 2), disabled children (Article 23), health and health services (Article 24), social security and child-care services and facilities (Articles 26 and 18, Paragraph 3), and standard of living (Article 27, Paragraphs 1–3).

States also are requested to supply information concerning the nature and extent of cooperation with local and national organizations,

governmental and nongovernmental, concerning the implementation of this part of the convention.

Education, Leisure, and Cultural Activities

The information to be provided under this heading relates to education, including vocational training and guidance (Article 28); aims of education (Article 29); and leisure, recreation, and cultural activities (Article 31).

Cooperation with governmental and nongovernmental organizations in this area is another point to be covered in the information supplied in this section of the report.

Special Protection Measures

Information is to be provided, under this heading, in regard to:

children in situations of emergency:

refugees (Article 22);

children in armed conflicts (Article 38), including physical and psychological recovery and social reintegration (Article 39);

children in conflict with the law:

the administration of juvenile justice (Article 40);

children deprived of their liberty, including any form of detention, imprisonment, or placement in custodial settings (Article 37[b], [c], and [d]);

sentencing of juveniles, in particular, the prohibition of capital punishment and life imprisonment (Article 37[a]);

physical and psychological recovery and social reintegration (Article 39);

children in situations of exploitation, including physical and psychological recovery and social reintegration (Article 39):

economic exploitation, including child labor (Article 32);

drug abuse (Article 33);

sexual exploitation and sexual abuse (Article 34);

other forms of exploitation (Article 36);

sale, trafficking, and abduction (Article 35); and

children belonging to a minority or an indigenous group (Article 30).

Reporting states also are encouraged to provide specific statistical information and indicators relevant to children included under this heading.

NOTES

1. Convention on the Rights of the Child, Committee on the Rights of the Child, *Official Records*, "General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties Under Article 44, Paragraph 1(a) of the Convention," CRC/C/5, October 30, 1991, p. 2.

2. For the Provisional Rules of Procedure, see Convention on the Rights of the Child, Committee on the Rights of the Child, *Official Records*, "Provisional Rules of Procedure," CRC/C/4, November 14, 1991.

3. The preceding discussion of the Provisional Rules of Procedure is based on CRC/C/4, November 14, 1991, and Convention on the Rights of the Child, Committee on the Rights of the Child, *Official Records*, "Overview of the Reporting Procedures," CRC/C/33, October 24, 1994, p. 6.

4. Subsequent committee discussion recognized the need to have guidance for periodic reports prepared for use by states parties in submitting the first round of such reports, due in September 1997. Convention on the Rights of the Child, Committee on the Rights of the Child, *Official Records*, "Summary Record of the 108th Meeting," CRC/C/SR.108, March 6, 1995, p. 7.

5. The points noted above have been made by Dan O'Donnell, "Two Steps Forward . . . One Step Backward?" *Monitor* 8 (1991): 4.

14

The Report System in Operation

SUBMISSION OF REPORTS

If the convention's report system is to be an effective complementary mechanism, an obvious requirement is that states parties fulfill their obligation to submit the required reports concerning their performance under the convention and do so within the prescribed time frame. Although the convention calls for initial reports to be submitted by states parties within two years following their ratification of this instrument, a March 10, 1995, tabulation showed only 42 percent — 56 out of 132 — of the states to whom this requirement applied had discharged this responsibility.¹

QUALITY OF REPORTS

The effectiveness of the convention's report system depends not only on promptness in the submission of reports but also on the quality of the reports — the extent to which they provide the amounts and kinds of information the committee needs to have as the organ designated to monitor the implementation of the convention.

Not surprisingly, the first years of experience yielded mixed results as to the quality of reports received by the committee. As one member noted, “there were wide disparities between reports submitted by different countries.”² Other members agreed that, at best, “some” of the reports contained

all the information the committee needed to evaluate the reporting parties' performance under the convention.³

Not only did reports differ from each other as to coverage, but in some cases, the information they contained was at variance with what the committee was receiving from other sources, principally other UN agencies.⁴

Evidence that there were qualitative deficiencies in reports from parties was provided by such committee comments as those contained in its concluding observations on the report submitted by Argentina, in which it said, *inter alia*:

The Committee notes with regret that the report submitted by the Government of Argentina does not cover all the rights enshrined in the Convention and that it was not prepared in accordance with the Committee's guidelines for the preparation of initial reports.

It notes that the report mainly deals with the legal framework and does not contain sufficient information, either analytical or statistical, on the actual implementation of the principles and rights set forth in the Convention.⁵

The United Kingdom's report also was judged to be deficient, during the same (eighth) session, because it "lacked sufficient information on the factors and difficulties impeding the implementation of various rights provided for in the Convention."⁶

Negative comments such as these are to be found in the record of the committee's review of other reports submitted in the first years of the report system's life, but this record also contains numerous instances in which the committee expressed its appreciation for the high quality of reports it had reviewed. Typical of such commendatory comments were those made during the committee's sixth session on the "very comprehensive" reports "closely following the Committee's guidelines" received from France and Chile and on those from Burkina Faso and Norway, also judged to have been prepared in conformity with the guidelines.⁷

One particular item noted by the committee as enhancing the quality of some parties' reports was the presence of self-criticism in these submissions. Thus, the committee's concluding observations on the report from the Russian Federation expressed satisfaction "for the frank, self-critical manner" in which the report had been prepared,⁸ and in its observations on the reports from Honduras and Paraguay, the committee "welcomed" the self-critical approach taken by these parties.⁹

Although it is, thus, possible to cite cases where the committee's summary comments would suggest that certain reports could be placed at

either end of a quality rating continuum, it also is possible to identify those where the comments suggest the conclusion that is most likely to follow from the review of parties' submissions — that they are of a mixed nature, quality-wise.

One such case was that of Paraguay, where the committee's preliminary observations, delivered in its seventh session, contained the comment that the committee "welcomed the self-critical approach taken . . . especially in indicating the factors and difficulties encountered in the implementation of the Convention" but then expressed regret that the information provided was not sufficient for the committee to form a "complete and accurate assessment of the implementation of the rights of the child in Paraguay."¹⁰

Also typical of this type of report was the one from Sweden, whose third-session review by the committee produced the observation that the report was very comprehensive and closely followed the committee's guidelines but that more information was needed "on the situation of vulnerable groups, particularly minority children, including indigenous children, and neglected children in the major city areas."¹¹

This need for more information was a constantly recurring theme in the record of the first years' experience under the report system, as was the committee's resort to the privilege given it by Article 44(4) of the convention, to "request from States Parties further information relevant to the implementation of the Convention."

Illustrative of the kinds of additional information sought by the committee are the requests for information from El Salvador on the implementation of legislation and the impact of action planned by this state; from France on new legislation and the way it might affect the enjoyment of the rights of the child; from Indonesia on progress in relation to legal reforms and their implementation; and from Vietnam on the administration of juvenile justice.

In three of these four cases, the states involved met the prescribed due date for the submission of the requested information. Similar evidence of the willingness of states to respond to requests for additional information was present in the experience of the committee's pre-session working group, in which, as committee members testified, such requests "frequently" produced useful results.¹²

The information lacking in initial reports was, in many cases, supplied by representatives of reporting states during the dialogue with the committee that has been a vital part of the review process. This contribution was noted, for example, in the committee's concluding observations on Sweden's report with the expression of its appreciation "for the

additional information provided by the delegation sent to present the report to the Committee.”¹³ Similar expressions of appreciation were registered for “the detailed additional information provided by [Vietnam’s] representatives in the course of the discussion”¹⁴ and for “the additional information provided by [Egypt’s] delegation, which endeavored to answer all questions from the Committee in an open way.”¹⁵

A number of factors can be identified as contributing to the failure of parties to submit initial reports that contained all the information the committee needed if it was to have a clear, complete picture of the status of the convention in these countries. The identification of these factors has prescriptive, as well as explanatory, value in that it points to problems that must be dealt with if the report system is to serve with increasing effectiveness as an implementary mechanism.

One of these factors is the sheer volume of the work that must be done by states in order to discharge their reporting responsibilities as parties to the convention and other human rights treaties. Some indication of the reporting task confronting governments is provided by the fact that the substantive part of the convention contains 40 articles, all but 9 of which are multisectional. These articles cover a wide range of rights and freedoms that parties undertake to implement; therefore, they call for information on a correspondingly wide range of civil and political and economic, social, and cultural situations and conditions within these nations and on the domestic laws, regulations, and practices that are relevant to them.

A second indication of the reporting work to be done by the 170 parties to the convention is the fact that these states are also, to varying extents, parties to six other major human rights treaties whose implementary systems call for reports from states that have ratified them.

Thus, for example, of one group of 44 parties to the Convention on the Rights of the Child, 13 are parties to all six of the other treaties, 12 are parties to five of the other treaties, 6 are parties to four of the other treaties, 5 are parties to three of the other treaties, 4 are parties to two of the other treaties, 3 are parties to one other treaty, and 1 is party to no other treaty.¹⁶

A second negative influence on the quality of reports is one whose existence may be suspected but difficult, if not impossible, to establish with certainty — indifference, on the part of some states, to the convention in general and to the system of reports in particular. A sense of realism suggests that not all the 170 states who had ratified the convention by the end of 1994 — more than had acceded to any other UN human rights treaty — were wholeheartedly committed to the convention and ready to

invest the time, energy, and human resources that the report process requires.

Inadequate reports could, thus, stem, at least in part, from the failure of some parties to follow the example of those whose positive, cooperative attitude was reflected in the way they handled the preparation phase of this process, showing seriousness of purpose through their commitment of human resources to this task. In the case of Bolivia, the report was the product of the cooperative work of more than 20 state departments and nongovernmental organizations.¹⁷ In Paraguay, a specific governmental agency, the Directorate General for Human Rights of the Ministry of Justice and Labor, was charged with the responsibility of gathering and presenting the relevant information.¹⁸

Chile provides a third example of the serious approach taken by at least some governments to the task of preparing initial reports. In Chile's case, the report was "the result of a joint effort between the Government and civil society represented by the Support Group for the Convention on the Rights of the Child." The government body responsible for preparing the report was the Ministry of Planning and Cooperation, "with invaluable support from the Ministries of Justice, Health, Education, and Foreign Affairs as well as the National Service for Minors."¹⁹

Given the scope of the ground to be covered in a report, it is inevitable that the submissions of even those parties who take the most conscientious approach to their preparation would fall short of providing all the information needed by the committee.

In the case of Bolivia, for example, the committee's concluding observations included the comment that "although the report contained valuable information on the legislative framework for the application of the Convention, the dialogue [led to a] request for further information on how the laws are applied in actual practice and what mechanisms exist to evaluate the results that have been achieved."²⁰

The same note was struck in regard to the report from Paraguay in the committee's expression of "regret" that the information was "not sufficient for the Committee to form a complete and accurate assessment of the implementation of the rights of the child in Paraguay."²¹

Judging from the observations made by the committee following its review of reports, a critical factor in determining the quality of submissions is the faithfulness with which parties follow the committee's guidelines for reports, a constantly recurring theme in these observations.

Although the committee may place some of the blame for deficiencies in reports on parties' failure to adhere to the guidelines, the guidelines

themselves have not escaped criticism in the review of the first years of experience under the report system.

Illustrative of this criticism is the assertion that the first reports “revealed the shortcomings of the Committee’s Guidelines; some reports had gaps because the Committee did not ask the right questions in the Guidelines.” One such alleged omission was the “failure to ask States for information concerning spending; even the most elementary questions about the percentage of the [national] budget allocated for children’s health and education were not asked.”²²

The case of Vietnam has been cited as an example of the readiness of parties to take advantage of this lack of guidance. This party’s report was seen as showing a “lack of candor” concerning national expenditures in that it did not provide such data (on funds for children’s education) as the value of its currency; the adjustment, if any, for inflation; amounts actually spent; and trends in evidence over several years’ time.²³

Another gap said to exist in the guidelines was its failure to ask for the economic information the committee needed if it was to be able to evaluate a party’s implementary performance on the basis of its available resources.²⁴

A third alleged guidelines deficiency was its ignoring of the link seen as existing between the need for structural adjustments in a nation’s society and the well-being of its children, a connection, so the criticism goes, that should have led to some inquiry into particular national social structures.²⁵

A final omission attributed to the guidelines concerned its failure to ask parties to provide information on what they were doing to discharge their responsibilities under the convention’s provisions (Preamble and Articles 4 and 24) calling for international cooperation.²⁶

The committee that had prepared the guidelines that were subjected to criticisms such as these agreed, after the first years’ experience, that there was a need to review this instrument. Although there was general agreement on this point, there was some dissent, expressed in one member’s assertion that “the Guidelines were satisfactory, since reports received hitherto [by the spring of 1995] had enabled the Committee to engage in dialogue with the State Party, to adopt conclusions and formulate recommendations.”

The major area of disagreement, however, was not over the question of reviewing the guidelines but was over the direction this process should take — whether it should lead to a revision of the guidelines or to the issuing of a supplementary commentary that would improve their usefulness.

Members also differed on whether or not it was too late to even consider revising the guidelines because, by the spring of 1995, they already had been sent to 154 parties. The argument was advanced that the establishing of new guidelines would create an “unacceptable” situation in which parties who had already submitted their reports would have followed one set of directions while others, reporting later, would be following a different set. A similar contention was that, “while it was always possible to improve the general guidelines, it was not opportune to do so for the present as far as the form and content of initial reports were concerned.”²⁷

Although there was some support for the position that the substitution of revised instructions would not be unfair to states who already had submitted their reports, the prevailing view favored the issuing of a commentary that, by amplifying the guidelines, would elicit the information the committee needed.

This discussion of the guidelines was perceived to be important because of its relevance for the quality not only of initial reports but also of the periodic reports that would follow them, and the committee frequently was reminded that the guidelines for these reports had to be ready by 1997.²⁸

THE ROLE OF THE PRESESSIONAL WORKING GROUP

An important element in the process of reviewing reports from states parties is the preparatory function performed by the preessional working group, established to assist the committee in discharging its monitoring responsibilities under the convention.

All committee members are invited to attend the group’s meetings; in one group of four of these, two were attended by nine of the ten committee members, one by seven, and the other by six.

The main purpose of the working group’s meetings, which begin immediately after the close of a committee session, is to identify the most important issues that are to be covered in the next discussions between the committee and reporting states. The process of identifying significant issues involves examining preliminary lists presented by committee members relative to reports due for committee review.

In this examination of draft lists, the group is aided by a technical advisory group in which, as authorized by Article 45, UN bodies, specialized agencies, and other competent bodies are represented. The process of

revising and adding to the preliminary lists results in the adoption of a final version of each list by the group as a whole.

The list emerging from the group's labors is then transmitted through diplomatic channels to each state involved to enable it to prepare its answers to the questions the list raises and, thus, be in position to contribute to what the committee hopes will be a "constructive" dialogue. In a typical transmission, the group stated the date by which it wanted to have written answers to the issues raised in the list and then added these comments:

The list is not intended to be exhaustive and it should not be interpreted as limiting or in any other way prejudging the type and range of questions which members of the Committee may wish to pose.

However, the Working Group believes that the constructive dialogue which the Committee wishes to have with the representatives of the reporting States can be facilitated by making the list and the written answers to it available in advance of the Committee's session.²⁹

The reasons for requesting written answers prior to committee sessions include one of a very practical nature — the need for time, in particular cases, for these answers to be translated into the committee's working languages.

In addition to transmitting the lists to concerned states together with the above comments, the group has, whenever possible, established informal contacts with the permanent missions of states whose reports were due for consideration at a forthcoming committee session in order to inform them of the procedure to be followed in this consideration and clarify the purpose the dialogue is designed to serve.³⁰ The transmission of the issues is accompanied by the committee's invitation to each concerned party to attend the forthcoming session, whose date, time, and place are indicated in the invitation.

The working group is assisted in fulfilling its preparatory function by the committee secretariat, which provides country files containing information relevant to each report that is to be examined. In the compilation of these files, the secretariat, in turn, is aided by relevant UN bodies and specialized agencies, nongovernmental organizations, and "other competent bodies" responding to the committee's invitation to submit "appropriate documentation" to the secretariat.³¹

There is a particular interest in receiving relevant documentation from certain bodies and agencies within the UN system: the United Nations Children's Fund, International Labour Organization, World Health

Organization (WHO), Commissioner for Refugees, Development Programme, and World Bank. Emphasis also is placed on obtaining information from other human rights treaty bodies and mechanisms and both domestic and international nongovernmental organizations.³²

As it proceeds with its task of preparing for the committee's discussion with reporting states, the working group may request information from them in addition to what is contained in their reports, a practice that committee members frequently have found to produce useful results.³³

THE DISCUSSION OF REPORTS

Reports from states parties are discussed in open, public committee meetings, with representatives of reporting states and committee members participating and representatives of relevant UN bodies and agencies in attendance. Also present are representatives of nongovernmental organizations, other interested individuals, and journalists, including those from the United Nations Department of Public Information.

After the report to be considered is briefly introduced, discussion begins with the answers from the party concerning the issues raised in the list it received from the preessional working group, following the sequence of headings in the committee's guidelines.

These presentations by the delegation representing the party concerned lead to a dialogue in which committee members raise questions, make comments, and ask for additional information and delegates respond. These responses, in turn, may prompt further questions and comments from the committee in a process that continues as the dialogue moves through the topics in the issues list in the order prescribed in the guidelines. At some stage in this procedure, the committee may issue its preliminary observations on the report.³⁴

The committee's expressed wish for a constructive dialogue with representatives of reporting states has, to a considerable extent, been fulfilled. In the opinion of one committee member, the report process has succeeded to a high degree in bringing about a meaningful dialogue. A less positive, though still favorable, judgment has been expressed by another member, who would substitute "moderate" for "high."³⁵

Records of committee sessions contain frequent expressions of this body's satisfaction with the quality of the dialogue. This procedure in a number of sessions has been variously characterized as "open" and "constructive" and marked by a "frank and cooperative tone."³⁶

There also have been numerous occasions when the committee has attributed the commendable quality of the dialogue to the presence of

“high level” delegations, most notably those containing officials from ministries directly responsible for implementing the convention or persons involved in various child-related issues.³⁷

The committee itself has been cited as a positive factor in those dialogues characterized as “constructive.” Thus, one observer of this process has seen the committee’s “greatest strength” to be its “exceptional ability to maintain a dialogue atmosphere by keeping focused on the needs of the child and being nonpolitical and nonjudgmental.” The review process was seen as “justifying [Parties’] trust that the committee would be “fair and constructive.”³⁸

Several committee members have concurred in the opinion expressed above that this body has been nonjudgmental in its approach to the reports submitted to it by parties. There is, however, a possibility, to be explored in this book’s evaluation of the convention’s implementation, that this quality of the committee has been overstated.³⁹

As the dialogue approaches its end, committee members present their observations on the report and the ensuing discussion, to which they may add their suggestions and recommendations to the reporting party. At this stage of the procedure, the state’s delegation also may make a final statement.

The final stage of the review process is the preparation, by the committee in private meeting, of its concluding observations on the report. Included are what the committee considers to be principal subjects of concern regarding the status of children’s rights in the reporting state and the steps the state has taken to implement the convention. The observations then present the committee’s suggestions and recommendations as to measures the reporting state might take to improve the situation of children within its jurisdiction.⁴⁰

The concluding observations are of high significance as a means to stimulate governments to take certain actions on behalf of the children within their countries and to assist them in these efforts. Reaching complete agreement as to what these observations are to contain would seem to be a most difficult process; yet, one member sees this as occurring “most of the time” and another, “always.”⁴¹

IMPLICATIONS OF THE REPORT PROCESS FOR THE COMMITTEE

The report process imposes a task of major proportions on the committee, charged, as it is, with the task of reviewing the reports submitted by states parties. Some indication of the enormity of this task is provided by

statistics concerning the quantity of information with which the committee must deal in the process of handling the submissions from parties.

One set of such statistics concerns the initial reports due in 1992. In this year, reports were due from 56 states parties, and these were to contain information on 69 items under 8 categories in the guidelines. If all reports had come in by the due date, the committee would have had a total of 3,864 pieces of information to evaluate. All these reports, of course, were not submitted by the due date; in fact, half of them still had not been received as of March 10, 1995. The record for reports due in 1993 was virtually the same, with 24 of that year's 47 reports still missing on March 10, 1995. For the following year's reports, there was a sharp rise in overdue submissions, with only 6 of the 25 that should have been transmitted in the committee's hands by March 10, 1995.⁴²

The fact that large numbers of reports have not been submitted on schedule has the obvious effect of creating a backlog of huge proportions with which the committee must eventually deal, with a consequent multiplying of the amount of information that must be analyzed in any given year before and during committee sessions. A number of approaches have been taken or proposed to deal with the problem of the vast quantities of data confronting the committee; one, favored by the committee, is to increase the time the committee has to get its work done.

In order to accomplish this objective, the committee took two actions in its fifth session (January 1994). The first was the reaffirmation of a previous session's decision, taken under Rule 2 of its Rules of Procedure, to convene a special session later that year. The second step was the adoption of a recommendation asking for a meeting of states parties to increase the number of annual committee sessions from two to three.⁴³

A second approach to the problem of the committee's workload has been to increase the number of reports considered at any one session by placing a six-hour limit on the time allotted for the discussion of each report. This, though, as one observer noted, proved "disastrous" in the case of one party, Mexico, with the committee "barely having time to even touch on such serious problems facing [this state] as street children, torture, and the uprising in the Chiapas region. The squeeze to fit Mexico into six hours 'come hell or high water' left all frustrated with an unsatisfactory dialogue." This experience led to the conclusion that "reducing the time allowed for reports is not an acceptable solution to the backlog problem. The examination of reports is the Committee's basic task, and it should devote sufficient time for serious discussion."⁴⁴

Realizing this, the committee abandoned its original six-hour formula in favor of a more flexible one that allowed six to nine hours for each

report. The usefulness of this formula was demonstrated in the subsequent handling of the cases of Namibia and Belarus, whose consideration required the minimum of six hours each, and of Colombia and Romania, for which the length of time needed rose to seven and eight hours.

A third approach to the committee's workload problem looks to easing the task of reviewing reports by making relevant information more readily available to the committee. In this connection, the committee repeatedly has expressed its interest in the computerization of such data as a necessary and desirable step in this direction, with the Centre for Human Rights and this organization's various agencies possibly cooperating in developing this facility.⁴⁵

An example of the committee's belief that the Centre for Human Rights could become a more useful source of the information it needed was provided in the committee's third session, when, "reaffirming the importance of ensuring access to all relevant sources of information pertaining to its functions," the committee recommended "that consideration be given to the establishment, within the Centre for Human Rights, of a documentation unit on the rights of the child."⁴⁶

Despite these and other efforts, it was the opinion of one committee member, expressed at the midpoint of the first decade of experience with the report system, that the committee's need for techniques, procedures, and facilities to organize and preserve relevant data on each party's performance under the convention had been only "partly satisfied," while another member saw this as being a still "unsatisfied" need.⁴⁷

The committee's search for ways to enable it to cope with its imposing workload also led it, in its fourth session, to request the secretary-general "to strengthen the support of the Committee and provide it with a minimum of two additional professional and one additional General Service posts."⁴⁸

One positive aspect of the problem the committee faced in coping with its workload was the assistance it received from other bodies variously related to the UN. The committee acknowledged the value of this aid in its report on its eighth session, when it noted that UN bodies and agencies "allowed an objective and well-informed diagnosis of the situation [in a reporting State's country] to be made by the Committee." This was done, according to the committee, by the service performed by these other bodies in providing the committee with "an in-depth technical assessment of the situation, identifying achievements and difficulties, evaluating technical assistance programs already in place and suggesting measures for improvements" prior to the discussion of a particular party's report.⁴⁹

The kind of aid, thus, available to the committee for its review of reports was indicated in the comment made by a WHO representative in one committee meeting, calling attention to the fact that WHO was in a position to provide the committee with data on health. Because of the availability of this information, there would be no need for the committee to take steps to obtain the relevant data from countries whose reports were being reviewed. WHO's representative also pointed out that this organization, working with the Committee on Economic, Social, and Cultural Rights, had established indicators that could be useful in assessing progress made by countries in realizing the right to health and that these could be of help to the committee.⁵⁰

Individual committee members also found the participation by other UN agencies and organs in the committee's work of reviewing reports to be "very helpful," as was that of the "other competent bodies" referred to in Article 45(a).⁵¹

The problem of coping with a very heavy workload, finally, has led to the observation by one committee member that the committee could deal with more reports in any given session, and do so more effectively, by "rationalizing" its working methods in order to make better use of its time.

This need for better organized committee discussions of reports is seen as stemming from such agenda-confusing practices as excessive improvisation, with issues being introduced that were not included in the preparatory discussions; mismanagement of meeting time by giving too little time to important issues and too much to those of less significance; and the repeating under one agenda heading of a discussion that had been conducted under another.

More careful planning could produce more fruitful discussions not only by eliminating practices such as these but also by limiting the number of items to be considered by the committee and the representative(s) of the party whose report is being reviewed. If this procedure were followed, the discussion would deal with only the most important questions, those that are likely to have the greatest effect on the committee's concluding observations on the report.

The member who presented these observations on the committee's working methods also noted the contribution that could be made toward better organized discussions by the rapporteurs, the two members given special responsibility for the report of a particular state party. This contribution could be made, in this member's opinion, by careful implementation of a rapporteur's task description that would include cooperation with the committee's secretariat in preparing the pre-session working group's discussions, careful examination of relevant documentation, proposal of

the list of issues to be covered in committee discussions, proposal of a strategy for the committee's discussions of agenda items with the representative(s) of a particular party and the priority to be given individual items, and leadership in committee-party discussions.⁵²

NOTES

1. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "States Parties to the Convention on the Rights of the Child and Status of the Submission of Reports under Article 44 of the Convention," CRC/C/39, March 17, 1995, entire.

2. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Summary Record of the 108th Meeting," CRC/C/SR.108, March 6, 1995, p. 4.

3. Committee members' replies to the author's questionnaire.

4. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Summary Record of the 108th Meeting," p. 4.

5. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Eighth Session," CRC/C/38, February 20, 1995, p. 10.

6. *Ibid.*, p. 35.

7. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Sixth Session," CRC/C/109, May 16, 1994, pp. 15, 25, 27.

8. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Third Session," CRC/C/16, March 5, 1993, p. 21.

9. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Seventh Session," CRC/C/34, November 8, 1994, pp. 11, 24.

10. *Ibid.*, p. 24.

11. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Third Session," p. 16.

12. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Followup to the Consideration of Reports under Article 44 of the Convention: Note by the Secretary-General," CRC/C/27 Rev.2, February 28, 1995, pp. 3, 4, 6; committee members' replies to the author's questionnaire.

13. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Third Session," pp. 16.

14. *Ibid.*, p. 19.

15. *Ibid.*, p. 24.

16. Centre for Human Rights, *United Nations Action in the Field of Human Rights* (ST/HR/2/Rev.4) (Geneva, Switzerland: United Nations, 1994), passim; Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “States Parties to the Convention on the Rights of the Child,” passim. The six treaties referred to here are the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Suppression and Punishment of Apartheid; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

17. Bruce Abramson, “First State Reports,” *Monitor* 10(1–2) (1993): 23.

18. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Initial Report of Paraguay,” CRC/C/3/Add.22, October 12, 1993, p. 3;

19. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Chile,” CRC/C/3/Add.18, June 22, 1993, p. 5.

20. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Report on the Third Session,” p. 13.

21. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Preliminary Observations of the Committee on the Rights of the Child: Paraguay,” CRC/C/15/Add.27, October 24, 1994, p. 1.

22. Abramson, “First State Reports,” p. 23.

23. *Ibid.*

24. *Ibid.*, p. 24.

25. *Ibid.*, p. 26.

26. *Ibid.*, p. 27.

27. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Summary Record of the 108th Meeting,” p. 8.

28. *Ibid.*, pp. 7, 8.

29. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Report on the Fifth Session,” CRC/C/24, March 8, 1994, p. 9.

30. *Ibid.*

31. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Overview of the Reporting Procedures,” CRC/C/33, October 24, 1994, p. 3.

32. *Ibid.*

33. Committee members’ replies to the author’s questionnaire.

34. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Overview of the Reporting Procedures," pp. 3, 4.
35. Committee members' replies to the author's questionnaire.
36. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Eighth Session," pp. 13, 20, 25.
37. For examples of such occasions, see Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Third Session," pp. 16, 19, 21, 24; Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Eighth Session," p. 13.
38. Abramson, "First State Reports," pp. 25, 26.
39. Committee members' replies to the author's questionnaire.
40. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Overview of the Reporting Procedures," p. 4.
41. Committee members' replies to the author's questionnaire.
42. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "States Parties to the Convention on the Rights of the Child," entire; Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 44, Paragraph 1(a) of the Convention," CRC/C/5, October 1991.
43. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Compilation of the Conclusions and Recommendations Adopted by the Committee on the Rights of the Child," CRC/C/19/Rev.4, February 28, 1995, pp. 5, 6.
44. Laura Theytag-Bergman, "Out of Time," *Monitor* 11(1) (1994): 11. This is also the source for the discussion in the following paragraph.
45. For examples of the expression of this interest on the part of the committee, see Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Compilation of Conclusions and Recommendations Adopted by the Committee on the Rights of the Child," CRC/C/19/Rev.1, March 30, 1994, p. 10; Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Summary Record of the 108th Meeting," p. 2; Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Fifth Session," pp. 31–33.
46. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Third Session," p. 6.
47. Committee members' replies to the author's questionnaire.
48. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Compilation of the Conclusions and Recommendations Adopted by the Committee on the Rights of the Child," CRC/C/19/Rev.4, p. 7.
49. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Eighth Session," pp. 46, 47.

50. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Summary Record of the 108th Meeting," p. 4.

51. Committee members' replies to the author's questionnaire.

52. The source for this discussion of ways to improve the committee's working methods is two memos prepared for the committee by committee member Thomas Hammarberg.

A Report System Case Study: The Sudan

Insights into how the convention's report system operates can be gained by seeing how it worked in the case of a particular country — the Sudan. This review of the Sudanese experience with the report system follows the two basic objectives of this system: to provide complete information on the status of the child in the country of a state party and to assess the degree of a party's compliance with the convention's norms and encourage efforts to improve performance in this regard.

The focus of the discussion here will be on what was done by each of the two participants in the system's operation, the committee and the Sudan, in relation to the two objectives of the report system. The basis for this discussion is the official records of the committee's consideration of the Sudanese initial report in its third and fourth sessions, January and September 1993. The continuation of this consideration over two sessions was made necessary, as the committee's chairperson noted, by "the complexity of the situation and the problems facing children in the Sudan."¹

INFORMATION ON THE STATUS OF THE CHILD

The Sudanese government provided information on the status of the child in the Sudan in three forms: the initial report, whose "timely submission" was noted by the committee in its preliminary observations on the report; a supplementary document containing additional information

requested by the committee following its examination of the initial report and felt to be necessary in the light of the committee's guidelines for initial reports; and oral responses by the Sudanese delegation to questions raised by committee members during the committee-Sudanese dialogue.

The Initial Report

The Sudanese initial report was prepared by a committee, created for this purpose, composed of representatives of the Ministry of Social Affairs, the Ministry of Health, the Ministry of Education, the Supreme Council for National Resources, the National Council of Non-Governmental Organizations, and a jurist.²

The committee was assisted in its work of report preparation by the United Nations Children's Fund, acting as a consultant for technical purposes, and reports from various domestic sectors dealing with children in response to the committee's request for information on their areas of activity.³

The introduction to the initial report proclaimed the Sudan's "interest in the care, protection, and development of children" and traced it to "the piety of the Sudanese population and its human values and customs, which enshrine human dignity and aim at strengthening the right of human beings to an honorable and worthy life and providing them with the conditions necessary for making that dignity a reality." The introduction proceeded with a reference to the place of "numerous" rights affecting children, mothers, and families in Sudanese legislation and in the Islamic beliefs, customs, and practices set forth in the Koran and the Sunna. The "considerable efforts to strengthen and enforce these rights" were described, leading to a concluding affirmation of the Sudan's "full commitment to the application of the provisions of the Convention."

The information in the initial report then was presented under two headings, the first of which was a country profile. One portion of this profile dealt with the Sudan's geographic features, including its natural resources, and with such demographic items as public health, classification of children by age group, primary education and the struggle against illiteracy, and the economically active population. A second section of the profile described the country's economic situation, noting the "malfunctioning and disruption of the economic infrastructure" that led to a "disastrous decline in production" and the policies and approaches taken in response to these conditions. In the profile's third part, on the political system, the Sudan's history of military coups and civil war, stretching over several decades, was reflected in allusions to "a succession of

political regimes,” “the problems of peace,” and the “establishment of a just peace” as one of the “principal challenges to be met.”

The second, and major, section of the initial report, organized on the basis of the committee’s guidelines, presented information concerning various provisions of the convention. The headings for this presentation were as follows:

Definition of the child

General principles; the right to life

Civil rights and freedoms

Name and nationality

Protection of privacy

Economic, social, and cultural rights

Freedom of expression

Access to information

Freedom of thought, conscience, and religion

Freedom of association and of peaceful assembly

Family environment and community protection of the family

Parental guidance

Responsibilities of parents or guardians

Absence of forced separation of children from parents

Family reunification

Payment of maintenance for the child by parents or guardians

Children deprived of family protection

Adoption (or *kafalah* in Islamic law)

Illicit transfer and nonreturn of children abroad

Protection of children from all forms of violence, physical or mental abuse, abandonment, or neglect; physical and psychological rehabilitation and social reintegration

Periodic review of children’s general situation and the treatment they are receiving

Health and welfare

Protection of disabled children

Right of the child to enjoy the highest attainable standard of health

Social security and child welfare services

Realization of the right to an adequate standard of living

Extracts from the Ministry of Health report

National mother and child-care project

Immunization

Food

Diarrheal disease control

Respiratory disease control

AIDS control program

Health education

Education, leisure, and cultural activities

Education

Leisure and recreational and cultural activities

Report of the Office of Specialized Centres of the National Commission for Culture and the Arts concerning the National Centre for Children's Culture

Factors and difficulties impeding the implementation of the relevant provisions of the convention

Protection of special categories

Popular participation in human and social development

The committee began its consideration of this report during its third session, in 1993. After holding two meetings for this purpose, on January 26 and 27, the committee decided to continue this review at its fourth session for reasons noted in the introduction to this case study. In preparation for this continuation in the following September and October, the committee requested the Sudan to provide written answers to questions that had gone unanswered because of lack of time. The committee also asked for additional information on matters of concern that it had identified through its review of the initial report. The date for the Sudanese response to this request was set as May 15.⁴

The Sudanese Reply to the Request for Additional Information

The Sudanese reply to the committee's request, dated June 2, 1993, began with an expression of appreciation for "the understanding and cooperation shown by the Committee during the consideration of the report of the Sudan in the presence of the delegation."⁵ The opportunity was, thus, provided for a "useful and objective dialogue, as desired by the Government," and as this passage further noted, the committee "also demonstrated a similar desire."

In its second paragraph, the Sudanese reply indicated the government's willingness to attend the fourth committee session and voiced appreciation for the committee's (preliminary) observations on the initial report. Attention then was called to Paragraph 6 of these observations, in which it was stated that the "factors and difficulties impeding the implementation of the Convention" were related to the civil war, structural changes in the

national economy, the inadequacy of the infrastructure, spells of drought, and desertification.

The Sudanese response to this committee statement was that

Although these [factors and difficulties] have constituted obstacles, they have not impeded implementation of the Convention in the Sudan; it would be more appropriate to say that they have prevented certain provisions of the Convention from being implemented in the ideal manner to which the Government aspires, in keeping with its firm commitment to the children of the Sudan and its determination that children receive first priority under all conditions and circumstances . . . [and] the efforts made by the Government of the Sudan, despite these circumstances, are conclusive proof of its concern with and commitment to the rights of children.

The reply then proceeded to deal, in order, with the concerns expressed by the committee in its preliminary observations. In the following summary of the Sudanese response, the paragraphs cited are those contained in the committee's preliminary observations.

Item 1, Paragraph 7: Non-compatibility of Certain Areas of National Legislation with Provisions of the Convention

The reply reported the steps taken to deal with the problem of compatibility. These included the formation of a committee to review all laws pertaining to children to determine whether they were consistent with the convention and the committee's observations concerning Sudanese legislation. This committee then was to submit recommendations looking to the elimination of any contradictions between national law and the convention, which is an "intrinsic" part of Sudanese law.

Another step taken to deal with this question was the convening of a two-day seminar on the implementation of the convention. This event involved a cross section of Sudanese economic, social, and political life, private and public, and was addressed by the head of the Sudanese delegation meeting with the convention's Committee on the Rights of the Child. The seminar produced a series of recommendations designed to deal with the question of compatibility raised by the convention's committee.

Item 2, Paragraph 8: International Cooperation to Facilitate the Implementation of the Convention

The reply affirmed that the Sudan's relationship with the UN and voluntary organizations, particularly with regard to child survival,

protection, and development, was consistent with the provisions of the convention and the two instruments produced by the World Summit for Children: the World Declaration on the Survival, Protection and Development of Children and its implementary Plan of Action.

This state's relationship with a number of UN agencies and programs was described as "excellent," and attention was called to the fact that seven of them had established cooperation programs with the Sudanese government, many of which related to children, the family, and the environment, "thus assisting implementation of the Convention in the Sudan."

Item 3, Paragraph 9: Children in Areas of Armed Conflict

The Sudanese reply asserted that "special care was directed towards children" and that "valuable efforts were being made" by a number of international and national organizations "in firm cooperation with the Government and the coordinator of Operation Lifeline Sudan, to protect children and respond to their needs."

It further was noted that the government "continued to maintain its timely contacts with the Office of the High Commissioner for Refugees" and that "appreciable efforts" were being made by the government and international and voluntary organizations to reunite all children with their families in every area.

Item 4, Paragraph 10: Displaced, Refugee, and Neglected Children

The fact that all or parts of 6 of the reply's 14 pages were devoted to the government's comments on this item is indicative of its seriousness. These observations dealt with a number of classes of children who could be described as "uprooted" and, hence, in danger of being neglected.

The government's reply dealt first with displaced children, beginning with an assertion that there were two reasons for the committee's request for additional information on this matter. The first reason was "adverse reports spread by some voluntary associations who were in dispute with the Government over their improper conduct." The second alleged reason was the "biased reports circulated by some of the media at the bidding of parties opposed to government efforts to transfer displaced persons to the peace villages in the Directorate of Khartoum rather than to unsuitable campsites," efforts that "were scorned by some voluntary organizations in their campaigns for donations that they did not want to lose."

The reply contended that the Sudanese handling of displaced persons had been endorsed by UN and French personnel and emphasized "the fact that, as a result of the help provided by the State, which established the

Office of the Commissioner for Displaced Persons, and by various national, regional, and international organizations, some camps enjoyed higher living standards than the nearby Sudanese villages.”

The Sudanese reply also noted the government’s establishment of “a new foundation with great potential, the Peace and Development Foundation,” which was working to resettle displaced persons.

A final comment on the subject of displaced persons was that the government “had endeavored to accommodate displaced boys and girls in government schools in the areas of displacement in the north on an equal footing with their peers” and that “these children additionally have their own schools.”

On the allied subject of refugee children, the reply called attention to the fact that there were two classes of refugees: those fleeing from conflicts and disasters in neighboring countries, in regard to whom the Sudan had “a clean, substantial record of hosting refugees and treating them well,” and Sudanese citizens made refugees by the civil war in the south.

Although the number of these refugees in other countries was small in comparison with the number of displaced persons moving to the northern provinces, the government “was maintaining contact with them, to confirm their well-being.” The reply saw a “recent positive feature in the voluntary return of some refugees in the Sudan to their own countries and the return of some Sudanese refugees to their home soil.”

In regard to the homeless, another subgroup within the general category of uprooted children, the reply cited the establishment of national camps for these children and a “practical program” for their physical, spiritual, psychological, and social rehabilitation within a period of no more than six months. Under this program, children were assigned to camps according to age group, “in line with educational principles,” and a medical clinic was installed in each camp. The program for the camps also included both “standard” and vocational education. The final stage in the camp program called for the reuniting of these children with their families.

Item 5, Paragraph 12: Forced Labor and Slavery

The Sudanese reply to this item began with an expression of “bewilderment” in being asked to deny something “that did not exist.” It then was noted that the government had submitted a “detailed reply” to the International Labour Office and the Commission on Human Rights that, in essence, said that situations that were “completely different from slavery” had been “wrongly depicted as enslavement.” The “situations” here

referred to, according to the reply, involved tribal disputes over pasture and water resources, during which one tribe would capture members of another and hold them until the conflicts were resolved in accordance with tribal traditions and customs.

Item 6, Paragraph 13: Definition of the Child, Disabled Children, and Children's Access to Education

The reply to this item referred to comments that had been made concerning the Sudanese Criminal Law Act, stating that “the age of majority is reached when a person manifests obvious external signs of puberty and has reached the age of 15.” This, according to the reply, was not inconsistent with the convention’s statement in Article 1 that “a child means every human being below the age of 18 years, unless, under the law applicable, majority is attained earlier.”

Despite this denial of inconsistency, the Sudanese reply stated that the committee formed by the public prosecutor and the minister of justice to review Sudanese legislation in the light of provisions of the convention would consider the question of definition of the child in its review.

The reply to this paragraph included comments relevant to Paragraph 11, dealing with “issues of criminal responsibility and the administration of juvenile justice.” It was stated that children were not dealt with as criminals and that offences committed by them were examined by special institutions or courts. Under Sudanese law, a juvenile court was considered to be a social institution whose officers were not uniformed and whose judges were specially trained. In the treatment of juvenile offenders, the preference was for placement in educational homes conducted by specialist social workers and teachers, with provision made for regular contacts between children and their families.

Finally, the reply presented information in response to the committee’s comment that the initial report did not deal with achievements resulting from the educational policies and plans on which the report concentrated. The reply presented statistics showing rises in the enrollment ratios in various sectors of the country and included a reference to the decision to increase the number of years in basic education to seven.

The reply also contained material to substantiate the assertion that all the objectives in Article 29 of the convention, regarding general education curricula, had been achieved.

Information Provided during the Delegation-Committee Dialogue

In the dialogue with members of the committee, the three-person Sudanese delegation provided information in response to written questions that had been given to them by the committee and in reply to additional questions posed during the discussion.⁶

One of the written questions concerned the place given to the convention in Sudanese internal law and whether the convention's provisions could be invoked before the courts. The answer was that, because the convention had been incorporated into the internal law of the country, its provisions could be invoked before the courts.

As the dialogue proceeded, a committee member asked for additional information concerning the relationship between the convention and national law — specifically, whether it could be concluded that the convention would prevail over preexisting legislation regarding the rights of children and whether any legislation adopted later with respect to these rights would override the convention. In response to the first part of this two-part question, a Sudanese representative stated that the convention's provisions took precedence over national legislation. The reply to the second part of the inquiry was that the possibility of new legislation being enacted that would limit the convention was “out of the question, since the text of an international convention could not be amended,” a response that reflected his previous statement that the convention had been incorporated into Sudanese law.

A second example of the process of eliciting and providing information through the delegation-committee dialogue is the discussion that arose in regard to the item included in the committee's written list of questions dealing with international cooperation in the convention's implementation (Article 4). The direction this discussion took also is relevant to the provision in the convention stipulating that “States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict” (Article 38[4]).

As the following summary indicates, the information produced through dialogue is not limited to matters of fact but can concern attitudes and relationships involved in particular situations.

The Sudanese reply first noted the “difficulty” in planning international cooperation in a changing world and then referred to a specific form of such cooperation — the operation Lifeline in Sudan functioning under an agreement involving the UN, the Sudanese government, and rebel factions in the ongoing civil war. International nongovernmental organizations

(NGOs) also were involved in this operation and had “undoubtedly made a big contribution to the implementation of the Convention.”

This reference to NGOs was followed by the charge that “some” of these organizations had attempted to use humanitarian aid as a political lever, with the result that “relations between the Sudanese Government and the NGOs had sometimes been stormy.” “Fortunately,” the representative added, “there had been changes in recent months,” but they “had not yet borne fruit.”

In response to these comments, a committee member offered the opinion that it was “desirable to clarify the situation regarding the relations between the Sudanese authorities and the NGOs,” and “it was most regrettable that disagreements between the authorities and the NGOs should prevent assistance from reaching children.” This member conceded that “certain NGOs were not blameless” but still felt that “some of the fault seemed to lie with the Sudanese authorities.”

As this discussion continued, the Sudanese representative who was speaking for his delegation on this question pointed out that the problems that had arisen were “quite limited” and “confined to certain organizations.” In his opinion, it was “natural that certain problems should arise since people from many different cultures had been coming together to help deal with emergencies,” but there was now “a greater mutual understanding.”

The final Sudanese comment on this question, and on how relations could be improved, was a reassertion of this government’s “strong feeling” that “humanitarian matters should remain purely humanitarian and that political issues should be discarded, particularly in relation to children.”

ASSESSMENT OF COMPLIANCE WITH THE CONVENTION

The second major objective of the report system, to assess the degree of states parties’ compliance with the provisions of the convention and encourage efforts to improve their performance in this regard, can be seen at work also in the case of the Sudan.

The first part of this discussion presents examples of Sudanese law and practice whose incompatibility with the convention was either expressly stated by the committee or implied in its comments.

The second part presents the Sudanese view of its performance under the convention — reasons for situations that were or might appear to be incompatible with this instrument and evidence of this party’s intention to implement its provisions.

The discussion concludes with the committee's recommendations and suggestions for a higher level of Sudanese compliance with the convention.

The basis for this part of the case study is the official records of the Convention on the Rights of the Child that deal with the handling of the Sudanese report by the Committee on the Rights of the Child.

The Committee's Findings

The possibility that the committee could be assuming something of a judicial role in the process of reviewing his country's report was denied by a Sudanese representative who, at one point in the dialogue, remarked that his delegation "had never considered the Committee to be acting as a court."⁷

It is quite apparent, however, that the committee did act judgmentally in its examination of the Sudanese report, stating either directly or indirectly that it had found evidences of noncompliance in either Sudanese legislation or practices and policies. In its concluding observations, for example, the committee stated that it was "very much concerned about the non-compatibility of Sudanese legislation relating to the child with the principles and provisions of the Convention." The observations also expressed the committee's "opinion" that the system of administration of juvenile justice in the Sudan was "not fully compatible with Articles 37, 39, and 40 of the Convention."⁸

The committee's preliminary observations also contained a specific citation of what the committee considered to be noncompliance. In these observations, the committee "noted the non-compatibility of certain areas of national legislation with the provisions and principles of the Convention, including the punishment of flogging."⁹

The committee-delegation dialogue produced other citations of incompatibility. One element in Sudanese law subjected to this criticism related to the age at which a child could be held criminally responsible. The opinion expressed was that the Sudanese use of puberty as a "reference point" for this purpose constituted "discrimination on the ground of sex and was accordingly incompatible" with the convention's provision that the rights of the child are to be ensured "without discrimination of any kind, irrespective of . . . sex" (Article 2).¹⁰

The possibility that committee members also at times were expressing a judgment of noncompliance indirectly is suggested by the fact that, in at least one instance, a citation of alleged legislative incompatibility followed immediately after a general statement that Sudanese legislation

was contrary to the convention. This was the case in regard to the Sudanese law prescribing that refugee children were required to submit birth certificates for school enrollment, although some of these children did not have such documents.¹¹

It also is possible to see an indirect judgment of incompatibility in the many expressions of “concern” occurring in the committee’s records. The committee’s preliminary observations, for example, listed the following items under this heading:¹²

- the putting into effect of Article 4 as it related to matters of international cooperation to facilitate the implementation of the convention;
- the effects of armed conflict on children, including the provision of humanitarian assistance and relief and protection of children in situations of armed conflict;
- the situation of internally displaced children and refugee and neglected children;
- the issues of criminal responsibility and the administration of juvenile justice; and
- the issues of forced labor and slavery.

The Sudanese View of Its Performance under the Convention

The Sudanese delegation did not contest the committee’s findings of noncompliance; rather, one representative’s comments included a recognition that “the remarks on the need to amend certain attitudes and legal provisions were well-founded.”¹³

The Sudanese view of its performance under the convention, however, also included the expressed opinions that the Sudan had given evidence of its commitment to the convention’s provisions and determination to put them into effect and that any instances in which these provisions had not been implemented were the results of difficulties and problems peculiar to this state’s general situation, not results of any lack of will on the part of the Sudanese government to honor its commitments.

The major indication cited of the Sudan’s commitment to the convention was the incorporation of this instrument into its internal law, in consequence of which the convention’s provisions could be invoked before Sudanese courts.¹⁴

As further evidence of the Sudan’s intention to comply with the convention’s standards, this state’s initial report cited the symposium held there in March 1989, prior to the convention’s adoption by the UN General Assembly. The symposium was held “to examine the articles of

the Convention in relation to the national legal provisions, with a view to implementing them effectively in the Sudan." Also included in the report was a reaffirmation of the Sudan's "full commitment to the application of the provisions of the Convention."¹⁵

If the Sudan's performance under the convention did not perfectly reflect this commitment, the reason, according to a Sudanese representative, "was not that the Sudan did not care about children or lacked political will" but that the Sudan, "one of the least developed countries, was having to contend with numerous difficulties inherited from colonization or caused by drought and the civil war that was raging in the south of the country."¹⁶ To these factors were added "structural readjustment measures, infrastructure inadequacies, desertification, and famine."¹⁷

Although these obstacles to compliance admittedly prevented the Sudan from fulfilling all its obligations under the convention, it was the Sudan's contention that they did not impede implementation of the convention in this country; rather, "it would be more appropriate to say that they have prevented certain provisions of the Convention from being implemented in the ideal manner to which the Government aspires."¹⁸

As an example of the efforts made by the Sudanese government to carry out its responsibilities under the convention, a member of the Sudan's delegation cited his government's endeavors, through legislation, to combat the "traditional practices prejudicial to the health of children" proscribed by the convention (Article 24[3]). In keeping with this objective, a National Mother and Child Care Department had been established "to eradicate harmful practices, especially in the field of nutrition where there were still many taboos." In addition, a department in the Ministry of Health had assumed responsibility for disseminating information on health problems.¹⁹

Additional evidence of the Sudan's commitment to compliance with the convention may be found in its attitude toward the committee and the way it performed its duties. Thus, one delegate expressed "appreciation" for the committee's role as the monitor of progress toward implementation, even though its members "sometimes asked questions, reflecting their different cultures, that are found somewhat irritating." This, however, in the opinion of the Sudanese representatives, was "all in a good cause," and the government of the Sudan "was happy to engage in a constructive dialogue and would continue to do so." It was through this dialogue that the Sudan "could be helped to overcome the obstacles still impeding full and complete implementation of the Convention."²⁰

This positive Sudanese attitude toward the committee and its work was acknowledged by one committee member in saying that this government

“had shown its good will towards the Committee since the first dialogue on the Convention by introducing a number of measures.”²¹

The following comments in the committee’s concluding observations are additional evidence that the committee accepted the Sudanese view that it was taking actions expressing a commitment to implement the convention’s provisions:

The Committee notes the willingness of the Sudanese Government to take into account the recommendations of the Committee, with a view to reviewing existing legislation to bring it into conformity with the Convention. In this regard the Committee welcomes the State Party’s decision to establish a committee to review national laws pertaining to children and that its Preliminary Observation in the area of the abolition of the punishment of flogging has been taken into account by the review committee.

Additionally, the Committee notes with satisfaction the initial steps taken by the State Party to develop monitoring and follow-up mechanisms for the implementation of the Convention.

The Committee welcomes the positive steps taken recently by the Government to improve its cooperation with intergovernmental and non-governmental organizations.²²

Subjects of Concern to the Committee

These comments in the committee’s concluding observations on the positive aspects of the state’s initial report were followed by a presentation of the “principal subjects of concern” to the committee. These included the following:

The lack of training on the rights of the child given to personnel working with children.

The insufficient attention paid to the implementation of the general principles of the Convention . . . namely its Articles 2, 3, 6, and 12 and their relationship to the implementation of all the Articles in the Convention, including those relating to the civil/political rights of children.

The seriousness of the general health conditions prevailing in the Sudan and their detrimental effect on children . . . the continuance of traditional practices harmful to the health of women and children, particularly the practice of female genital mutilation . . . the plight of disabled children and the need for effective measures to improve their situation.

The effects of emergency situations on children and the problems facing homeless and internally displaced children . . . and reports of forced labour and slavery.²³

Committee Recommendations and Suggestions

The final section of the committee's concluding observations contained recommendations and a series of comments designed to encourage certain additional implementary actions by the Sudanese government. The recommendations were:

That the review of national legislation continue to take into account concerns expressed by the Committee with regard to the definition of the child and the age of criminal responsibility.

That training about child rights should be given to relevant professional groups such as judges, teachers, and social workers.

That the general principles of the Convention as expressed in Articles 2, 3, 6, and 12 guide the review of national legislation and the development of policies and strategies for ensuring the effective enjoyment by children of all their rights.

That further efforts be undertaken to raise awareness in order to eradicate traditional practices harmful to the health of women and children.

That attention be given to extending the provision of primary health care and primary education in order to improve the general health and nutritional and educational status of children.

That future development plans accord priority to the situation of disabled children.

That the system of administration of juvenile justice be reviewed to ensure its compatibility with Articles 37, 39, and 40 of the Convention.²⁴

In addition to these recommendations, the committee "emphasized the need" for "further urgent efforts to improve the protection and promotion of the rights of internally displaced children, and to pay urgent and due regard to the reports of forced labour and slavery of children."²⁵

Finally, the committee "encouraged" the development of mechanisms to monitor and follow up the implementation of the convention and the government's continued cooperation with intergovernmental organizations and NGOs to improve the effectiveness of measures to alleviate the suffering of children. The committee also expressed the "hope" that the review of child-related laws would result in the total abolition of flogging and that improvements in the implementation of the convention would be forthcoming. The committee expressed its appreciation of the willingness of the state party to keep it regularly informed of relevant developments.²⁶

NOTES

1. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Summary Record of the 89th Meeting," CRC/C/SR.89, November 11, 1994, p. 2.

2. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Sudan," CRC/C/3/Add.3, December 16, 1992.

3. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Summary Record of the First Part (Public) of the 69th Meeting," CRC/C/SR.69, August 30, 1993, p. 5.

4. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention; Preliminary Observations of the Committee on the Rights of the Child: Sudan," CRC/C/15/Add.6, February 18, 1993, p. 1.

5. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Sudan," CRC/C/3/Add.20, August 2, 1993, passim.

6. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Summary Record of the First Part (Public) of the 69th Meeting," passim; Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Summary Record of the 70th Meeting," CRC/C/SR.70, February 1, 1993, passim.

7. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Summary Record of the 70th Meeting," p. 9.

8. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention; Concluding Observations of the Committee on the Rights of the Child: Sudan," CRC/C/15/Add.10, October 18, 1993, pp. 2, 3.

9. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention; Preliminary Observations of the Committee on the Rights of the Child: Sudan," p. 2.

10. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Summary Record of the 90th Meeting," CRC/C/SR.90, October 5, 1993, p. 2.

11. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Summary Record of the 71st Meeting," CRC/C/SR.71, August 30, 1993, p. 7.

12. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Consideration of Reports Submitted by States Parties

under Article 44 of the Convention; Preliminary Observations of the Committee on the Rights of the Child: Sudan,” pp. 2, 3.

13. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Summary Record of the 71st Meeting,” p. 7.

14. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Summary Record of the First Part (Public) of the 69th Meeting,” p. 4.

15. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Sudan,” pp. 1, 2.

16. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Summary Record of the First Part (Public) of the 69th Meeting,” p. 2.

17. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Consideration of Reports Submitted by States Parties under Article 44 of the Convention; Preliminary Observations of the Committee on the Rights of the Child: Sudan,” p. 2.

18. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Sudan,” p. 2.

19. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Summary Record of the 71st Meeting,” p. 2.

20. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Summary Record of the 90th Meeting,” p. 12; Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Summary Record of the First Part (Public) of the 69th Meeting,” p. 2.

21. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Summary Record of the 90th Meeting,” p. 11.

22. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, “Consideration of Reports Submitted by States Parties under Article 44 of the Convention; Concluding Observations of the Committee on the Rights of the Child: Sudan,” p. 2.

23. *Ibid.*, pp. 2, 3.

24. *Ibid.*, pp. 3, 4.

25. *Ibid.*, p. 4.

26. *Ibid.*, pp. 3, 4.

IV

PROSPECTS FOR THE REALIZATION OF THE CONVENTION'S GOALS

The preceding chapters have discussed the significance of the convention and reviewed its origin and development, substance, and implementary system. In this concluding part, the focus is on the factors that are likely to determine the extent to which the convention's goals for the world's children, presented in the form of certain rights and freedoms, can be realized.

Whether the kind of children's life set forth in the convention's norms comes closer to realization depends not only on its previously described and evaluated implementary machinery but also, to a very considerable extent, on three other elements in the total picture:

the global level, the work done by extraconvention agencies — inter- and nongovernmental organizations, particularly those who have some kind of relationship to the UN system, who are active in the functional areas of the convention's rights and freedoms;

the national and domestic level, the policies and practices of national governments and the activities and impact of such key segments of the private sector as nongovernmental organizations, national commissions established to give support to the convention, the media, the academic community, social agencies, relevant professionals and others who have close contact with children, individuals who provide grass-roots support for the convention, and the general attitude toward children prevalent at any given time in particular societies; and

general conditions and issues that call for responsive action on both the global and the national and domestic levels — armed conflict and attendant military expenditures, the physical environment, population levels, and such interrelated economic concerns as debt levels, structural readjustment, poverty, and the resources available for the implementation of the convention's economic and social rights.

16

Factors that Affect the Convention's Prospects

THE ROLE OF EXTRA CONVENTION INTERNATIONAL AGENCIES

The significance of UN-related international agencies for the realization of the convention's standards was recognized by the World Conference on Human Rights (held in Vienna in June 1993) in its statement that "relevant specialized agencies and bodies and institutions of the United Nations system . . . play a vital role in the formulation and implementation of human rights standards."¹ The relevance of the organs referred to in this statement is particularly clear in regard to the convention's economic, social, and cultural rights, which are a major concern of the convention. The program and activities of the World Health Organization, for example, have a direct relationship to this aspect of the child's life, as do those, in their respective functional fields, of the United Nations Educational, Scientific, and Cultural Organization; the International Labour Organization; The Food and Agriculture Organization; and the United Nations Children's Fund (UNICEF).

The extent of the impact of these and other agencies on the child's quality of life depends not only on what they do within their individual provinces but also on how well they cooperate with each other to achieve the general objective they have in common, that is, the betterment of life for all the world's people, including children.

The efforts by various agencies to serve this objective can, for example, be enhanced considerably by cooperation in such practical matters as access to information. Through their activities in countries where they maintain programs, all these agencies gather relevant information on conditions within these countries, and the sharing of this information, either through informal contacts or participation in some integrated information and documentation system, can enable each agency to better serve the needs of children.

Interagency cooperation can be furthered through any one or a combination of approaches. UNICEF, for example, "sees its role as stimulating joint or coordinated efforts by all concerned agencies," a role that is traced to its creation as "the UN's agency for monitoring and supporting the survival, protection, and development of the world's children" and because "both its mandate and operations are intimately intertwined" with their rights.²

Also illustrative of the approaches that can be taken to cooperation is the establishment of interagency task forces, a device that provides opportunities for cooperation and policy coordination to meet the needs of children in such areas as child labor, health, education, and nutrition.

The objective of cooperation, again, can be served through such events as the First Ad Hoc Inter-agency Meeting on the Implementation of the Convention on the Rights of the Child in Geneva, Switzerland, January 14–15, 1991, and the Consultation on the Role of the United Nations and Non-governmental Organizations in the Implementation of the Convention in New York, March 24, 1993.³ To these events can be added meetings of representatives of human rights treaty monitoring bodies.

Interagency cooperation also involves nongovernmental organizations (NGOs) related to the UN. NGOs have been associated closely with the convention from the days of its inception, when an ad hoc NGO group was established to represent more than 20 such organizations in the negotiations that eventually produced the convention. NGO activity since the convention entered into effect has included the production and coordination of information on children's rights to be submitted to the UN. This activity has been designed to bring to appropriate human rights bodies "the greatest possible amount of pertinent information in a coherent and coordinated manner."⁴

An example of the steps taken by NGOs to serve this objective is the establishment, within the NGO group, of subgroups on such specific themes as exploitation of children, children in conflict with the law, child refugees, and children in armed conflict. Conveners appointed to serve

these subgroups are responsible for the preparation of their contributions to the UN bodies working in the relevant functional fields.⁵

NGOs, thus, cooperate with various UN agencies in the process of gathering and organizing information that is useful to efforts to bring a higher quality of life to the world's children. This process is a two-way street that benefits NGOs as well as UN agencies, because it brings data to these organizations that can help them serve more effectively as child advocates and monitors of governmental practices and policies affecting the welfare of children.

RELEVANT NATIONAL-LEVEL FACTORS

The national-level factor having the most immediate and direct effect on the realization of the convention's goals is the policy and practice of governments in the functional areas to which this instrument's standards apply.

A state's ratification of the convention imposes a legal obligation on its government to take the legislative and administrative steps necessary to implement the convention's standards. It is important to note that, especially in regard to the economic, social, and cultural rights in this instrument, this obligation relates to actions (for which a government can be held accountable) not results (which can depend on factors beyond a government's control).

What constitutes fulfillment of this obligation, however, depends on the interpretation given, in specific situations, to a number of provisions in the convention, provisions that are so vague that they can be used in a self-serving, defensive way by a government to rationalize implementary actions whose inadequacy actually stems from its lack of political will or to provide a credible basis for the assertion that a government has been faithful to its commitment.

Provisions that can be used in either of these two ways are found in many of the convention's articles, as illustrated by the following list, in which the terms capable of subjective interpretation are capitalized:

Article 2: "States Parties shall take ALL APPROPRIATE measures to ensure that the child is protected against all forms of discrimination."

Article 3: "States Parties undertake to ensure the child SUCH PROTECTION AND CARE AS IS NECESSARY for his or her well-being, TAKING INTO ACCOUNT THE RIGHTS AND DUTIES [of parents and others responsible for him or her]."

Article 4: “States Parties shall undertake ALL APPROPRIATE . . . measures for the implementation of the rights recognized in the present Convention. With regard to economic, social, and cultural rights, States Parties shall undertake such measures to the maximum extent of THEIR AVAILABLE RESOURCES.”

Article 8: “Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide APPROPRIATE ASSISTANCE AND PROTECTION.”

Article 9: “States Parties shall respect the right of the child who is separated from one or both parents to maintain . . . contact with both parents . . . except if it is contrary to the CHILD’S BEST INTERESTS.”

Article 10: “Applications by a child or . . . parents to enter or leave a State Party for . . . family reunification shall be dealt with by States Parties in a POSITIVE, HUMANE AND EXPEDITIOUS MANNER.”

Article 18: “States Parties shall use THEIR BEST EFFORTS to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.”

Article 24: “States Parties SHALL PURSUE FULL IMPLEMENTATION” of the right to the “HIGHEST ATTAINABLE standard of health.”

The presence within the convention of such vague provisions as these serves as a test and revealer of the factor that is so significant for the realization of its goals — the degree of political will that a government possesses to pursue these goals. Thus, such phrases as “best effort,” “shall pursue,” and “highest attainable” will be accepted as a challenge by a government that truly wants the highest possible quality of life for its country’s children. For one that lacks this motivation, however, these phrases can be used to divert responsibility from itself for domestic conditions destructive of the well-being of its nation’s children, claiming that it has been doing all that it could for them.

The same contrasting possibilities are present in regard to the other passages cited above, all of which not only test a government’s commitment to the convention’s goals but also present problems for those international and domestic agencies who monitor its performance in the light of the convention’s standards.

It is no easy matter for these agencies to determine whether a particular government is really making its “best effort,” taking truly “appropriate measures,” and using all “available resources” to enable its country’s children to enjoy the highest possible quality of life. It is most difficult, in other words, to accurately measure a government’s political will to give effect to the convention’s norms.

It is possible, of course, to argue that the act of ratifying the convention is itself evidence of a positive political will. This contention becomes especially persuasive when ratification places a state and its government under a particularly strong legal obligation in regard to the convention's terms, as it does in the cases of countries like Argentina, Chile, and the Sudan, where the convention is incorporated into a nation's legal system or is recognized as a self-executing treaty, capable of direct application in the courts of the land.⁶

The proposition that ratification of the convention demonstrates a political will to implement its provisions becomes less convincing when ratification is accompanied by declarations or reservations, as it was by 57 of the 176 states who had ratified or acceded to the convention as of June 30, 1995.

These declarations and reservations vary widely. The one entered by Pakistan is extremely general, simply stating that "the provisions of the Convention shall be interpreted in the light of Islam's laws and values." Others are quite specific but limited in the number of provisions to which they apply, as in the cases of Mali, Malta, and Mauritius, citing Articles 16, 26, and 22, respectively. Still others are specific in reference but more extensive in coverage, an example being the list of six articles to which the Netherlands took exception. Some make the kind of declaration recorded by the Republic of Korea: "The Republic of Korea considers itself not bound by the provisions of Paragraph 3 of Article 9, Paragraph (a) of Article 21, and Sub-Paragraph (b)(v) of Paragraph 2 of Article 40." Others follow the pattern of Thailand's statement that "the application of Articles 7, 22, and 29 . . . shall be subject to the national laws, regulations, and prevailing practices in Thailand."⁷

The Committee on the Rights of the Child has conceded that some of the reservations and declarations made to the convention have "contributed to reinforcing the standards it set forth," citing, as an example, those entered by some states to the provisions of Article 38, setting the minimum age for recruitment into the armed forces at 18 rather than the 15 stipulated by this article. However, the committee also has stated that "some reservations and declarations could express a restrictive interpretation of the provisions of the Convention." Thus, in presenting both the positive and negative aspects of reservations and declarations, the committee has "recognized the need to keep as its primary consideration the spirit of understanding and consensus deriving from the Convention, and not to refer to the question of reservations and declarations as a dividing factor which would undermine this spirit."⁸

Although it has, thus, sought to prevent the question of reservations from becoming a divisive element in its dealings with states parties to the convention, the committee has not hesitated to let it be known that this matter is one of very real concern to it. The seriousness with which the committee takes the issue of reservations stems, to no small degree, from its belief that "the Convention has introduced a holistic approach to the rights of the child, which are all interrelated. The fact that each right was fundamental to the dignity of the child and had an impact on the enjoyment of other rights was to be taken into consideration (when) dealing with the issue of reservations and declarations."⁹

Its belief in the seriousness of reservations has led the committee to give continuing attention to this issue in its meetings and to pay "systematic attention" to it in the process of examining the reports of states parties to the convention. Of particular concern to the committee are reservations of a "broad and vague nature, or otherwise contrary to international law, namely in the light of Article 51 of the Convention."¹⁰

At times, the committee's examination of states' reports has led it to express commendation for the approach taken to the matter of reservations. Accordingly, it expressed "satisfaction" at the Sudan's early ratification of the convention without any reservations and "welcomed" Indonesia's commitment to review the reservations it had made with a view to withdrawing them.¹¹

At other times, this examination has produced a recommendation that the reporting party consider withdrawing a reservation, as it did in regard to the one registered by Argentina when it ratified the convention.¹²

At still other times, the review of a party's report has involved a debate between committee members and a state's representative over both the general question of reservations and a specific reservation. This occurred during the committee's sixth session examination of the report from Pakistan, when the committee's chairperson called attention to the Pakistani reservation stating that "the provisions of the Convention shall be interpreted in the light of the principles of Islamic laws and values." Noting that the World Conference on Human Rights had encouraged states to consider reviewing reservations with a view to withdrawing them, the chairperson asked the Pakistani representative to provide information on whether his government was considering its withdrawal, and another committee member added the comment that the reservation in question was "of a sweeping nature . . . that could undermine the force of the Convention in Pakistan and in the region concerned."

In response, Pakistan's representative observed that "it was very difficult to accept anything tantamount to a challenge to the basic ethos of a

people” and that, “although the Committee’s concerns were fully appreciated, it had to be recognized that the evaluation [of the reservation] taking place within Pakistan must also pay heed to national factors. The Government was willing to cooperate with the Committee, but the latter should keep in mind that a country had the right to interpret provisions in the light of domestic factors, especially religion.”

One committee member then expressed the opinion that “the question was one of political will” and that “the withdrawal by Pakistan of its reservation would be not simply a legal procedure but an important signal of the paramount importance of the rights of the child.”¹³

Pakistan’s negative reaction to the committee’s expression of concern over its reservation is by no means an isolated case. As some committee members have observed, few parties have responded positively to the committee’s efforts to encourage them to reevaluate their reservations and declarations, looking to their possible withdrawal. Moreover, in only a few instances have parties responded positively to the committee’s request for information concerning the impact of their reservations and declarations on their national legislation.¹⁴

Reservations and declarations have been called into question not only by the committee but also by states parties to the convention. Under Article 51 of the convention, the texts of reservations made by states at the time of ratification are circulated by the UN secretary-general to all states, who then are free to exercise their privilege of recording objections to such reservations. As of July 28, 1995, this action had been taken by nine states parties to the convention. Finland, Ireland, the Netherlands, Norway, Portugal, and Sweden, for example, registered objections to the Pakistani reservation discussed above. Sweden also entered objections to the reservations recorded by Indonesia, Jordan, Thailand, Bangladesh, Djibouti, Myanmar, Qatar, and the Syrian Arab Republic.

Various grounds were given by these states for their objections. Finland cited “the general principle of treaty interpretation (that) a party may not invoke the provisions of its internal law as justification for failure to perform a treaty” in objecting to the Indonesian reservation made on this basis. The same state saw Jordan’s reservation based on “Islamic precepts” as a violation of the principle that a party “may not invoke general principles of national law” to justify a reservation and that of the Syrian Arab Republic as being too “unlimited and undefined” in character.

“Very general wording” and “indefinite nature” also were given to support Germany’s challenges to Syrian and Tunisian reservations.

Germany also found Myanmar's reservations unacceptable because they were "incompatible with the object and purpose of the Convention."

In these, and in other cases, objecting states expressed the opinion that the reservations they challenged raised doubts as to the commitment of these states to the object and purpose of the convention.¹⁵

The doubts created by reservations as to a state's commitment to the convention's goals may lead to pessimism concerning the possibility that serious efforts will be made on behalf of these goals within that nation. These doubts may, of course, be reduced by the realization that there are factors other than the political will of a particular government that affect the fate of the convention's goals in that country.

The fact remains, however, that a government's political will is the factor that has the most immediate and direct effect on the extent to which the convention's goals will be realized within a particular nation. If it is also true that reservations are an indication that this will is not present or is present in only a limited degree, then the prospects for significant progress toward the attainment of the convention's purposes are not very bright for about one-third of the states parties to this treaty.

The whole question of the relation between reservations and political will, however, is too complicated to be dealt with in generalities or assumptions. It is true, of course, that a particular state may reject some provisions because its government simply has no desire to challenge the domestic forces that oppose their implementation or to find the resources this implementation would require. It also is true, however, that the rejection could stem from a deep-seated social and political ideology characterizing a national society and, thus, could constitute a sincere statement of philosophy, not an expression of unwillingness to take necessary implementary action. Again, it could be argued that a given state's will to implement the convention could be questioned only in relation to those provisions to which it has taken exception through declarations or reservations and that it could be expected to honor its legal commitment in regard to other parts of the convention.

Whether discussed in relation to reservations or in more general terms, the question of the existence of a political will to give effect to the convention's terms is one that inevitably leads to a variety of answers. Thus, the conclusion of some members of the Committee on the Rights of the Child, based on the reports received from parties, is that only a "few" or "some" of them are making a "sincere effort" to bring their laws and practices into conformity with the convention. Skepticism within the committee as to how determined parties really are to implement the convention also is indicated in members' comments that the committee "seldom" accepts, at face

value, presentations made by parties of the factors and difficulties they encounter in fulfilling their commitment to the convention.¹⁶

The committee's records do, however, show that it has found reason to commend some states for taking actions expressive of a will to give effect to the convention's principles and provisions, as the following examples demonstrate:

Senegal, whose plans to introduce the subject of the convention into the country's school curriculum and to "mitigate the negative effects" of Senegal's structural adjustment program were "welcomed" by the committee;¹⁷

Ukraine, where the committee saw a positive attitude in the "establishment of mechanisms" to deal with children's issues and the question of children's rights, "in particular" the Parliamentary Commission on Health Care, Mother and Child Welfare, with its departments and regional divisions, and the Presidential Committee for Women's, Maternal and Children's Affairs;¹⁸

Portugal, commended for its government's "decision to improve the implementation of economic, social, and cultural rights" and for the establishment of a national minimum guaranteed income; for the steps taken in regard to education, such as an increase in the budgetary allocation for education and in the network of preschool facilities; and for the establishment of an ombudsman and, within this person's office, a focal point on children's rights;¹⁹

Italy, cited for its setting up of various institutions and mechanisms, some mentioned specifically, for the protection and monitoring of the rights of the child;²⁰

the Philippines, where the committee found efforts being made to bring domestic laws into line with the convention through the enactment of new laws and the adoption of programs specifically aimed at promoting and protecting the rights of the child, such as the Philippine Plan of Action for Children, "The Filipino Children: 2000 and Beyond";²¹

Colombia, commended for its major legislative initiatives to provide a legal framework and special mechanisms for the implementation of the convention and for "the emphasis placed on the protection of human rights as reflected, for example, by the establishment of a Unit on Human Rights in the Attorney General's Office";²² and

Mauritius, whose report noted the establishment, three years after this state's accession to the convention in July 1990, of a task force to elaborate a "strategic plan" of action to combat child abuse; the passage in 1994 of the Child Protection Act "to make better provision for the protection of children against ill-treatment, neglect, abandonment, destitution, or any other form of exposure to harm"; and legislation, in 1993, to make primary education compulsory.²³

Progress toward the time when children will be able to enjoy the quality of life described in the convention depends not only on governmental actions of the kind noted above but also on what is done by elements within a nation's private sector to serve the best interests of its children.

One such element is the media, which has been referred to as "the chief mid-wife of peaceful change" because of its function as a purveyor of information concerning what is happening in the lives of children and of ideas and proposals that could lead to a better life for them.²⁴

A second key private sector element is the professionals in such fields as health and education, who have a particularly close relationship to children and are, therefore, well-positioned not only to serve them directly but also to be effective advocates on their behalf. The same opportunity exists for personnel serving a nation's judicial and welfare systems in respect to cases affecting the child — proceedings in juvenile courts, for example, where a child's right to be heard may be involved; situations of real or alleged child abuse; or placement of a child through adoption or in a foster home.

A third private sector element having a significant bearing on the extent to which the convention's goals are realized is those organizations having the basic needs of children as their major concern. Organizations of this kind are present in nearly all the world's nations, working to promote education, to protect children in situations of armed conflict and against disease and abuse at home or at work, to help street children, and to combat hunger. Most of these organizations, enjoying a "remarkable" rate of growth, are located in developing countries. India, for example, has 12,000 independent movements; 3,000 NGOs are working in Pakistan to meet human needs; street children are a special concern of 200 organizations in the Philippines; and 600 organizations deal with development issues in Indonesia.²⁵

The activity of NGOs on behalf of children takes many forms. In one-half of the world's developing countries, they have helped draft national action programs to meet the needs of children, in some cases in response to invitations from governments. In other instances, NGOs have held their own consultations to prepare such programs. In some countries, the NGOs have opted for efforts to achieve particular goals. This was the case in Bangladesh, where six organizations joined with the Ministry of Education to achieve the objective of a basic education for all children by the year 2000, and in Brazil, where NGOs created a national Street Children's Movement.²⁶

Although the great majority of private sector organizations working on behalf of children have been located in developing nations, they also have

been present in industrialized countries, as the following examples demonstrate.

World Visions International and the International Save the Children Alliance sponsor mass letter-writing campaigns to political leaders, media representatives, and corporation executives to remind them of the basic social goals agreed upon at the UN's 1990 World Summit for Children. The same purpose was served by the Washington, D.C., based Results group through its promotion of editorials in major newspapers — editorials that also urged a tripling of U.S. aid for primary health care and basic education.

International Federation of Red Cross and Red Crescent Societies, with a Child Alive program, helps implement low cost methods to control major childhood diseases.

Rotary International is active in more than 100 countries, with such projects as fund raising for polio eradication.

International Baby Food Action Network sponsors a campaign to stop the promotion of commercial infant formulas in developing countries.²⁷

The examples cited above of the existence and work of private sector organizations in both developing and industrialized countries are efforts to meet the need expressed by the 1990 UN-sponsored World Summit for Children in concluding that "the experience of the 1980s shows that it is only through the mobilization of all sectors of society, including those that traditionally did not consider child survival, protection, and development as their major focus, that significant progress can be achieved in these areas."²⁸

Just how much progress can be made toward achieving the convention's goals through the efforts of elements in a nation's private sector depends to no small degree on how effectively they employ the advocacy techniques that are available to them. The existence of an abundance of such techniques is indicated in the recommendations presented by the Commission on Advocacy and Education, a subgroup of the International Conference on the Rights of the Child held in Stockholm, Sweden, in June 1989. These recommendations included the following lines of action:

promoting the systematic inclusion of the means to sustain child's rights in national budgets and in the political process as a whole;

establishing national policies for children in a more integrated manner than in the past;

persuading UNICEF, other UN specialized agencies, and NGOs to work for the establishment of these policies concerning children;

- pressing for the inclusion of pledges for children's rights in all political party manifestos;
- promoting series of meetings with those who can help transform social thinking with "horizontal" messages, such as lawyers, teachers, nurses, physicians, journalists, and trade unions;
- encouraging the establishment of national commissions to ensure that one body has assumed responsibility as "overseer" for issues relating to the convention and children's rights as a whole; and
- encouraging the establishment of a children's ombudsman in every country to promote and monitor children's rights and keep abreast of international trends.²⁹

In addition to these child advocacy techniques, the Stockholm conference identified one other objective of actions in support of children's rights: the family. The conference's belief in the importance of this private sector element is seen in its statement that: "laws, rules, and regulations pertaining to the protection and welfare of the child are important, but the rights of the child are fundamentally sustained in the quality of the relationship between the child and its closest care-givers in the household. The enhancement of that quality is therefore a primary rights issue for child advocacy." This being so, "we need legislation which defines the issues and sets constraints to adult behavior or actions harmful to the child," because "in practice, the undoing of the child begins with adults closest to it."³⁰

No discussion of the domestic elements that help determine the degree of progress toward the realization of the convention's goals would be complete without some reference to the smallest of these elements — the individual. The significance of this component of the domestic scene lies in the proposition advanced, for example, by Michael Jupp, in asserting that "the strength of the Convention will lie in the support it has among ordinary people." This support, according to Jupp, can be given through a variety of actions by individuals:

- leading discussions on the rights of the child at meetings held by churches, parent and teachers associations, labor unions, business associations, and clubs, urging members of these groups to work to promote the convention;
- banding together with a group of friends or associates to form a local chapter of a national or international organization promoting children's rights;
- ensuring that children are aware of the provisions that exist to protect them and teaching them about peace, universal brotherhood, and human rights;

targeting a local children's program as a special responsibility and helping it become more efficient;
asking school authorities to include the convention in the school curriculum; and assuming the duty of keeping abreast of children's issues, both locally and nationally.³¹

When individuals in significant numbers begin to take actions on behalf of a particular cause, the result can be a people's movement to effect a change in a particular social and political area. This is a phenomenon that has been seen as occurring, for example, in relation to such issues as the environment and women's rights, "two causes that lacked a priority [and were] unlikely to be advanced by either market forces or conventional political processes (and that) began to advance only when large numbers of people began to know more about the mistakes being made and the injustices being committed."³²

If the catalytic force exerted by a people's movement on behalf of children's rights is present in a national society, this will certainly enhance the prospects for real progress toward the realization of the convention's goals. For this to occur, however, there must be one other, and final, element present within that society — the "profound transformation of the mind" referred to by Varindra Tarzie Vittachie in discussing the convention's future. What must be changed, according to this observer, is "the familiar mind which has accepted the degradation of children through economic, psychological, sexual, and military abuse and by sheer neglect, as regrettable [but] normal: a state of mind which has made this Convention necessary."

Unless this state of mind is changed, contends Vittachie, the convention is likely to "remain a dead letter, a piece of paper to be quoted occasionally when a politician needs to add a little sentimental flavor to a speech, unless it serves as a constant reminder to our people of our ancient natural obligation to protect and nurture our children, unless it becomes a conscious element in a nation's ethos, a people's perception of what they regard as human decency."³³

The ethical and cultural climate prevailing within a nation, in other words, is the ultimate domestic element that will determine how seriously the convention's norms are taken and how much progress is made toward their realization within that nation. It is not unreasonable to believe that the climate necessary for more rapid progress in this direction can be developed through the efforts of those agencies and individuals, in both the public and private sectors, who labor on behalf of children's rights.

NOTES

1. International Human Rights Instruments, *Official Records*, Meetings of Chairpersons, "Improving the Operation of the Human Rights Treaty Bodies," HRI/MC/1994/2, August 12, 1994, p. 2.
2. Daniel O'Donnell, "The Convention on the Rights of the Child," *Bulletin of Human Rights*, 91(2) (1992): 37; Varinda Tarzie Vittachie, quoted in "The Convention on the Rights of the Child," *The Review* 36 (June 1986): 33.
3. O'Donnell, "The Convention," p. 38; UN General Assembly, *Official Records*, World Conference on Human Rights, "Report on Other Meetings and Activities," A/CONF.157/PC/42/Add.2, April 20, 1993, p. 1.
4. Nigel Cantwell, "Nongovernmental Organizations and the United Nations Convention on the Rights of the Child," *Bulletin of Human Rights* 91(2) (1992): 17, 22.
5. *Ibid.*, p. 22.
6. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Eighth Session," CRC/C/38, February 20, 1995, p. 10; Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Sixth (Special) Session," CRC/C/29, May 16, 1994, p. 24; UN General Assembly, *Official Records*, "Report of the Committee on the Rights of the Child," Forty-ninth Session, Supplement No. 41, A/49/41, 1994, p. 34. The states cited here are illustrative, not exhaustive, of those where the convention has the status referred to in this discussion.
7. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Reservations, Declarations, and Objections Relating to the Convention on the Rights of the Child: Note by the Secretary-General," CRC/C/2/Rev.4, July 28, 1995, pp. 10–33.
8. UN General Assembly, *Official Records*, "Report of the Committee on the Rights of the Child," p. 93.
9. *Ibid.*
10. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Eighth Session," p. 44. Article 51(2) states that "a reservation incompatible with the object and purpose of the present Convention shall not be permitted."
11. UN General Assembly, *Official Records*, "Report of the Committee on the Rights of the Child," pp. 34, 35.
12. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Eighth Session," p. 11.
13. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Summary Record of the 132nd Meeting," CRC/C/SR.132, April 12, 1994, pp. 3, 5, 6.
14. Committee members' replies to the author's questionnaire.

15. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Reservations, Declarations, and Objections Relating to the Convention on the Rights of the Child: Note by the Secretary-General," pp. 35–44. For recognition in international law of the privilege of presenting objections to reservations to multilateral treaties, see Gerhard von Glahn, *Law Among Nations*, 4th ed. (New York: Macmillan, 1981), pp. 308, 309, 489–92.

16. Committee members' replies to the author's questionnaire.

17. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Summary Record of the 248th Meeting," CRC/C/SR.248, November 13, 1995, p. 2.

18. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention; Concluding Observations of the Committee on the Rights of the Child: Ukraine," CRC/C/15/Add.42, November 27, 1995, p. 1.

19. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Concluding Observations of the Committee on Portugal," CRC/C/15/Add.45, November 27, 1995, p. 2.

20. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Concluding Observations of the Committee on Italy," CRC/C/15/Add.41, November 27, 1995, p. 2.

21. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Report on the Eighth Session," pp. 13.

22. *Ibid.*, p. 17.

23. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention; Initial Reports of States Parties Due in 1992: Mauritius," CRC/C/3/Add.36, October 2, 1995, p. 5.

24. James P. Grant, Ed., *The State of the World's Children 1993* (New York: Oxford University Press, 1993), p. 40.

25. *Ibid.*, p. 37.

26. *Ibid.*, pp. 37, 38.

27. *Ibid.*, p. 39. To these may be added Defence for Children International, a child advocacy organization with such parallel movements as Save the Children and national counterparts like the Children's Defense Fund in the United States.

28. *Ibid.*, p. 37.

29. "Recommendations from Commission on Advocacy and Education," in *Making Reality of Children's Rights* (Final Report of the International Conference on the Rights of the Child) (Stockholm, Sweden: Save the Children, 1989), pp. 47, 48.

30. *Ibid.*; Andreas Fuglesang, "Child Advocacy in Community Development," in *Making Reality of Children's Rights* (Final Report of the International Conference on the Rights of the Child) (Stockholm, Sweden: Save the Children, 1989), pp. 70, 71.

31. Michael Jupp, "The UN Convention on the Rights of the Child," *Human Rights Quarterly* 12(1) (February 1990): 136.
32. Grant, *The State of the World's Children*, p. 25.
33. Varinda Tarzie Vittachie, "Only Credible Messengers Will Transform Our Minds," in *Making Reality of Children's Rights* (Final Report of the International Conference on the Rights of the Child) (Stockholm, Sweden: Save the Children, 1989), p. 30.

Additional Factors that Affect the Convention's Prospects

GENERAL CONDITIONS

The extent to which the convention's goals for the world's children, embodied in the rights and freedoms it contains, are realized is strongly dependent on the ability of the world's nations, acting individually and collectively, to cope with a set of general conditions that adversely affect the lives of their children. Three such conditions, the focus of the following discussion, are the quality of the physical environment, the presence of armed conflict, and such economic factors as poverty and available resources.

The proposition that there is a significant relationship between the enjoyment of human rights in general and the quality of the physical environment was set forth in a 1994 resolution adopted by the UN Commission on Human Rights, which stated that "the promotion of an environmentally healthy world contributes to the protection of the human rights to life and health of everyone."¹ "Everyone," of course, includes children, whose quality of life, present and future, faces serious threats from such specific environmental factors as pollution and the more general one of the impact of adverse ecological conditions on a nation's — and the world's — economy.

The impact on the lives of children of the first of these factors, pollution, is direct and sometimes immediate, as it was in the case of the April 1986 disaster at the Soviet Union's Chernobyl nuclear power plant. As a

result of this accident, the thyroids of more than 60,000 children were affected by radiation doses that exceeded acceptable standards.

The less immediate but no less damaging effect of pollution on children was noted by Bulgaria's president in his reference to the "extremely dangerous effect on children's physical, psychological, and mental health" of his country's "polluted environment."²

The significance of the more general environmental factor has been cited by Lester R. Brown in his observation that the dream of a better life for children will remain "just a dream unless we can quickly reverse some of the environmental trends that are undermining our economy." The environmental trends that must be corrected, according to Brown, include the loss of productive soil through erosion, exhaustion, poisoning, paving for roads, and the spread of urban centers; deforestation, linked to such problems as soil erosion; loss of living species, associated with deforestation and carrying ecological implications; and air pollution, with its damaging effect on the ozone layer and the earth's climate.

Illustrative of the kinds of action that can be taken in order to provide a healthier physical environment for the world's children are the following international agreements, based on the proposition that the protection of the environment is an objective that can be attained only through cooperative efforts:

- the Vienna Convention of 1985, calling for collaborative research and careful monitoring of the ozone layer to protect human health and the environment;
- the Montreal Protocol of 1987, requiring a 50 percent reduction of chlorofluorocarbons by 1999, hailed as "the first major step [to deal with] a global ecological threat";
- the Basel Convention of 1989, restricting international traffic in hazardous waste materials, especially the exporting of toxic materials from rich to poor states; and
- the amendment of the Montreal Protocol in 1990, calling for a phase-out of chlorofluorocarbons by the year 2000, with some time extensions for developing countries.³

The extent to which the convention's goals are attained also will depend on what the world's nations, individually and collectively, are able to do concerning a second condition that has a powerful, negative effect on the quality of life of the world's children — armed conflict within and between states.

The devastating impact of armed conflict on children was portrayed vividly in the report issued by the United Nations Children's Fund

(UNICEF), "The State of the World's Children 1996." According to this report, the preceding decade saw 2 million children killed, 4–5 million disabled, 12 million made homeless, and another 1 million orphaned or unable to locate their parents. In addition, perhaps as many as 10 million children experienced psychological trauma.⁴

Other studies and surveys have provided additional evidence of armed conflict's destructive effect on children, one being a 1988 study showing that 96 percent of the children in Beirut, Lebanon, between the ages of 3 and 16 had been exposed to at least one traumatic war event. According to another survey dealing with children directly involved in Mozambique's civil war, 51 percent of these children had been physically abused or tortured, and of those who had been taken from their families, 28 percent had been given combat training and compelled to kill. Still other studies of children in conflict areas demonstrate that they "lose their sense of safety, acquire a high tolerance for violence, are haunted by terrifying memories, are mistrusting and cautious of others, and have a pessimistic view of the future."⁵

Some insight into what must be done to protect children from experiences such as these is provided by the fact, noted by Canadian researcher Ernie Regehr, that today's wars tend to be "fights within single states" and are "primarily a consequence of failed states — states that are unable to forge a minimum national consensus and to meet basic human needs." Current wars, according to this observer, "are typically desperate attempts by states to halt the spread of internal chaos. The protagonists are citizens of the same state fighting for internal change." The answer to situations such as these is said to be less a matter of international intervention in local disputes than of "improving the conditions that lead to civil wars."⁶

The conditions leading to the new breed of warfare appearing in the 1990s included ethnic strife. Hostility among ethnic groups has led to civil wars in which both government and guerrilla forces used children as combatants. The involvement of child soldiers in 27 conflicts around the world is testimony to the fact that "military leaders have discovered the effectiveness of an army of children who do as they are told." According to 14-year-old Rui Fernando, one of five boys kidnapped from an orphanage in Mozambique, "they were made to do some terrible things. We were always attacking villages. Hardly ever military targets. . . . We would go in at night and just start shooting . . . at everything." Some indication of the effect on child soldiers of this kind of experience is provided by the fact that Rui was the only one of the five who was able to readjust, and at least one of the other four was left "in really bad shape . . . very aggressive, isolated, and paranoid."⁷

The stress placed on the need to deal with the conditions leading to internal strife also occupied a prominent place in the UNICEF report noted above, which called for more attention to be given to the underlying causes of violence. Citing the example of programs in Sri Lanka targeting ethnic hostility in school children, the report also proposed the inclusion in school curricula of courses in conflict resolution. Other recommendations made in the interests of protecting children from the destructive impact of armed conflict included the following:

- raising the minimum age for service in the armed forces from 15 to 18;
- outlawing the land mines to which children are especially vulnerable;
- identifying war crimes against children;
- experimenting with limited cease-fires for the sake of children, such as those used successfully in El Salvador, Lebanon, and the Sudan; and
- increasing efforts to demobilize and rehabilitate child combatants, with special emphasis on the psychological and social harm done to children.

Finally, the UNICEF report called for the formulation of child impact statements before the imposition of international economic sanctions against a particular state, using those against Iraq as an example of the harmful effect on children of such actions.⁸ The damage done to Iraq's children by these sanctions was cited by this state's observer at a UN Human Rights Commission session. In support of his assertion that "children were indeed major victims of the embargo imposed on Iraq," Yousif presented the following comparative mortality rates to demonstrate the "dramatic decline in their health status because of the lack of food, medication, and medical equipment."⁹

Cause of Deaths	January 1989	January 1993
Malnutrition	93	1,994
Diarrheal diseases	121	1,380
Respiratory diseases	139	1,789

The Iraqi presentation also included the claim that the sanctions in question had other harmful effects: disruption of the program of free school meals and of the distribution of low cost milk; inability to import "such cultural basics" as pencils and school exercise books; and the denial to Iraqi children of access to modern teaching aids and scientific toys available to children in other countries.

The presence of armed conflict, thus, constitutes, because of its impact on the well-being of the world's children, a highly significant general condition that must be dealt with if the convention's goals are to be realized. This impact is both direct, as they become targets or combatants, and indirect, as they suffer from the loss, through military spending, of the resources required to meet basic human needs and to provide essential services.

The extent to which the convention's goals are realized also depends on what the world's nations, acting individually and collectively, are able to do in response to a third general condition that has a powerful effect on the lives of the world's children — poverty and the availability of the resources needed to achieve these goals.

The significance of poverty was underscored in a resolution adopted in 1994 by the UN Human Rights Commission in stating that “the elimination of widespread poverty . . . and the full enjoyment of economic, social, and cultural rights and civil and political rights remain interrelated goals.” This resolution further noted that “extreme poverty continues to spread throughout the countries of the world, regardless of their economic, social, or cultural situation, and gravely affects the most vulnerable and disadvantaged individuals, families, and groups.”¹⁰ Children most certainly belong in the “most vulnerable” category.

The extent of the problem of poverty among children is indicated by the fact that, even in the nation generally considered to be one of the world's wealthiest, the United States, the 1993 poverty rate for children under 18 years of age was 22 percent and, for those under 6, 25.6 percent. In both cases, the 1993 level was a new ten-year high.¹¹

Poverty has been cited as a major contributing factor to child neglect, abuse, exploitation, and prostitution. Illustrative of poverty's impact is its effect in the areas of education and health. In reference to the child's access to education, it has been noted that “the poor family cannot survive without the labor of its children. Poor children do not enter school and those who do drop out by grade three or four, when they are old enough to contribute labor for the family. Working in garden or field, or at home to free parents for such work, these children have no time for homework.”¹²

Infant mortality rates provide some insight into the effect of poverty on the health of children, with these rates being 10 times higher in low income nations than in the richer countries — 13 times, when China and India are excluded.

“The single most important factor” in these “excessive” perinatal and infant mortality rates in Third World countries, according to one

source, is "the high percentage of babies with low birth-weight due to socio-economic deprivation."¹³

Also relevant to the health factor are statistics concerning the percentages of Third World children under five years of age suffering from malnutrition. These rates, ranging from 10 percent to 66 percent, support the comment that "facts and figures on malnutrition . . . in many developing countries are staggering."¹⁴

The impact of poverty on children is not limited to Third World countries. In the United States, for example, the 15.7 million children classed as "poor" in 1993 were two times more likely than other children to die from birth defects; three times more likely to die from all causes combined; four times more likely to die from fires; five times more likely to die from infectious diseases and parasites; and six times more likely to die from other diseases.¹⁵

The possibilities of eliminating the poverty that has such devastating effects on the lives of children are linked with the success that nations have in dealing with two major related factors: population growth and the availability of resources.

Speaking to the first of these two factors, one study noted that "the prospects for substantially lessening poverty are dimmed by the relentless expansion of population, poverty's companion. Demographic growth has been singled out as a major obstacle to economic and social progress in much of the developing world. . . . The population factor makes it difficult for the poor to find jobs."¹⁶

One, and a most critical, result of this "relentless expansion of population" is the strain placed on a second factor directly related to the problem of poverty, the availability of the resources needed to provide the kind of life for the world's children for which the convention calls. This element in the general economic environment surrounding efforts to achieve the convention's goals is the subject of Article 4 of this instrument. This article stipulates that, with regard to the economic, social, and cultural rights that are so central to the convention's goals for children, "States Parties shall undertake such [legislative, administrative, and other implementary] measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation." The convention thus recognizes the critical role of the resource factor in determining the extent to which its economic, social, and cultural rights can be implemented, in a provision that also contains terms that indicate the extremely complex nature of this factor.

Four questions raised by Robert E. Robertson demonstrate this complexity.

What is a resource? "Governments are obliged to take measures beyond merely opening up the public treasury in their attempts to combat human misery and promote human development." Resources must be viewed in the "broadest sense."

What resources are potentially available to a state for economic, social, and cultural rights purposes? "Clearly, potential resources go beyond those directly controlled by the state, but to what extent?"

How much of its resources must a state devote to realizing these rights? "A standard of resource allocation must recognize human rights to be a priority, but must balance that recognition against other state obligations and private property rights."

How can state compliance with the resource allocation obligation be measured?¹⁷

Stated in other terms, the concept of available resources for the attainment of the convention's goals raises questions: Are the necessary resources really present; does a state actually have what is needed for this purpose? Is availability determined by the priorities set by a state's political decision makers? Is the resources problem one of quantity or one of distribution?

If the problem for any state is an actual absence of essential human and physical resources, then particular significance attaches to that part of Article 4 that speaks of "the framework of international cooperation" within which, "where needed," states are to take measures to implement the convention's economic, social, and cultural rights. This note of shared responsibility was also struck in the provision "recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries," in the preamble.

These convention passages reflect what Thomas Hammarberg has referred to in saying that "it was understood when the Convention was drafted that the richer states and the so-called donor community in general would assist the poorer countries in the implementation."¹⁸

This assumption that wealthier states could be expected to respond to the resources problem in developing countries evidently was shared by the developing nations. Thus, "following the commitment made at the [1990] World Summit for Children, every developing country that draws up a detailed program of action . . . should now be able to expect that some proportion of the cost will be met by increased or reallocated aid." For the developing world as a whole, the amount of additional external aid needed was set at \$8 billion yearly. However, as a 1993 study noted, "[there was] no significant sign that the industrialized countries will make additional

resources available on this scale. Aid continues to stagnate, and there have been few serious attempts to restructure existing aid allocations.”¹⁹

The stagnation of aid here referred to — or worse — is noted in the record of percentages of national gross national product (GNP) devoted to official development assistance (ODA), as contained in the 1994 World Development Report issued by the World Bank. According to this report, these percentages were lower in 1991 than they were in 1980 in 8 of the 18 members (industrialized nations) of the Organization for Economic Cooperation and Development; for one other, the giving was on the same level, and two others registered only very slight increases. Norway was the only member devoting as much as 1 percent of its GNP to this purpose, with 1.14 percent allocated for ODA.²⁰

If, then, the resources problem is a matter of what is actually at hand and if the answer, to any significant extent, involves ODA, it is apparent that achieving the convention’s goals will require a more positive response by the wealthier nations to the concept of international cooperation than was in evidence at the 1990s’ midpoint, a time when one observer was moved to comment that “the pledge [to assist the poorer countries] had not been honoured.”²¹

The concept of international cooperation also is highly relevant to the condition underlying the poverty and resources problem — the state of the economy, both in individual nations and in the world in general. Because the two are so intimately related, the prospects for developing and sustaining a healthy economy are, to a considerable extent, dependent on the degree to which nations are able to work together to solve the economic problems of today’s global village. It is possible, however, that the availability of resources may be a matter of distribution, not quantity. This possibility is suggested by the examples of some poorer states — Sri Lanka, China, Costa Rica, and the Indian state of Kerala, for example — who have been credited with undertaking “ambitious programs” in such areas as health care and education.²²

The possibility that availability is really a matter of priorities also is suggested by the flawed performance of one of the richest of the world’s countries, the United States, in some areas of child life. In one of the most critical of these areas, health care, for instance, the indictment is that “many American children are growing up without the health care necessary for a healthy start in life.” Despite its high rank in measures of national wealth, this country’s 1992 infant mortality rate of 8.5 per 1,000 births placed it behind 21 other states; more than 9 million children lacked health insurance; and 41 percent of its poor children were not receiving adequate immunization against preventable childhood diseases.²³

Examples such as these provide support for the contention that the question of available resources is, in fact, a matter of the presence or absence of the political will to allocate resources for economic, social, and cultural purposes. At the midpoint of the 1990s, there was no clear-cut answer to the question of whether this will was present to the extent necessary to provide the resources needed to attain the convention's goals.

On the negative side of this question are such examples as the expressions of concern on the part of the Committee on the Rights of the Child "at the small proportion of the [Indonesian] budget devoted to the social sectors, particularly primary health care and primary education" and its "suggestion" that Argentina's budgetary measures be reviewed "with a view to ensuring that the maximum amount of available resources is allocated to promote and protect the rights of the child at the federal, regional and local levels." It was also the committee's opinion that another state, the Philippines, had paid "insufficient attention" to the provisions of Article 4 concerning budgetary allocations. The committee further noted, with concern, "the balance of resource allocations . . . between the social and other sectors and the high proportion of military expenditures to the detriment of child-related issues. In this regard the Committee expresses its concern at the unequal distribution of the national wealth in this country."²⁴

Various factors have been cited to explain the failure of at least some states parties to the convention to allocate adequate resources for child welfare-related purposes. Thus, the Committee on the Rights of the Child expressed its "awareness" that economic conditions in Pakistan "[had] not been favorable and per capita income [was] relatively low." Colombia's president pointed to the expenditure of \$1 billion in one year "to fight drugs" as the reason why "less resources" would go to children. In the Central American states, the failure was attributed to the "persistence of conditions of warfare."²⁵

Whether factors such as these, rather than a lack of political will, are valid explanations for budgetary inadequacies is a debatable question, one whose answer would require a case-by-case, in-depth analysis of particular national situations.

A more positive answer to the political will question is provided by the 1990 record of national spending for selected purposes as compared with that of 1960, suggesting an increasing willingness to devote resources to child-related causes. Although some of the changes noted in the following data are not great, the concern here is not the degree of shifts in priorities but their direction.

Percentages of the Gross National Product Spent

	By Developing Nations	By Developed Nations
For military purposes		
1960	3.9	5.9
1990	3.9	3.7
For education		
1960	2.4	3.6
1990	3.9	5.2
For health		
1960	0.9	2.2
1990	1.6	5.2

Behind these general statistics, however, are wide disparities among regional groupings.

Region	Number of States with Complete Data	Number of States Showing Decreased Military and Increased Social Spending, 1960-90
Black Africa	24	1
East Europe	4	2
	(exclusive of 3 former states)	
Far East	9	2
Latin America	20	4
Middle East	8	3
North Atlantic Treaty Organization		
Europe	14	11
North America	2	2
North Africa	3	2
Oceania	2	2
South Asia	4	0
Totals	90	29

The existence of variations among developing nations in the pattern of resources allocation is seen in the examples of five nations: China,

Indonesia, Nigeria, Philippines, and Sri Lanka. The percentages of GNP spent in each of the three categories rose in three states and declined in two, but the pattern of changes was not the same for all of the five. Such variations did not occur in five selected developed countries: Germany, Italy, Norway, United States, and United Kingdom. This record showed four of these states decreasing their spending for military purposes, with the fifth remaining on the same level, and all five raising their level of percentages allocated for health and education.²⁶

If the pattern of budgetary allocations for military versus social expenditures is a reasonably reliable indication of political will, then it is apparent from the foregoing that the question of the existence of a political will to make resources available for child welfare-related purposes must be answered on a country-by-country basis. It is on this basis, too, that the prospects for realizing the convention's goals for the world's children must be assessed, to the extent that this assessment turns on the availability of the resources needed for this purpose.

NOTES

1. UN Economic and Social Council, *Official Records*, "Report of the Commission on Human Rights on Its 50th Session," E/1994/24, Supplement No. 4, 1994, p. 187.

2. *Response* (New York: Women's Division, General Board of Global Ministries, United Methodist Church, December 1990), pp. 8, 20.

3. The source for the discussion here of the environment, including the Lester Brown quote, is Ruth Leger Sivard, *World Military and Social Expenditures 1991*, 14th ed. (Washington, D.C.: World Priorities, 1991), pp. 28–32, 35.

4. Cited by Barbara Crossette, "UNICEF: Children Major War Victims," *Patriot-News* (Harrisburg), December 12, 1995, p. A1.

5. The studies noted here were cited by Mona Macksoud, who also is the source for the material quoted in this discussion. *A World Safe for Children* (Final Report, Annual Conference, Department of Public Information for Nongovernmental Organizations, September 1990) (New York: Department of Public Information for Nongovernmental Organizations, September 1990), p. 29.

6. Ernie Regehr, "Warfare's New Face," *World Press Review* (April 1994): 14, 15.

7. John Fleming, "Children in Bondage," *World Press Review* (January 1996): 8.

8. For UNICEF's recommendations, see Crossette, "UNICEF: Children Major War Victims," p. A1.

9. UN Economic and Social Council, Commission on Human Rights, *Official Records*, "Summary Record of the 61st Meeting," E/CN.4/1993/SR.61,

Supplement No. 4, March 15, 1993, p. 11. This also is the source for the Iraqi presentation cited in the following paragraph.

10. UN Economic and Social Council, Commission on Human Rights, *Official Records*, "Report of the Commission on Human Rights on the 50th Session," E/CN.4/1994/132, Supplement No. 4, February 25, 1994, p. 62.

11. Belva Finlay, ed., *The State of America's Children Yearbook 1995* (Washington, D.C.: Children's Defense Fund, 1995), p. 101.

12. Andreas Fuglesang, "Child Advocacy in Community Development," in *Making Reality of Children's Rights*, (Final Report of the International Conference on the Rights of the Child) (Stockholm, Sweden: Save the Children, 1989), pp. 68, 69.

13. *Ibid.*, p. 69; *World Development Report 1994* (Washington, D.C.: World Bank, 1994), pp. 214, 215.

14. Virginia A. Leary, "The Right to Health in International Human Rights Law," *Health and Human Rights* 1(1) (Fall 1994): 47; *World Development Report 1994*, pp. 214, 215.

15. Finlay, *The State of America's Children Yearbook 1995*, p. 19.

16. Ruth Leger Sivard, *World Military and Social Expenditures 1993*, 15th ed. (Washington, D.C.: World Priorities, 1993), p. 24.

17. Robert E. Robertson, "Measuring State Compliance With the Obligation to Devote the 'Maximum Available Resources' to Realizing Economic, Social, and Cultural Rights," *Human Rights Quarterly* 16(4) (November 1994): 694, 695.

18. Thomas Hammarberg, in manuscript on the Convention on the Rights of the Child, shared with the author.

19. James P. Grant, Ed., *The State of the World's Children 1993*, (New York: Oxford University Press), p. 20.

20. *World Development Report 1994*, p. 196.

21. Hammarberg manuscript.

22. Grant, *The State of the World's Children 1993*, pp. 17, 18.

23. Finlay, *The State of America's Children Yearbook 1995*, pp. 28, 32.

24. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention," CRC/C/15/Add.25, October 24, 1994, p. 3; Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention," CRC/C/15/Add.29, February 15, 1995, pp. 2, 3; Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention," CRC/C/15/Add.35, February 15, 1995, p. 3.

25. Committee on the Rights of the Child, Convention on the Rights of the Child, *Official Records*, "Consideration of Reports Submitted by States Parties under Article 44 of the Convention," CRC/C/15/Add.18, April 25, 1994, p. 2;

Response, p. 20; UN Economic and Social Council, Commission on Human Rights, *Official Records*, "Summary Record of the 61st Meeting," p. 17.

26. Sivard, *World Military and Social Expenditures 1993*, pp. 42–45.

Conclusion

At the midpoint of the decade of the 1990s, the convention had been in effect for five years — not a long period of time, historically speaking, but long enough to justify some observations concerning this instrument's impact on the status and condition of the world's children and on the behavior of the states parties to it.

Discussion of the convention's impact is made difficult by the fact that this instrument is only one among many forces and factors having an effect on the lives of children and the actions of states. The convention appeared at a time when it was possible for Sweden's Thomas Hammarberg, a member of its Committee on the Rights of the Child, to say that "children are high on the political agenda as probably never before." The following examples have been cited to support this observation:

the fading of the atmosphere of denial around child prostitution and steps taken to deal with this problem — the UN's appointment of a special rapporteur, the adoption by the UN Human Rights Commission of a plan of action, and the Swedish government's invitation to a world congress on this abuse;

the emergence of child labor as a major item for intergovernmental discussion, because of the effect on trade relations of reports of this practice;

reaction to atrocities against children in situations of armed conflict, including the initiation of a UN-sponsored study of such actions and the recognition that

“the use of anti-personnel mines, rape, and other brutalities affecting children are . . . important questions calling for determined action”; and recognition, in at least some countries, that refugee and asylum-seeking children are “subjects in their own right.”¹

Although the presence on the world scene of numerous forces and factors working on behalf of children makes it impossible to clearly identify or precisely measure the convention’s effectiveness, there is credible evidence to support the conclusion that the convention has made a difference in the behavior of the states parties to this instrument and, therefore, has had a favorable impact on the status and condition of the world’s children. Such evidence includes the testimony of informed observers of the world scene, for example, the legal consultant for Defense for Children International, in whose opinion “the Convention and efforts made to raise support for it . . . have greatly increased the awareness and interest in children’s rights.”²

An effect of this kind has long-range implications in that popular attitudes can translate into policy demands that governments cannot ignore, especially in an era when it is possible to refer to “the ground being gained by democratic systems.”³

Another testimonial to the convention’s effectiveness has been offered by Thomas Hammarberg who has shared in this instrument’s implementary processes, in asserting that “the discussions between the Committee [on the Rights of the Child] and the governments have had some positive results. . . . Some of the points raised by the Committee appear to have had impact on some governments. The importance of seriously addressing the problem of domestic violence and (the ratifying of) International Labour Organization rules on child labour are two examples.”⁴

Regarding a state’s behavior, the real, though immeasurable, influence of discussions between its representative(s) and members of some international agency, such as the Committee on the Rights of the Child, is exerted not only in an agency’s open sessions but also (and, quite possibly, even more importantly) in the informal talks that are so significant in all forms and fora of international diplomacy. It is in such consultations, conducted away from the glare of publicity, that real progress can be made in coping with some issue of concern and the ground laid for subsequent governmental action. This process and its results are not likely to become a matter of general knowledge unless a particular government decides that it can gain domestic support for a controversial policy decision by pleading the desirability of cooperating with international programs or the legal obligation to do so.

In the absence of any such motivation, governments cannot be expected to publicize what has happened and, thereby, subject themselves to the criticism that they have yielded to the pressure of an international agency; international agencies can be expected to avoid publicity out of a desire to retain the confidence of governments, thereby encouraging freer and more productive discussions of items on their agenda.

The formal and informal consultations involving the convention's main implementary body and representatives of states parties, thus, constitute one way in which the convention reasonably can be assumed to be having a significant, though immeasurable, impact on state behavior and, consequently, the condition of that state's children.

In some cases, this impact has been sufficiently apparent as to inspire commendatory comment from the committee. This was true, for example, in regard to Nicaragua as a result of its willingness to consider action that would give constitutional status to the convention; its major changes in laws relating to sexual abuse of women and children; its engagement in a comprehensive examination of various laws affecting children to ensure the compatibility of the laws with the convention's provisions; its establishment of a National Commission for the Promotion and Defence of the Rights of Children; and the proposed creation of an office of ombudsman for children.

The committee also "noted with satisfaction" that a number of laws had been amended or supplemented and new legislation drafted by Romania for the purpose of bringing domestic laws into conformity with the convention; such "important steps," taken by Vietnam toward implementation of the convention, as the establishment of national, provincial, district, and commune committees for the protection and care of children and the adoption of laws for the protection, care, and education of children; and the legislative and administrative measures undertaken by Belarus to deal with the problems of its children, seen as "indications of the importance [this] State Party attaches to its obligations under the Convention."⁵ Such instances provide the basis for the comment by Thomas Hammarberg that "concrete steps have been taken in several countries to review legislation, establish ombudswork for children, coordinate child's rights policies between ministries, inform professionals, and create an awareness about children's rights among a broader audience."⁶

Although conceding that "such positive steps might have taken place without any international child rights treaty" and that "it is likely that the political climate which made the Convention possible would have caused such improvements," still, in Hammarberg's opinion, "it seems obvious that the Convention has had a catalytic effect which otherwise would have

been difficult to cause.”⁷ The “catalytic effect” referred to is certainly one of the aspects of the convention that must be taken into consideration in any attempt to assess the convention’s impact. By its very nature impossible to measure, this phenomenon is a result of actions and processes both within and corollary to the convention.

The very necessity of preparing a report on its performance in relation to the convention’s standards compels a state party to give renewed attention to the condition of its country’s children and to the relation of its laws and practices to this condition. In some states, the process of preparing reports involves nongovernmental organizations, and this is one of a number of ways in which the convention’s impact is being strengthened by the work of elements in a nation’s private sector who, in many countries, serve as monitors of their government’s compliance with convention standards.

On the basis of the considerations noted above, it is reasonable to conclude that, by the midpoint of the 1990s, the convention had been an effective force working for the benefit of the world’s children. It is also reasonable to assume that this effectiveness will increase with more extensive experience with the functions that this instrument is well-qualified to perform:

- as a reminder to states parties of legal obligations to pursue designated objectives for their nations’ children, to which these states have formally committed themselves, a reminder periodically delivered through the necessity of reporting to the convention’s complementary organ concerning their progress toward this instrument’s goals for children;
- as the facilitator of consultations between persons representing the convention and the states parties to it to call attention to areas of noncompliance with the convention; identify problems and circumstances making compliance difficult; and find ways to overcome these hindrances, including suggestions and recommendations from the convention’s committee and offers of assistance from international agencies, where such aid could contribute to a better performance by parties; and
- as an instrument that can be used by child advocacy agencies within states parties in their efforts to move their governments to take the kinds of prochild welfare actions they favor, citing convention commitments and standards in support of their representations; to lift the level of interest in and concern for the well-being of their country’s children; and to educate children, parents, guardians, and others closely related to children concerning the rights of the child and the responsibilities of those who care and plan for them in one way or another.

Although the convention’s effectiveness can be expected to increase as its complementary personnel, extraconvention global agencies, states

parties, and nongovernmental organizations and other elements within the private sector of these states accumulate more experience with its contents and processes, there are limits to what can be looked for as a result of even an increased effectiveness. These limits are set by a number of factors, including the vast scope of the rights and freedoms contained in the convention, the ever-changing nature of the threats to these rights and freedoms, and the inability of states to give full compliance to the convention's standards, through absence of political will, negligence, preoccupation with other policy concerns, or lack of human and other resources needed to satisfy these standards. What can be expected, though, is what the convention requires of its parties: actions designed to achieve progress toward the realization of the kind of life for the world's children that the convention envisions.

This progress inevitably will be uneven, within and among states and in relation to particular provisions set forth in the convention, but it is by no means unrealistic to anticipate progress for the benefit of the world's children as the public and private sectors of the nations continue to become increasingly sensitive to the status and condition of their children, a sensitivity that the convention will certainly cultivate and help satisfy.

NOTES

1. Thomas Hammarberg, in manuscript on the Convention on the Rights of the Child, shared with the author.

2. Dan O'Donnell, "Two Steps Forward . . . One Step Backward?" *Monitor* 8 (1991): 9.

3. James P. Grant, ed., *The State of the World's Children 1993* (New York: Oxford University Press), p. 19.

4. Hammarberg manuscript.

5. Convention on the Rights of the Child, Committee on the Rights of the Child, *Official Records*, "Convention on the Rights of the Child," CRC/C/15/Add.36, June 20, 1995, p. 2; Convention on the Rights of the Child, Committee on the Rights of the Child, *Official Records*, "Convention on the Rights of the Child," CRC/C/15/Add.16, February 7, 1994, p. 1; Convention on the Rights of the Child, Committee on the Rights of the Child, *Official Records*, "Convention on the Rights of the Child," CRC/C/15/Add.3, February 18, 1993, p. 2; Convention on the Rights of the Child, Committee on the Rights of the Child, *Official Records*, "Convention on the Rights of the Child," CRC/C/15/Add.17, February 7, 1994, p. 1.

6. Hammarberg manuscript.

7. *Ibid.*

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ABOUT THE AUTHOR

A. GLENN MOWER, JR., is Professor Emeritus of Political Science, Hanover College. He has written extensively on the subject of human rights, including *Human Rights and American Foreign Policy* and *Regional Human Rights* (Greenwood, 1987 and 1991, respectively).