

Towards a Convention on Responsibilities and Obligations to the Child – Philip Marcus

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TOWARDS A CONVENTION ON RESPONSIBILITIES AND OBLIGATIONS TO THE CHILD

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Preface: Responsibilities and Duties, not Rights

This Paper follows on from a paper I presented at the 5th World Congress in Halifax, Nova Scotia, four years ago.

In that paper, a copy of which is attached as the annex, I tried to show that the principal defect of the Convention on the Rights of the Child of 1990 (CRC), followed in the European Convention on the Exercise of Children's Rights of 1996 (hereinafter - Strasbourg 1996), is that it was framed in terms of the rights of the child, without adequate indications of those responsible for seeing that those rights were supplied. I submitted then that the preferable focus should be on protection of the child and caring for him. In other words, the child's nurture were the responsibility of his parents and family, and of the State in those circumstances that the parents and family are unable to, or refuse to, care for him.

The word "right" is usually used in a legal sense to denote an actionable claim. This assumes that the owner of the so called right is aware of its existence and has the capacity to take action for its enforcement.

Children, certainly those under the age of 14 (the age of criminal responsibility in many countries, as an example of attribution of adult capacity, which is in itself questionable), like many disabled adults, are unaware of their so-called rights, and are certainly incapable of taking legal action in the event of breach.

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As an example, a child who suffers non-violent sexual abuse from a parent may not be aware that the behaviour of the parent is wrong, and so will not complain; and it is of no assistance to the child to say that the parent has the right to complain where his interest is clearly opposed to that of the child. And in a case which I dealt with (Fam. C. 2470/05 *In Re S*, a minor), the biological mother sued for contact with her son, who had been brought up since infancy believing that the father's wife was his mother; again, the child was unaware of the existence of anything untoward in his life, and any discussion of his rights, in the sense referred to above, was irrelevant.

Many separating couples still assume that parental separation has to be accompanied by litigation over arrangements for the children, because the so-called rights of one parent conflict with those of the other; this assumption is rooted in a fundamental mistake as to the relations between parents and children, and between the parents regarding their mutual involvement with the raising of their children. Adversarial proceedings are almost inevitably detrimental to the child and the parents.

For this reason, and for several others, including my general dissatisfaction with rights based discourse in all legal and other frameworks¹, in the Halifax paper I suggested a rewriting of the Convention, by framing the interest of the child in terms of duties owed to him, and also by designating clearly who are the actors - individuals or organisations or agencies of the State - who are responsible to carry out these duties.

The rewritten Convention on Duties to Children is appended to that paper. It should be clear that such a rewriting does not in any way reduce the benefits of the Convention to children – on the contrary, the benefits are enhanced by directing attention to the responsibilities of adults.

¹ In my thesis for the LL.M. degree, *Hohfeld Without Rights*, I demonstrate the many problems of the rights analysis and suggest that all legal relations can be described and enforced using the formulation of duties and obligations, including, where necessary, obligations on the State to refrain from interfering with the liberties of the individual without just cause, thereby nullifying the defects arising from rights talk. It is indicative of movement from pure rights discourse to that of responsibilities and duties that the Republic of South Africa, after promulgating a Bill of Rights, also promulgated for children a Bill of Responsibilities, containing the relevant provisions in language that children can understand and act upon.

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I do not take back any of what I said then; indeed, subsequent events have confirmed to me that the concept is correct. However, in the light of many changes in the way we regard families, the convention appears to be outdated in other respects.

So I will outline how the convention should be made to conform to the needs of children in the second decade of this century and beyond.

Recent developments

In the last few years, there have been two connected developments, one in the medical-social field and the other in the legal-psychological field, both of which impact directly on the Convention and require that it be amended².

In the medical-social field, the increasing use of assisted reproduction, and in particular surrogacy and the use of frozen sperm or ova sometimes many years after the donors who were a couple have ceased to live together; the acceptance of same-sex couples and marriages; increasing recognition of the importance of grandparents and members of an extended family for the welfare of the child; and the perennial increase in the number of children living with one parent: all of these changes require a review of the definition of the terms "family", "parent" etc.

See Nachmani, also H CJ 4077/12 Anon. v. Ministry of Health, Shamgar p.6 there

In the legal-psychological field, there is movement in many jurisdictions from terminology of custody, access, visitation etc. to language of parental responsibility³. This reflects a changing understanding of the

² I am fully aware that it will be necessary to amend other Conventions which do not take changes in family structure and the paradigm of parental responsibility into account, but for reasons of space I will restrict myself to the CRC.

³ It would be better to talk in terms of parental responsibilities, in the plural, since parenting consists of a large variety of tasks – including caring for the child's health, housing, clothing, nutrition, education, social and emotional needs (which include involvement of all such relatives who can contribute positively to the child's development); and these tasks are usually divided, even in an intact family, between the parents and other caregivers, by express or tacit agreement. So on divorce or separation, there needs to be an arrangement in respect of each task, and the division can be made in any one of many different ways. For example, division of the task of housing the child is usually achieved by fixing where the child will stay when he is not in school – division by time; his nutrition and clothing by allocating the tasks to one of the parents and the task of paying to the other – economic division; and deciding who will carry out those tasks that are to be fulfilled by others, including carers, teachers, etc.

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roles the members of a child's family should play for his healthy upbringing; however those having responsibility for the welfare of a child are not restricted to members of his family, as shall be pointed out.

For example, the Hague Convention on the Civil Aspects of International Child Abduction of 1980 (hereinafter Hague 1980) is formulated only in terms of "rights of custody and access" (Articles 1(b), 3, 4, and the definitions in Article 5, and *passim*). The move towards recognition of the need that both parents take part in the child's future is reflected in the title of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, concluded at The Hague in 1996 (hereinafter Hague 1996).

But Article 3(b) of Hague 1996, in defining the measures that may be taken for the protection of the child, refers *inter alia* to "rights of custody, including rights relating to the care of the person of the child and the right to determine the child's place of residence, as well as rights of access..."

So the shift from the custody-access paradigm to the parental responsibility paradigm is far from complete, with all that this entails for the continuation of adversarial proceedings about the future of the child.

All of these developments, which could hardly have been foreseen when the Convention was drafted, require changes.

Family, Parents, Relatives – Not Defined

The preamble to the CRC contains the statement that the family is "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children", and that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding".

But the term "family" is nowhere defined.

Nevertheless, Article 5 of CRC recognizes, albeit without definition, the existence of extended family ties, but from the wording of the article, these only exist where local custom provides for them: "States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as

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provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention."

Article 7(1) states that a child has "as far as possible, the right to know and be cared for by his or her parents", and Article 9(1) that a child shall not be separated from his parents against their will except in the case of abuse or neglect of the child by the parents or where the place of residence of the child needs to be determined because the parents are separated. Article 9(3) adds that such a child must be able to have personal relations and direct contact with his parents, and Article 9(4) for provision of information as to the death or detention of one or both parents or of the child to "the parents, the child or, if appropriate, another member of the family...".

While the Convention speaks of legal guardians "when applicable" (e.g. in Articles 14(2) and 18(1)), this term is also not defined; similarly where reference is made to "relatives" (e.g. in Article 21(a)), no attempt is made to define who they are and what degree of relationship is needed. And no definition of "parents" is offered.

Article 26 of the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993 (hereinafter Hague 1993) speaks of parental responsibility of adoptive parents, without defining parental responsibility.

The wording of Hague 1996 does not reflect substantial progress on defining those who have primary responsibility for a child. Article 1 defines the term "parental responsibility" thus: "For the purposes of this Convention, the term 'parental responsibility' includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child", without defining "parents". And Article 7, dealing with wrongful removal or retention of a child, speaks of the person, institution or other body "having rights of custody".

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Similarly, Article 2(b) of Strasbourg 1996 defines "holders of parental responsibility" thus: "parents and other persons or bodies entitled to exercise some or all parental responsibilities", without defining "parents".

Social changes – What is a Family?

The CRC and other international instruments are based on the traditional paradigm of the family: one father, one mother, and their joint biological child or children, and other biological relatives. Article 18 of the CRC calls on States Parties "to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child", the clear assumption being that the child has a father and a mother.

The CRC takes little or no account of the importance of sibling relationships, and seems to treat each child as if he was the only child of his parents, even though siblings can constitute an important support group in times of family disharmony.

Grandparents, where referred to at all, are the biological parents, one male and one female, of the parent of the child concerned.

There have been changes even in the structure of biological families, because people are living far longer than they did 30 or 40 years ago. Thus grandparents, and even great-grandparents, are far more likely to be actively involved with their offspring, and to demand contact where this has been denied.

Legal systems have experienced difficulty in defining the relationships between children and their step-parents where a biological parent remarries after divorce or being widowed. The new wife or husband can be placed anywhere on a continuum, from the wicked stepmother of children's stories to a full emotional replacement for the absent parent.

But in the case of divorce, the other parent is rarely completely absent, and this can lead to further damaging conflict. The child may be torn between the biological parent and the stepparent, and if there is unfinished business between the biological parents, or the stepparent wants to take over the role of the biological parent, the scene is set for further animosity and litigation.

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Clear definition of areas of parental responsibilities at the breakup of the parent's relationship, including the prohibition of adoption of parental responsibilities by a new partner except by agreement of all concerned, would go a great way to mitigate , if not prevent, future conflict.

However, recent years have seen a weakening of the institution of marriage⁴. More and more couples are having children without being married to each other, making separation less complicated for the couple, but no less disturbing for their children; in addition, each of the separated parents can enter into relationships, including cohabitation, without the commitment of marriage, and the child is confronted with new partners of his parents, whose continued involvement in his life may be doubtful.

In addition, homosexual partnerships are becoming more common, as are the jurisdictions recognizing homosexual marriages. This can add further stress to the child if one parent takes a negative view of the former partner's sexual orientation. But in any event, a child growing up with two male or two female adults was not envisioned as a family when the CRC was drafted, even in those cases where the child is the biological offspring of one of them.

But it is in the field of assisted reproduction that there have been massive changes in the years since 1990. Louise Brown, the first test tube baby, was born in 1976, and since then at least 3 million babies have been born worldwide by *in vitro* fertilisation; but legislation around the world has concentrated on the medico-legal and ethical ramifications of assisted reproduction, and in 1990 no-one expected the use of surrogacy, in which the donors of gametes may not know the surrogate mother or the prospective parents. In such a case, the child has five persons who can legitimately claim to be parents – the sperm donor and the ovum donor, whose genes the child carries; the surrogate, who carried the pregnancy and in the nature of things may have developed an emotional attachment; and the person or persons, of whatever gender, who initiated the process intending to raise the child, even though neither of them have any biological connection. Who are the parents and who constitute the child's family?

⁴ Nothing in this paper should be interpreted as expressing approval or disapproval of any lifestyle choice by an adult. My intention is only to describe the effects of the different types of family on children involved, and to demonstrate how removal of the doctrine of rights together with adoption of the doctrine of division of parental responsibilities, together with techniques for identifying who has those responsibilities and preventing outside interference with the proper exercise of those responsibilities, will improve the lot and quality of life of those children.

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Towards a New Definition of Parenthood and Family

Clearly there is an urgent need for multidisciplinary consultations in order to arrive at a satisfactory revision of the CRC to take account of the new situations faced by children and those who have to determine their future.

Any proposal for a definition of parenthood and family requires input from experts in the behavioural sciences, especially those who can advise on child development and the importance of relationships of different kinds, and the drafting will have to be done by jurists and others who will take into account the different cultures in which children grow up.

Legislation and case law talk about various levels and types of parenthood: Legal Parents, Natural Parents, Biological Parents, Psychological Parents, Social Parents. But little effort has been put into defining these terms except in the most superficial manner.

So the following represents my suggestions, from the point of view of a Judge who sat, almost exclusively, in family matters, for seventeen years.

The starting point has to be the revision of the CRC by doing away with rights terminology. Although this may sound revolutionary, my experience has been that once parents are made aware that they are not in a position that someone is trying to make them act in a certain way because of rights, and that the focus has to be on providing the child with what he needs and deserves, the process can, with appropriate dispute resolution techniques applied, turn into a polite debate, instead of a vociferous argument. The child does not need rights for this to happen. Judges and lawyers and other practitioners need to reframe the discussion in terms of responsibilities, obligations and duties.

The needs of children, at present framed as rights, would be satisfactorily addressed by the CRC if it named the persons or organisations responsible for providing those needs. Even so, some updating may be necessary, particularly in view of the cyber-revolution, which exposes children to dangers which were not envisaged when the CRC was framed.

There is also no need to change the basic premise, that a child needs a family unit to belong to.

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The difficulty is in setting out what that unit should consist of – who are the people who should be closely involved in the healthy upbringing of the child.

The concept of responsibilities is helpful in this regard. The biological parents are responsible for the wellbeing of the child, because they caused him to be born. But there may be others who take on responsibilities, or who must be given responsibilities and held to their performance, all according to the circumstances of the individual child; and as already mentioned, a specific area of responsibility can be allocated to more than one person.

The following are some examples, taken from cases which have come before the court, from which we can derive certain principles which can help in arriving at a definition of parents. In most cases I have for convenience used the term "biological parent", but this will also mean adoptive parents or others to whom parental responsibilities have been granted

In the ordinary child protection case, where it is found that the biological parent or parents, or the person or persons responsible for the child, have not protected the child from harm, either by abuse or neglect, the state intervenes. This may take the form of an application to remove the child from his home to a foster family or children's home, or to declare the child adoptable, but the Court must determine the extent to which the responsibilities for the child's welfare and upbringing have to be reallocated.

In the extreme case, the Court may divest the biological parent of all responsibility for the child⁵, by making an adoption order, which allocates all the responsibilities to the adoptive parents.

⁵ There is a huge difference, in the eyes of a parent who has emotional attachment to the child, between an application for termination of parental rights and an application to transfer parental responsibility to a person or couple who truly want the child. The phrase "termination of parental rights" is aggressive and denigrates the parents, and especially the mother, focusing on her inadequacy and depriving her of her "rights" to what "belongs" to her. Terminology of "transfer of parental responsibility" makes the procedure sound as if the mother, if not instituting the process, is at least involved, in addition to making the child a principal rather than the object. It is reasonable to suggest that for some mothers, especially in the case of an unwanted child - unfortunately, there are such cases, where the pregnancy was caused by rape or for other reasons – an application framed as a request for transfer of parental responsibilities to another person may come as a relief from an unbearable burden, and promises a better life for the child.

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In other cases, the biological parent retains contact and legal and psychological involvement with the child, and this should be translated into language which will not give the impression that the State or its agencies have completely taken over, and that the parents are no longer expected to act in the child's interests.

So an order should set out those parental responsibilities which remain with the biological parents; according to the circumstances, this may include full responsibility for providing the child with a home during holidays and vacations, including food, supervision etc., and while the child is with the foster family or in a children's home the responsibility for providing clothing and keeping up medical insurance. When there are more than one child, and not all of them are living with one place, their need for sibling ties must be addressed by ensuring that they spend some time together during holidays or vacations⁶.

As already stated, when parents separate – it matters not if they were married – they must determine how the parental responsibilities should be allocated, so that although the child may have two homes, there is no period in which it is unclear who is responsible. As stated earlier, making allegations and claims based on rights relating to the child is never beneficial for the child. This means that a detailed parenting agreement, or failing that, a parenting judgment or order, is essential in every case.

When separated parents form new relationships, there may be a need to adjust the division of parental responsibilities, and, as indicated, the new partner may take over performance of some of the duties of the biological parent or parents. Here again, for the avoidance of friction, a new agreement will be necessary.

And again there is a need to ensure ties between siblings, if they are not all living in one place⁷.

Where paternity or maternity are in dispute, different issues arise, since there are (usually) three adults involved – the persons registered as the

⁶ This can be very difficult. For several years I dealt with five children of the same parents who were for most of the time in four different placements – the three eldest in therapeutic children's homes and the two youngest with the same foster family. It was very hard to coordinate weekends together, since each children's home had a different regime regarding home time.

⁷ In a case I dealt with, the parents agreed that one of their sons would live with the father and the other with the mother, in a different city. I made strenuous efforts to persuade the parents that the boys, who had a good relationship despite their differing loyalties, should spend two weekends every month together, one with the father and one with the mother.

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child's parents, or with whom the child has grown up thinking they are his parents, and another person, who either claims to be the parent or who is alleged by one member of the couple to be a parent. In a recent case before the Israeli Courts⁸, a girl was born shortly after the mother was divorced, and the father and a former boyfriend of the mother disputed paternity. The Courts, and the expert whose opinions were part of the evidence, all proceeded on the assumption that there was a need for a clear determination as to who was the biological father. But they ignored the fact that the child had a close relationship with both men, and called both of them Daddy. In such a case, the courts should have pressed the adults to divide the parental responsibilities between them, including the issue of the place of residence of the child (the mother was considering leaving Israel with one of the fathers) and the level of contact and the extent of the authority of each of them to make decisions about educational and medical matters. Instead the child would be forced to "lose" one of her Daddies, because of over-reliance on the rights of the adults and the assumption that in such a case certainty as to the biological details would be better for the child.

The involvement of grandparents and other members of the extended families has exercised courts and legislators to an increasing extent in the past few years. There is no doubt that grandparents can be of great importance in the development of the child and his sense of self and belonging. However, grandparents sometimes assert a right to be involved in the child's upbringing, and this is particularly the case after the parents separate or after the death of one of the parents.

Here again, assertion of rights is wrong and leads to unsatisfactory results. The basic principle is that the biological parents have all the responsibilities for bringing up their children, including the fostering of healthy relationships with grandparents and the wider family, but allied with the responsibility and as an integral part of it, the parents must have the authority to make decisions about the children without outside interference. This immunity from interference is, of course, not absolute, and we have already seen that the State may, and indeed must, intervene if the child is abused or neglected. If an application by grandparents is framed in terms of parental responsibilities, those concerned will need to know if the biological parent or parents are or are not fulfilling their

⁸ Fam. App 7038/12

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responsibilities, without grandparents having a freestanding right to involvement⁹.

More and more children are being raised by same-sex couples, or by solo parents who choose to have a child and raise him without any partner¹⁰. There can be no doubt that these parents have the same responsibilities for the healthy upbringing of the child. Thus, they should not be left out of account when we discuss the definition of "parent" and "family".

From these cases we can derive certain principles:

- The existence of any biological connection with the child must carry parental responsibilities – in other words, the act of procreation imposes responsibilities for and towards the child to be born. The only exception can be where the donor of a gamete expressly requests anonymity and the other parent agrees on behalf of the child; but even this exception must be limited, and the donor has residual responsibility in a case where the child is sick and needs a donation of an organ or other material where the gamete donor is a match.
- Any family relationship with one of the parents may impose responsibilities towards the child, if those primarily responsible are not carrying out their duties adequately.
- The existence of any relationship with the child imposes responsibilities upon an adult. At the simplest level, a teacher or health care worker who comes into contact with the child is responsible to protect the child from harm, and in many jurisdictions to report suspicions of abuse or neglect. But a person who enters into a relationship with a person who has parental responsibilities for a child should be made aware that, as soon as an

⁹ The Israeli legislation of 1975 allowed a bereaved parent to apply to the court for contact with the children of the deceased if this was refused or restricted by the surviving parent; in 2012 the liberty to apply was extended to all grandparents, but the application has to be made by way of a request for dispute resolution, and not by an ordinary claim.

¹⁰ I strongly object to the use of the phrase "single parent family" where both parents are alive and involved with the child, but the major part of raising the child is carried out by one of the parents. The only cases where the phrase is justified are those where one parent is dead or has been, by appropriate legal process, been deprived of parental responsibility, or the child was born from donation of a gamete or gametes from anonymous donors.

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emotional or dependency relationship with the child comes into existence, responsibilities will ensue. This applies principally to partners of parents, but is not dependent on the will of the adults; the existence of the relationship creates responsibilities. However, the extent of the responsibilities will vary with a number of factors, including the extent of the involvement of others who bear responsibilities, including parents living apart from the child.

Conclusion

The CRC is an important contribution to the welfare of children, setting up norms and requiring member states to bring their laws and practices, as far as possible, in line with the principles of the Convention.

But as I have shown, its wording is inadequate to the laudable aims. Reframing the Convention, using the concept of responsibilities to children, and adapting its provisions to the sociological and medical reality of the present day, is an urgent need for the children of the world – our children and grandchildren and future generations.

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ANNEX

We Have Duties To Children: But Do They Need Rights?

Presentation to the Fifth World Congress on Family Law and Children's Rights, Halifax, Nova Scotia, August 2009

Philip Marcus, Judge

Jerusalem Family Court, Israel

Since the late 18th century, the western world has used the language of Rights to describe legal and other relations. This has caused many distortions, not the least of which are increasing selfishness and insularity. Too often a right is asserted without regard for others who may be affected by its exercise, whereas obligations are by definition owed to another or to others or society.

Rights talk is particularly inappropriate when used for children, who cannot assert their position fully because of age disability. I therefore propose that our starting position should not be the Rights of children, but our Obligations and Duties towards them - to respect them as human beings, to love and nurture them, to feed, clothe, protect and house them and deal with their medical needs, and educate them.

Parents have to fulfill these obligations because they are parents, but neither parent can to decide how to do these things without consulting with the other parent and even parents in conflict have a duty each to enable the other to carry out their duties towards the child.

The child before the court does not need a Right to these things in order to ensure they are provided, because society is under a duty to adjudicate disputes between parents and to provide those goods and services and protections where the parents cannot or do not provide them. A child does not need a right, which may place him in an adversarial position against a parent; he has the power to cause others to perform their duties towards him.

It is no part of the present argument that we can or should do away with the welfare of the child as the main criterion for determining issues relating to children. But I seek to demonstrate that “rights” are not only unnecessary in determining the welfare of the child: they introduce unnecessary confrontations into the decision making process, and poison the debate with positions which each of the litigants holds to be “right”, in the sense of correct, because someone (framers of Constitutions or Declarations or Treaties or Laws) said he has the “right” to do something.

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I want to suggest that the Convention on the Rights of the Child (ICRC) can be reframed using the concepts of duties and obligations, in order to remedy what I see as a serious defect in the ICRC in its present form – the absence, in many clauses, of a clear indication who is responsible for ensuring performance of the act designed to ensure the welfare of the child.

While the Convention speaks of “respect for the rights” of the child in many areas, the duty to respect the child as a child is also missing. The child must be allowed to be a child, not an adult in the making. A child must of course be educated and brought up to play his role in society properly, but not at the expense of depriving him of his childhood, by framing his relations with the world around him in terms of his rights which he must assert if he is to progress.

The following is a proposal for redrawing the ICRC; the text to be omitted is in parentheses, and the additions are in **bold type**. The words in the original text “obligation”, and “shall” and “responsibilities” which indicate an obligation, are *italicized*. (For reasons of space, I shall not propose amendments to the preamble, which refers to existing declarations and Conventions.)

The reformulation I suggest avoids the pitfalls inherent in the “Rights” discourse. The child is better protected by the imposition of clear duties on clearly defined obligors, and ambiguities are avoided. In fact, the imposition of duties gives better protection to the child, including the obligation to allow him free expression and to be consulted in any matter appropriate to his maturity and understanding. This fits in with the primary obligations of parents and society – to bring up children who will themselves contribute to a liberal and law-abiding community.

I must emphasise that the proposals in this paper are entirely mine, and do not represent the position of the State of Israel, or the Family Court.

Proposal for a Revised International Convention on Duties to Children

Presented as part of a presentation to the Fifth World Congress on Family Law and Children’s Rights, Halifax, Nova Scotia, August 2009: We Have Duties To Children: But Do They Need Rights?

Philip Marcus

PART I

Article 1

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.

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Article 2

1. States Parties *shall* respect and ensure the ~~(rights)~~ **performance of the obligations** 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, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. 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.

Article 3

1. 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.
2. 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)~~ **obligations** and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, *shall* take all appropriate legislative and administrative measures.
3. States Parties *shall* ensure that the institutions, services and facilities responsible for the care or protection of children *shall* conform with the 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 4

States Parties *shall* undertake all appropriate legislative, administrative, and other measures for the ~~(implementation of the rights)~~ **performance of the obligations** recognized in the present Convention. With regard to economic, social and cultural ~~(rights)~~, **obligations** States Parties *shall* undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

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Article 5

States Parties *shall* respect the responsibilities, ~~(rights)~~ **obligations** and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in ~~(the exercise by the child of the rights recognized in)~~ **all matters arising from** the present Convention.

Article 6

1. States Parties recognize ~~(that every child has the inherent right to life.)~~¹¹ **that all persons and states are obliged to ensure the life of each child.**

2. States Parties *shall* ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child *shall* be registered immediately after birth and *shall* ~~(have the right from birth to a name)~~ **be given, from birth, a name, by his parents or in their absence or inability to do so, by the responsible authority, (the right to acquire) be granted a nationality by the responsible authority** and, as far as possible, ~~(the right to)~~ **shall** know and be cared for by his or her parents.

2. States Parties *shall* ensure the ~~(implementation of these rights)~~ **performance of these obligations** in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to ~~(respect the right of)~~ **enable** the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties *shall* provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

¹¹ A “right to life” without any specific duty, is empty.

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Article 9

1. States Parties *shall* ensure that a child *shall* not 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. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties *shall* be given an opportunity to participate in the proceedings and make their views known.
3. States Parties *shall* ~~(respect the right¹² of the)~~ **ensure that** a child who is separated from one or both parents ~~(to)~~ **shall** maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party *shall*, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties *shall* further ensure that the submission of such a request *shall* of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the *obligation* of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification *shall* be dealt with by States Parties in a positive, humane and expeditious manner. States Parties *shall* further ensure that the submission of such a request *shall* entail no adverse consequences for the applicants and for the members of their family.
2. A child whose parents reside in different States *shall* ~~(have the right)~~ **be enabled** to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the *obligation* of States Parties under article 9, paragraph 1, States Parties *shall* ~~(respect the right of)~~ **enable** the child and his or her parents to leave any country, including their own, and to enter their own

¹² The right of a child to be in contact implies that it is a matter for his discretion.

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country. The ~~(right)~~ **liberty** to leave any country *shall* be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the ~~(rights)~~ **obligations to** and freedoms of others and are consistent with the other ~~(rights recognized in)~~ **provisions of** the present Convention.

Article 11

1. States Parties *shall* take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties *shall* promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties *shall* assure to the child who is capable of forming his or her own views the ~~(right)~~ **opportunity** to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child *shall* in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child *shall* have the ~~(right¹³ 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.
2. The exercise of this ~~(right)~~ **freedom** may be subject to certain restrictions, but these *shall* only be such as are provided by law and are necessary:
 - (a) For respect of the ~~(rights)~~ **obligations to** or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

¹³ Freedom of expression is a liberty, and the word “right” is entirely superfluous.

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Article 14

1. States Parties *shall* respect the ~~(right of the child to)~~ **child's** freedom of thought, conscience and religion.
2. States Parties *shall* respect the ~~(rights¹⁴)~~ **liberties** and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her ~~(right)~~ **duties** in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental ~~(rights)~~ **obligations to** and freedoms of others.

Article 15

1. States Parties recognize the ~~(rights)~~ **liberties** of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these ~~(rights)~~ **liberties** other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the ~~(rights)~~ **obligations to** and freedoms of others.

Article 16

1. 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.
2. The child ~~(has the right)~~ **is entitled** to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and *shall* ensure that the child has access to information and material from a diversity of national and international sources, 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 *shall*:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

¹⁴ The so-called rights of parents and guardians to bring up their children are none other than the liberty to do so with immunity from unwarranted outside interference

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

(c) Encourage the production and dissemination of children's books;

(d) 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;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article

1. 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. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the ~~(rights)~~ **performance of the obligations** set forth in the present Convention, States Parties **shall** render appropriate assistance to parents and legal guardians in the performance of their child-rearing **responsibilities** and **shall** ensure the development of institutions, facilities and services for the care of children.

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

Article 19

1. 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.

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

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Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, **shall** be entitled to special protection and assistance provided by the State.
2. States Parties **shall** in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard **shall** be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

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 and they **shall**:

- (a) Ensure that the adoption of a child 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 and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of 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;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties **shall** take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures **shall**, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate

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protection and humanitarian assistance in the enjoyment of applicable ~~(rights)~~ **freedoms and liberties** set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties *shall* provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child *shall* be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. 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.

2. States Parties recognize the ~~(right of)~~ **obligation to provide** the disabled child ~~(to)~~ **with** special care and *shall* encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article *shall* be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and *shall* be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties *shall* promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account *shall* be taken of the needs of developing countries.

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Article 24

1. States Parties recognize ~~(the right¹⁵ of)~~ **their obligation to provide** the child ~~(to the enjoyment of)~~ **with** the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties *shall* strive to ensure that no child is deprived of his or her ~~(right¹⁶ of)~~ access to such health care services.

2. States Parties *shall* pursue full implementation of this ~~(right)~~ **obligation** and, in particular, *shall* take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties *shall* take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

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

Article 25

States Parties recognize ~~(the right¹⁷)~~ **their obligation, in respect** of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to **provide for** a periodic review of

¹⁵ As drawn, this is a right without any person designated to provide it.

¹⁶ Again, the word right adds nothing.

¹⁷ There is no provision as to who has to undertake the review. And the “right” as drawn is unenforceable.

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the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties *shall* recognize for every child the ~~(right to benefit from)~~ **obligation to provide** social security, including social insurance, and *shall* take the necessary measures to achieve the full realization of this ~~(right)~~ **obligation** in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the ~~(right of)~~¹⁸ **their duty to ensure provision for** every child ~~(to)~~ **of** a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, *shall* take appropriate measures to assist parents and others responsible for the child to implement this ~~(right)~~ **duty** and *shall* in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties *shall* take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties *shall* promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize ~~(the right of the child to)~~ **their obligation to ensure for each child an** education, and with a view to ~~(achieving this right)~~ **performing this**

¹⁸ This kind of right is hopelessly inadequate, since it does not provide any criteria for assessing if it has been complied with or not.

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obligation progressively and on the basis of equal opportunity, they *shall*, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties *shall* take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties *shall* 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. In this regard, particular account *shall* be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child *shall* be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human ~~(rights)~~ **duties and obligations** and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) 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 for civilizations different from his or her own;
- (d) 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;

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(e) The development of respect for the natural environment.

2. No part of the present article or article 28 **shall** be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions **shall** conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous **shall** not be denied the ~~(right)~~ **freedom**, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the ~~(right)~~ **need** of the child ~~(to)~~ **for** rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties **shall** respect and promote the right of the child to participate fully in cultural and artistic life and **shall** encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. 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.

2. States Parties **shall** take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties **shall** in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

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Article 33

States Parties *shall* 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.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties *shall* in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties *shall* take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties *shall* protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties *shall* ensure that:

- (a) No child *shall* be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release *shall* be imposed for offences committed by persons below eighteen years of age;
- (b) No child *shall* be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child *shall* be in conformity with the law and *shall* be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty *shall* be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the

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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 interest not to do so and *shall* have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) 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.

Article 38

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

2. States Parties *shall* take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties *shall* refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties *shall* endeavour to give priority to those who are oldest.

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

Article 39

States Parties *shall* 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. Such recovery and reintegration *shall* take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize ~~(the right of)~~ **their obligation to ensure that** 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 the ~~human rights~~ **the obligations to** 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.

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

(a) No child *shall* be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) 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;

(v) 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;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings. 3. States Parties *shall* 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, and, in particular:

(a) The establishment of a minimum age below which children *shall* be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care *shall* be available to ensure that children are

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dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention **shall** affect any provisions which are more conducive to the realization of the ~~(rights of)~~ **obligations to** the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

PART II

Article 42

States Parties **undertake** to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the **obligations** undertaken in the present Convention, there **shall** be established a Committee on the ~~(Rights of)~~ Duties to the Child, which **shall** carry out the functions hereinafter provided.

2. The Committee **shall** consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee **shall** be elected by States Parties from among their nationals and **shall** serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems. (amendment)

3. The members of the Committee **shall** be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee **shall** be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations **shall** address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General **shall** subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and **shall** submit it to the States Parties to the present Convention.

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5. The elections *shall* be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties *shall* constitute a quorum, the persons elected to the Committee *shall* be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee *shall* be elected for a term of four years. They *shall* be eligible for re-election if renominated. The term of five of the members elected at the first election *shall* expire at the end of two years; immediately after the first election, the names of these five members *shall* be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member *shall* appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee *shall* establish its own rules of procedure.

9. The Committee *shall* elect its officers for a period of two years.

10. The meetings of the Committee *shall* normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee *shall* normally meet annually. The duration of the meetings of the Committee *shall* be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations *shall* provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention *shall* receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. 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 those rights:

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

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2. Reports made under the present article *shall* indicate factors and difficulties, if any, affecting the degree of fulfilment of the *obligations* under the present Convention. Reports *shall* also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee *shall* submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties *shall* make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs *shall* be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee *shall* transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;
- (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;
- (d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations *shall* be transmitted to any State Party

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concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention *shall* be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification *shall* be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention *shall* remain open for accession by any State. The instruments of accession *shall* be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention *shall* enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention *shall* enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General *shall* thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General *shall* convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference *shall* be submitted to the General Assembly for approval.

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2. An amendment adopted in accordance with paragraph 1 of the present article *shall* enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it *shall* be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations *shall* receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention *shall* not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who *shall* then inform all States. Such notification *shall* take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, *shall* be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

Proposed by Philip Marcus, Judge, Jerusalem Family Court (retired)

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