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**THE HUMAN RIGHTS AGENDA AND  
THE RIGHTS OF CHILDREN:  
TOWARDS A UNIFIED APPROACH**

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# THE HUMAN RIGHTS AGENDA AND THE RIGHTS OF CHILDREN: TOWARDS A UNIFIED APPROACH

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## I. INTRODUCTION

This essay is devoted to general topics concerning the rights of children and the future prospects for their realization in this country and around the world. It is in this broad context that the author would like to reflect upon certain observations that have concerned her as she followed discussions about the rights of children in both the relevant literature, and at national and international conferences on this topic.

These observations and concerns have to do with:

The isolation of the international children's rights project from the wider human rights agenda;

The emergence and solidification of separate human rights areas whose scholars and advocates are often quite unaware of the existence and developments in other human rights "specializations";

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The fragmentation of the children's rights subject into ever more distinct subspecialties—in both discourse and advocacy;

The increasing preponderance of victimology in children's rights discourse, discussions, and actions, often at the expense of a focus upon the general capacities, propensities, and needs of children and youth ranging from psychological, social, economic, and cultural to political considerations;

The need for large-scale efforts and strategies to communicate to the public knowledge about children and youth—without which any attempts at implementing the United Nations Convention on the Rights of the Child must founder.

This essay on "The Human Rights Agenda and the Rights of Children: Towards a Unified Approach" attempts to address some of these matters.

## II. THE HUMAN RIGHTS OF CHILDREN: THE QUEST FOR LEGITIMACY

A new era in the history of children's rights began with the adoption of the United Nations Convention on the Rights of the Child in November 1989.<sup>1</sup> Now after almost a decade, all nations of the world—with the exception of the United States and Somalia—have ratified or acceded to the Convention. Hence, according to the standards of international law, the United Nations Convention on the Rights of the Child has acquired the status of international legality. But, to use Max Weber's useful distinction, the historical task of achieving legitimacy for the Convention as a whole and for its specific articles and provisions still lies ahead. This means it is not sufficient that the provisions of the Convention are legally binding on those countries that have ratified it. For in order to effectively guide social and political actions of nations on behalf of children and youth, the articles of the United Nations Convention on the Rights of the Child must also be upheld as valid by the citizens of these nation states. This means that the "validity of the claims to legitimacy" for the articles of the Convention must be based, at a minimum, "on a belief in the legality of enacted rules."<sup>2</sup> In other words, it is not sufficient for 191 governments to have become States Parties to the Convention. The next and more difficult steps en-

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1. Convention on the Rts of the Child, *adopted* Nov. 20, 1989, U.N. Doc. A/44/736, 28 I.L.M. 1448, *corrected at* 29 I.L.M. 1340 (entered into force Sept. 2, 1990).

2. MAX WEBER, *ECONOMY AND SOCIETY: AN OUTLINE OF INTERPRETIVE SOCIOLOGY*, vol. 1 at 215 (Guenther Roth & Claus Wittich eds., Ephraim Fischhoff et al. trans., Bedminster Press 1968).



tail the Convention's incorporation into the legal and administrative structures of each nation, and the application of newly adapted laws and procedures in the everyday affairs of governments and society. They entail, as well, the establishment of foundations of legitimacy for these new legal realities in the public at large.

Such a transformation of international agreements and standards into the laws, practices, and belief systems of each participating nation is what is meant when the term "implementation" is used in the Convention itself. Once we disaggregate the meaning of "implementation of the Convention," the difficulties that confront such attempts become immediately apparent. At stake are not only the good intentions of legislators, government officials, and administrators to honor the terms of these international agreements, but also the values, belief systems, customs, and traditional practices, which have heretofore governed society's attitudes and behavior towards children and youth. When it is considered in its entirety, the Convention both presupposes and requires formidable changes in the political, economic, social, and cultural realities of children. These changes will often run against the grain of popular beliefs and practices of elected officials, administrators, and the generality of citizens. The task of implementing the Convention goes far beyond the legal realms of the international community and nations. The problem is to achieve legitimate authority for the Convention.<sup>3</sup>

This problem is further exacerbated by the circumstance that much criticism has been directed against those Western hegemonic intentions that are widely supposed to inform the human rights project in general, and the Convention on the Rights of the Child in particular. Such criticism emanates not only from representatives of the developing world, but also from certain intellectual quarters in Western industrialized societies.<sup>4</sup> The history of human rights after World War II and

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3. The role of the states needs to be clarified in relation to international and transnational nonstate actors. According to LeBlanc: "A great deal has been said in recent years about the emergence of various international and transnational non-state actors in international politics, but it is generally agreed that states remain the primary actors in the international system (e.g. Keohane and Nye, 1989). This is certainly the case for human rights treaties. States—and only states—can ratify such treaties, so they can be expected to play the most important role in drafting them." LAWRENCE J. LEBLANC, *THE CONVENTION ON THE RIGHTS OF THE CHILD: UNITED NATIONS LAWMAKING ON HUMAN RIGHTS* 26 (1995).

4. Such colleagues as Jens Quortrup, among scholarly activists on behalf of children, put forth his reservations in the following: "The UN-convention is a political

the articulation of two categories of: (1) civil and political rights and of (2) economic, social, and cultural rights, largely took place in the context of the Cold War. In the words of LeBlanc, during this period, "these categories were fixtures of international ideological dispute between East and West, with some Western states, especially the United States, emphasizing civil and political rights and with some socialist and Third World states emphasizing economic, social, and cultural rights."<sup>5</sup>

There is no doubt that the history of East-West conflict and North-South relations are refracted in the contemporary human rights project and in the Convention on the Rights of the Child (Convention) as well.<sup>6</sup> There can equally be no doubt that Western conceptions of the child and what constitutes the best interests of the child and enhances child development are preponderantly visible articles of the Convention. This circumstance, however, further underscores the problems that will have to be faced when it comes to the "implementation" of the Convention in the context of both Western and non-Western parties in the future.

### III. UNIVERSALITY, COMPLEMENTARITY, AND INDIVISIBILITY OF HUMAN RIGHTS

#### A. THE GROWING FRAGMENTATION OF HUMAN RIGHTS

To discuss in closer detail the Convention on the Rights of the Child, it is important to place such a discussion within the larger framework of human rights. Even though human rights have been held

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document of Western provenance, it is a very abstract document, which glosses over enormous differences of conditions between childhoods, as these are found in many parts of the world." But he concedes, that it "is nevertheless a useful document of highly symbolic value with far-reaching signaling effects." JENS QUORTRUP, *Sociological Perspectives on Childhood*, in COLLECTED PAPERS PRESENTED AT THE FIRST INTERNATIONAL INTERDISCIPLINARY COURSE ON CHILDREN'S RIGHTS 109 (Ghent: Children's Rights Centre, University of Ghent 1996). In response to a recent presentation of the Convention on the Rights of the Child to a small audience at the Rockefeller Foundation Study and Conference Center in Bellagio, a number of colleagues from the social sciences, but also other fields, indicated to the author in private conversations their problems with such conceptions as "autonomy" or "the child" as an individual in the field of human rights and in the Convention. According to their arguments, these ideas are not applicable in a non-Western context such as in the case of Japan or most developing countries.

5. LEBLANC, *supra* note 3, at xvii.

6. After all, it was the Polish delegation that began the movement that led to the Convention's eventual drafting.



to be universal, interdependent and indivisible, the writings of many scholars and activists in the international law and human rights arena demonstrate that as a result of an ever-increasingly dense context of international conventions, treaties, and declarations, as well as administrative bodies to enact them, a concomitant and ever-increasing specialization of topics and interests has taken place. Among the milestones in the history of human rights since the Second World War are such important treaties and instruments as the United Nations Charter (1945),<sup>7</sup> the Universal Declaration of Human Rights (1948),<sup>8</sup> the European Social Charter (1961),<sup>9</sup> the International Covenant on Civil and Political Rights (1966),<sup>10</sup> the International Covenant on Economic, Social and Cultural Rights (1966),<sup>11</sup> the American Convention on Human Rights (1969),<sup>12</sup> the Convention on the Elimination of All Forms of Discrimination Against Women (1979),<sup>13</sup> the Convention on the Rights of the Child (1989),<sup>14</sup> and the Rio Declaration on Environment and Development (1992).<sup>15</sup> Such agreements and instruments have resulted in new and ever-growing areas of expertise, scholarship, and advocacy, ranging from children to women, to indigenous people, to the environment, to labor, to health, to education, and so on.

As a related development, however, individual groups of experts in any particular human rights field are often only dimly aware of the nature of the conventions, treaties, and agreements in other areas. These specializations and subspecializations are, moreover, carried forward still further within the context of each convention, treaty or other category of human rights activities. It seems evident that in view of such pervasive development of division and fragmentation in international

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7. U.N. CHARTER, June 26, 1945.

8. Universal Declaration of Hum. Rts, G.A. Res. 217A (III) of Dec. 10, 1948, U.N. Doc. A/810 (1948).

9. European Social Charter, Oct. 18, 1961, 529 U.N.T.S. 89.

10. International Covenant on Civil and Political Rts, Dec. 16, 1966, 993 U.N.T.S. 3.

11. International Covenant on Economic, Social, and Cultural Rts., Dec. 16, 1966, 999 U.N.T.S. 171.

12. American Convention of Hum. Rts., Nov. 22, 1969, 1144 U.N.T.S. 123.

13. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

14. Convention on the Rts. of the Child, *adopted* Nov. 20, 1989, U.N. Doc. A/44/736, 28 I.L.M. 1448, *corrected at* 29 I.L.M. 1340 (entered into force Sept. 2, 1990).

15. Rio Declaration on Environment and Development, June 14 1992, 31 I.L.M. 874 (1992).

law in general, and of the proclaimed particularized rights of special groups, classes, or units, the need for unified perspectives becomes increasingly acute.

Unless such an attempt is undertaken, the result will be a continued proliferation of particularized concerns and scholarly competencies that will generate still more specialized subdivisions in each separate category. Given the special expertise of individual scholars, activists, and consultants in conjunction with the manifold institutions that fund all these special interests, the time has come to initiate a counter-movement that stresses the communality and interdependence of such separate pursuits within the larger framework of human rights. It amounts to a truism to argue that the division of the attention of experts and publics alike, and the concentration of their energies in isolation from one another on so many different sub-problems and subjects, simply weakens the general effectiveness of these efforts.

It does not require much reflection to demonstrate how closely connected most of the social, economic, political, and cultural problems are that have given rise to these manifold separate international and human rights declarations and treaties. From a perspective based upon an awareness of the grand historical forces that have been changing the world community and all nation states, and will still usher in additional unidentified transformations in the new millennium, isolated attention focused upon single areas of highly specialized circumstances runs the risk of establishing nothing more than a symptomatology. The transformations of sovereignty, the expansions of trade, finance and capital markets, the free and often instantaneous mobility of capital across national borders—to invoke merely a few global developments—have ushered in historical changes with major repercussions in national political and social infrastructures. Their implications for the social well being of children, women, and families, or for the relations between racial and ethnic groups, or on the environment—categories of human rights activities—must be comprehended in their totality and inform the particular strategies devoted to the realization and implementation of children's human rights. It is evident that exclusively specialized approaches and actions in the manifold human rights arenas alone, without explicitly comprehending, at the same time, the wider forces that give rise to these separately perceived problem areas, may very well be doomed to failure.



### B. TOWARDS A UNIFIED APPROACH TO HUMAN RIGHTS

On the basis of such observations, one should consider the need for a unified approach to human rights in the context of this international symposium on "The Rights of Children in the New Millennium." Such a call for working within a general framework of human rights is not intended to question the validity of our focus on the rights of one part of the human community or the worthiness of our efforts to bring about the implementation of the United Nations Convention on the Rights of the Child.<sup>16</sup> The symposium's main purpose is clearly not analyzing and recapitulating the articles of this Convention, or the history of its genesis but rather to actively advance children's causes in a variety of different circumstances and institutionalized settings. On this view, all such efforts towards implementation must be regarded as political and social action—both in the narrower as well as the more general senses. Even in terms of real politics and political utility, the agreement to move the children's rights agenda forward both within and in connection to the wider human rights movement may prove to be a more efficacious way of reaching the public at large, at least in Western industrialized nations. Recent events in the Balkans, and the response of American and European citizens to the current intervention in Yugoslavia, represent a substantial indication that claims made on behalf of human rights are considered not merely as a matter of international legality, but that they are also regarded as legitimate, that is that they are held to be morally valid.

In this connection, there are some related observations advanced by experts in international law and human rights that also comment on the development of fragmentation in the human rights arena and their consequent shortcomings. By the same token, these observers have also advocated, either directly or by implication, what is being proposed here as a unified approach.<sup>17</sup>

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16. Convention on the Rts. of the Child, *adopted* Nov. 20, 1989, U.N. Doc. A/44/736, 28 I.L.M. 1448, *corrected at* 29 I.L.M. 1340 (entered into force Sept. 2, 1990).

17. See, e.g., G.J. MERRILL, ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS: CONCEPTUAL ASPECTS IN HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION (Alan E. Boyle & Michael R. Anderson, eds., 1996):

"Proponents of new human rights, of those seeking to further existing rights, sometimes present their arguments in terms which appear to overlook the existence of other rights, or the need to relate the right under consideration to them. This is understandable, given that those concerned with certain rights often come to these matters from a background of special expertise or interest. Nevertheless, the tendency for



In the case of the United Nations Convention on the Rights of the Child,<sup>18</sup> such a perspective might usefully include simultaneous reflection upon more general human rights perspectives. These would include not only the Universal Declaration of Human Rights<sup>19</sup> but also first, second, and third generation rights as they are articulated in International Covenants of Civil and Political Rights,<sup>20</sup> International Covenants on Economic, Social and Cultural Rights,<sup>21</sup> and solidarity rights. In light of such declarations and instruments, the Convention on the Rights of the Child is to be considered, despite its unique and innovative character, as a particular embodiment and application of these anterior and encompassing articulations of the human rights agenda that has been developing since World War II.

#### IV. CIVIL SOCIETY AND HUMAN RIGHTS

In almost all discussions of the history of the Convention on the Rights of the Child, the importance and significance of the contributions made by non-governmental organizations (NGOs) are stressed. The same arguments are being advanced for many other human rights endeavors as well. There can be no doubt as to the salient role NGOs have played, and are still playing, in the human rights arena, generally, and on behalf of children in particular. Moreover, there continues to be an extraordinary proliferation of NGOs worldwide. The 1990s have seen an important change in official attitudes and policies towards non-governmental organizations on the part of major funding agencies and international bodies such as the World Bank, the International

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rights to be discussed, as it were, in separate compartments, which is encouraged by the practice just mentioned of formulating certain rights in rather vague terms, is not acceptable. A coherent concept of rights calls for a given right, whether actual or proposed, to be considered alongside other rights, for only thus is it possible to appreciate what any existent right really means, or to understand the possible impact of a new right on a moral or legal system." *Id.* at 36f.

"The need to avoid thinking in absolutist terms, which is a major risk if rights are treated in isolation, can be seen if we consider first of all the ways in which nearly all rights have to be qualified to take account of other interest." *Id.* at 37.

18. Convention on the Rts. of the Child, *adopted* Nov. 20, 1989, U.N. Doc. A/44/736, 28 I.L.M. 1448, *corrected at* 29 I.L.M. 1340 (entered into force Sept. 2, 1990).

19. Universal Declaration of Hum. Rts., G.A. Res. 217A (III) of Dec. 10, 1948, U.N. Doc. A/810 (1948).

20. International Covenant on Civil and Political Rts., Dec. 16, 1966, 993 U.N.T.S. 3.

21. International Covenant on Economic, Social, and Cultural Rts., Dec. 16, 1966, 999 U.N.T.S. 171.

Monetary Fund, the United Nations Development Program, and the United Nations Ethical, Scientific and Cultural Organization. This change in attitude, as a matter of international policy, has led to a significant rechanneling of funds to NGOs.

This change in funding policies is of considerable historical importance. It is here that one can find some of the deeper-lying roots of what could be described as an increasing fragmentation of, and specialization in, human rights projects in our era.

As many know, the term "civil society" in most human rights discussions has become synonymous with the aggregate of NGOs and their role vis-à-vis the state and sovereign governments. Ever since 1989 in particular, the virtues and benefits of "civil society" have been extolled in such quarters as the World Bank, the International Monetary Fund, and organizations such as the United Nations Children's Fund. The term "civil society" has a long and venerable history. However, in its recent usage, the notion of "civil society" has become a shorthand label for what, in the eyes of its proponents, stands for developments worthy of promotion everywhere, not only in the societies of the South. Upon further inquiry, however, most scholars and activists who use the term with great frequency, find themselves hard-pressed to explain its wider meanings or, more importantly, the implications and consequences for the human rights causes to which their energies are dedicated.

For reasons of limited space, here is what must remain a condensed and simplified analysis of these developments and their historical implications.

Since the end of World War II and from Bretton Woods forward, but especially since the demise of communism, there has occurred an ever-accelerating spread of economic and financial institutions that serve as the most powerful integrative forces of a world system. By the same token, the competitive economic and financial pressures upon governments to open their borders to free trade in goods and services, as well as to the free flow of short-term capital, have been mounting.

When we consider the simultaneous quests, during these last decades, for higher living standards in developing countries, and for a more equitable distribution of resources and life chances in the developed and industrialized nations, the role and capacity of the modern state, to which citizens have turned for redress, has become a central focus of debate and discussion. Demands made upon developing countries to curtail their infrastructural (education, health, etc.) expenditures



in order to satisfy the requirements of international loan repayment—a development which has become known as “structural adjustment”—have now also reached back into the developed world. The welfare reform of recent years in the United States is a good example of this. Additionally, the pressures upon European countries to cut down on their infrastructural spending—another way of beginning to dismantle the highly developed welfare states of these nations—are yet another version of structural adjustments brought home, as it were, in the service of the generation of wealth and the growth of international capital.

These developments went hand-in-hand with demands both on the national level, as in the United States, and on the international level, as advanced by the World Bank, for goals such as “less government” or “to get big government out of the lives of people.” In other words, these neo-liberal policies aim at scaling down the state to the bare functions of military defense, social order, and to minimal infrastructural provisions. In this conception and model of society, it is the intermediary groups, such as “voluntary organizations,” “secondary groups,” or what is known in our vocabulary today as “NGOs,” or “charitable organizations,” which are expected to attend to society’s affairs and to remedy many of the social problems that need public attention. In this view, state and society as a whole are only minimally responsible for assuring the general and individual well-being. This responsibility is to become the task of all those groups that serve an intermediary function between the state, the economy, and the individual.

We must begin to understand the close connections between recent policies aimed at paring down the welfare states in the north and the assertion that it will not be feasible, economically, to implement welfare states in the Third World with the promotion of “civil society” by leading international policy institutions such as the World Bank. Only if we consider these prevailing international policies, will we be able to understand the reason why this last decade has seen the broad promotion and generous funding of voluntary organizations and NGOs.

It is here where the argument comes full circle. No matter how well intentioned and effective such NGOs are at times, they nonetheless represent a multitude of competing causes and interests that can no longer be attended to—or so the argument goes—by modern nation states in the north and south. The sphere of human rights, with all its specialized objectives, is a case in point. Unless we insist upon understanding and emphasizing the intimate connections of the structural realities of our societies, as well as the problems that have given rise to the advocacy of the human rights of children, women, races, ethnicity,

or the environment, our good intentions and energies of amelioration are bound to become, in many instances, band-aid measures that hold little promise of leading to significant social changes.

#### V. STRATEGIES FOR THE NEW MILLENNIUM

In summary, in order to advance the human rights of children, we must attempt to:

1. Connect them to the human rights movement of the post World War II era;

2. Base our advocacy upon a more thoroughgoing comprehension of those forces and policies that are maintaining, rather than fundamentally transforming, for the better, the structural realities that have given rise to the manifold problems we attempt to solve;

3. Devise ways of reaching the public and of instructing it about the relevance of human rights in general and of children's human rights in particular. Governments and elected officials, as a rule, tend to listen only to those constituencies that are conversant with, and believe in, the legitimacy of human rights claims;

4. Work toward a unified and integrated approach to both human rights and the Convention on the Rights of the Child. Only when securely situated within the general framework of the Universal Declaration of Human Rights, the Covenants on Civil and Political Rights and on Social, Economic, and Cultural Rights will our advocacy of the human rights of children have a genuine chance. In light of the forces of international finance, capital, and trade—forces that are shaping and transforming our societies—the model of “civil society” must be revised, if not abandoned. In this model, the pursuit of the common well-being of societies has been relegated to an exponentially increasing multitude of social action groups, NGOs, charitable organizations, social interest groups, or voluntary organizations. These intermediary organizations are in uninterrupted competition with one another for scarce resources. Anyone familiar with this situation at national or international levels eventually comes to realize that these groups and organizations, or civil societies, are no match for the economic and financial conglomerates in their global advance.

The children's rights movement cannot afford to continue its activities in isolation from the general human rights agenda, or without taking into account the larger social and economic developments that are determining the future of the next generations in the new millennium.