

Freedoms, Entitlements, Protections, and Parents' Rights: an analysis of the UN Convention on Rights of the Child

Donald Brieland, Wynne Korr, Barry Fallon and Di Bretherton

The United Nations Convention on the Rights of the Child – the first treaty on the subject – recently ratified by Australia and more than fifty other countries is already familiar to readers of *Children Australia*.

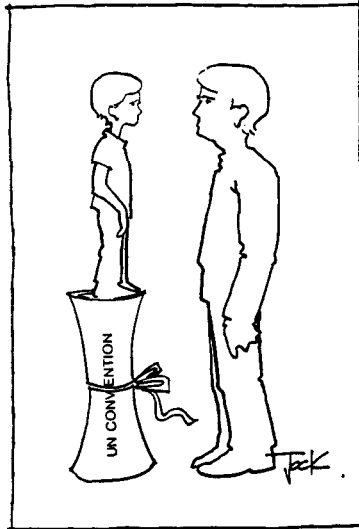
The Convention has 54 articles. Part I contains forty one (41). The first article defines the child. Articles 4 and 41 are administrative. The remaining thirty eight (38) contain substantive rights. Part II contains four (4) articles dealing with the responsibility of a committee to monitor implementation and compliance. Part III contains nine (9) articles on ratification and amendment procedures. Part I is the focus of this paper.

This paper organizes the thirty-eight (38) substantive articles of the Convention into a conceptual model under three main categories and presents the full text of several articles to address a controversy, namely that the Convention will unnecessarily restrict parents' rights.

Concerning organization of the provisions of the Convention, the treaty does not lend itself easily to analytical studies because its provisions are not presented in an orderly fashion. In designing research on attitudes of youth, parents, and professionals for a project now under way in Australia and the United States, we found that the content of the Convention could be clarified by classifying the articles under **affirmative rights, entitlements, or protections** and also by reordering them. The articles that apply to all are presented in an order based generally on development of the child. Articles that apply to all children precede those that affect only special groups of children. This model should prove useful to practitioners who work with children as well as to researchers.

Professors Brieland and Korr from the University of Illinois/Chicago were Visiting Scholars at the University of Melbourne in the first half of 1991. They are collaborating with Doctors Fallon and Bretherton from the University of Melbourne Psychology Department on a research project on Children's Rights.

Department of Psychology, University of Melbourne, Parkville, 3052. Tel: (03) 344 4000; Fax: (03) 344 5104



Operational definitions were developed for each of the categories and the 38 substantive articles were classified.

Affirmative Freedoms:

The right to think, decide and act with the same freedom as an adult; extension of these freedoms depends on the evolving capacities of the child and the character of the action involved.

Most of the affirmative rights are appropriate beginning in early childhood. The Convention does not identify affirmative rights of the adolescent in any detail – perhaps because this period of dependency common in western cultures is not characteristic in numerous UN member nations.

Entitlements:

What all children can expect from society including parental responsibilities for care – survival, food, shelter, clothing, school, and health.

What entitlements the parents cannot or do not provide become the responsibility of the government; in addition, the government is responsible for entitlement programs including education, social security, and health service systems and rehabilitation. Special

entitlements are accorded to children without families, disabled children, those accused of law violations and those who are members of ethnic minorities.

Protections:

Legally-based responsibilities of the state to protect all children against child labour, narcotics, child abuse and neglect, sexual exploitation and harmful media; to protect children with special needs – children in placement, adoptees, refugees, and those deprived of liberty.

Article 16 on Privacy and Article 17 on Media & Information were classified under two of the categories.

The model is summarized below.

UN CONVENTION ON THE RIGHTS OF THE CHILD **Definition of a Child**

ARTICLE 1 Definition of the Child
Every person under 18, unless national law grants majority at an earlier age.

UN CONVENTION ON THE RIGHTS OF THE CHILD **Affirmative Rights** (six articles)

ARTICLE 12 Free Expression of Opinion
The child's right to express an opinion in matters affecting the child and to have that opinion heard.

ARTICLE 31 Leisure and Recreation
The right to leisure, play and participation in cultural and artistic activities.

ARTICLE 13 Freedom of Information
The right to seek, receive and impart information through any media.

ARTICLE 16 Privacy
The right to protection from interference with privacy, family, home or correspondence, or attacks on honor and reputation. (Privacy must be accorded if it is to be protected).

ARTICLE 15 Freedom of Association

The right to freedom of association and freedom of peaceful assembly.

ARTICLE 14 Freedom of Conscience/Religion

The right to manifest religion or beliefs; State to respect the rights of parents or guardians to provide direction in the exercise of this right.

**UN CONVENTION ON THE RIGHTS OF THE CHILD
Entitlements
(fifteen articles)**

ARTICLE 6 Survival and Development

The child's right to life; the State to ensure the survival and maximum development of the child.

ARTICLE 7 Name and Nationality

The right to a name and to acquire a nationality; the right to know and be cared for by parents.

ARTICLE 9 Parental Care and Non-Separation

The right to live with parents unless this is deemed incompatible with the child's best interests; the right to maintain contact with both parents; the State to provide information when separation results from State action.

ARTICLE 5 Parental Responsibility, Respect for

The State to respect the rights of parents or guardians to provide direction to the child in the exercise of the rights in this Convention.

ARTICLE 18 Parental Responsibilities

The State to recognize the principle that both parents are responsible for the upbringing of their children and that parents or guardians have primary responsibility; the State to assist parents or guardians in this responsibility and to ensure the provision of child care for eligible working parents.

ARTICLE 24 Health Care

The right to the highest attainable standard of health and access to medical services; the State to attempt to diminish infant and child mortality, to combat disease and malnutrition, ensure health care for expectant mothers, provide access to health education, develop preventive health care and abolish harmful traditional practices.

ARTICLE 17 Media and Information

The State to ensure access to information and material from a diversity of national and international sources (see also Protections).

ARTICLE 27 Standard of Living

The right to an adequate standard of living; the State to assist parents who cannot meet this responsibility and to try to recover maintenance for the child from persons having financial responsibility, both within the State and abroad.

ARTICLE 26 Social Security

The right, where appropriate, to benefit from social security or insurance.

ARTICLE 28 Education

The right to education; the State to provide free and compulsory primary education, ensure equal access to secondary and higher education and ensure that school discipline reflects the child's human dignity.

ARTICLE 29 Education, Aims of

The States Parties' agreement that education be directed at: developing the child's personality and talents; preparing the child for responsible life in a free society; developing respect for the child's parents, basic human rights, the natural environment and the child's own cultural and national values and those of others.

ARTICLE 10 Family Reunification

The right to leave or enter any country and to maintain contact with both parents.

ARTICLE 39 Rehabilitative Care

The State to promote the physical and psychological recovery and social reintegration of child victims of abuse, neglect, exploitation, torture or armed conflicts in an environment which fosters the health, self-respect and dignity of the child.

ARTICLE 40 Juvenile Justice

The right of accused children to be treated with dignity. The State to ensure that: no child is accused by reason of acts or omissions not prohibited by law at the time committed; every accused child is informed promptly of the charges, presumed innocent until proven guilty in a prompt and fair trial, receives legal assistance and is not compelled to give testimony or confess guilt; alternatives to institutional care are available.

ARTICLE 30 Children of Minorities

The right of children of minority communities and/or of indigenous origin to enjoy their own culture, practice their own religion and use their own language.

**UN CONVENTION ON THE RIGHTS OF THE CHILD
Protections
(twenty articles)**

ARTICLE 8 Preservation of Identity

The right to preserve or reestablish the child's identity (name, nationality and family ties).

ARTICLE 3 Best Interests of the Child

The best interests of the child to prevail in all legal and administrative decisions; the State to ensure the establishment of institutional standards for the care and protection of children.

ARTICLE 2 Freedom from Discrimination

Rights in this Convention to apply to all children without exception; the State to protect children from any form of discrimination or punishment based on family's status, activities or beliefs.

ARTICLE 16 Privacy

The right to protection from interference with privacy, family, home or correspondence, or attacks on honor and reputation. (See also Affirmative Rights above).

ARTICLE 17 Media and Information Protections from harmful media. (See also Entitlements above).

ARTICLE 19 Abuse and Neglect

The State to protect children from all forms of abuse, neglect and exploitation by parents or others, and to undertake preventive and treatment programs in this regard.

ARTICLE 34 Exploitation, Sexual

The State to protect the child from sexual exploitation and abuse, including prostitution and involvement in pornography.

ARTICLE 36 Exploitation, Other

The State to protect children from all other forms of exploitation.

ARTICLE 11 Illicit Transfer and Non-Return

The State to combat the illicit transfer

and non-return of children abroad.

ARTICLE 35 **Sale and Trafficking**

The State to prevent the abduction, sale and trafficking of children.

ARTICLE 32 **Child Labor**

The right to be protected from economic exploitation and from engaging in work that constitutes a threat to health, education and development; the State to set minimum ages for employment, regulate conditions of employment and provide sanctions for effective enforcement.

ARTICLE 33 **Narcotics**

The State to protect children from illegal narcotic and psychotropic drugs and from involvement in their production or distribution.

ARTICLE 38 **Armed Conflicts**

The State to respect international humanitarian law, ensure that no child under 15 takes a direct part in hostilities, refrain from recruiting any child under 15 into the armed forces and ensure that all children affected by armed conflict benefit from protection and care.

ARTICLE 23 **Disabled Children**

The right of disabled children to special care and training designed to help achieve self-reliance and a full and decent life in society.

ARTICLE 25 **Periodic Review**

The right of children placed by the State for reasons of care, protection or treatment to have all aspects of that placement reviewed regularly.

ARTICLE 20 **Children without Families**

The right to receive special protection and assistance from the State when deprived of family environment and to be provided with alternative family care, such as foster placement or Kafala or Islamic Law, adoption or institutional placement.

ARTICLE 21 **Adoption**

The State to regulate the process of adoption (including intercountry adoption), where it is permitted.

ARTICLE 22 **Refugee Children**

The State to ensure assistance and protection to children who are refugees or seeking refugee status, and to cooperate with competent organizations providing such protection and assistance.

ARTICLE 37 **Torture and Capital Punishment**

The State to protect children from: torture or other cruel, inhuman or degrading treatment; capital punishment or life imprisonment; and unlawful or arbitrary deprivation of liberty. The right of children deprived of liberty to be treated with humanity and respect, to be separated from adults, to maintain contact with family members and to have prompt access to legal assistance.

Administrative Articles in Part I

ARTICLE 4 mandates States Parties to undertake all appropriate measures for the rights recognized in the Convention to the maximum extent of their available resources. ARTICLE 41, the last item in Part 1 of the Convention, states that nothing in the convention shall affect any provisions which are more conducive to the realization of the rights of the child. This article is considered to be administrative rather than substantive.

The Parents' Rights Issue

After the Convention was publicized, a concern was expressed that the document would lead to state interference in family life with a resulting reduction of parental control over their children. Because the Convention is a treaty developed in consultation with the UN member nations and binding on those who sign it, it is not surprising that the language emphasises the role of the state and clearly establishes that the state has parental authority to protect children who are exploited, abused or neglected, but this authority is nothing new. The Convention should not be judged on the basis of second-hand evidence without reference to the text of three articles concerning parental rights and responsibilities:

UN CONVENTION ON THE RIGHTS OF THE CHILD
The Role of Parents
(three articles)

ARTICLE 5 **Parental Responsibility, Respect for**

States Parties shall respect the responsibilities, rights, and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guard-

ians 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 9 **Parental Care and Non-separation**

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, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to 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 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 14 **Freedom of Conscience/Religion**

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

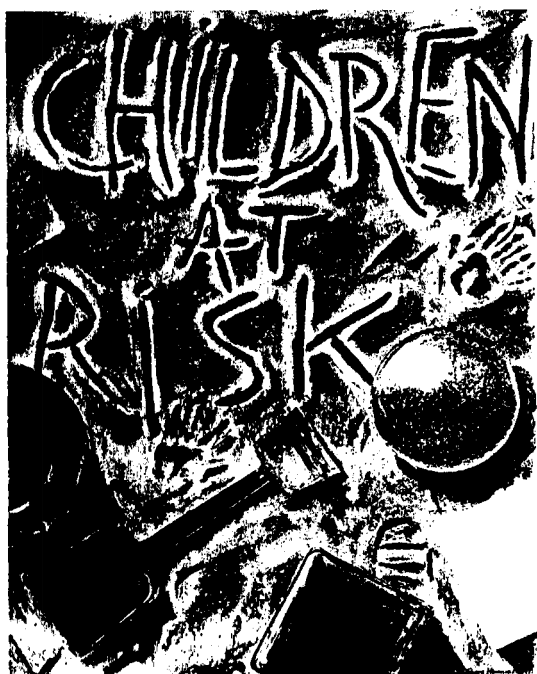
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

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 and freedoms of others.

Future use of the Model

The UN Convention should be the subject for extensive legal and social science research. In our current project on attitudes towards the UN Convention by Australian and American youth, parents, and professional workers with children, we have found this model useful both to develop methodology and to organize findings. We welcome information from other sources and practitioners who may utilize it. ♦

A version of this paper which contains the full text of the Articles of the UN Convention, is available at a cost of \$5.00, from the NCBA, PO Box 686, Mulgrave Vic 3170.



CHILDREN AT RISK

AN INTERNATIONAL INTERDISCIPLINARY CONFERENCE
Bergen, Norway 13-16 May 1992

THE NORWEGIAN CENTRE FOR CHILD RESEARCH

in cooperation with
THE NORWEGIAN COMMISSIONER FOR CHILDREN
THE ROYAL MINISTRY OF CHILDREN AND FAMILY AFFAIRS
NORWEGIAN SAVE THE CHILDREN
THE CITY OF BERGEN
UNICEF NORWAY

Introduction

The conference intends to provide a forum for scientific discussion of children's life and development in the perspective of the UN Convention on Children's Rights. Participants wishing to present a paper at the conference are asked to submit an abstract intended for oral or poster presentation.

Officials in public work, politicians and members of international organisations that work for children are invited to take part in the conference to discuss practical and theoretical consequences of recent research.

The conference language is English.

Programme

1. Risk factors connected to nature and environment: children and the physical milieu.
2. Medical risk factors: nutrition, disease and disturbed development.
3. Family and social network.
4. The role of the public caretaking agencies.
5. Culture, education and identity.

Grants

Participants originating from countries outside Western Europe and the US may apply for a grant covering expenses concerning travel and accommodation.

Registration

Registration fee includes admission to the conference, Conference Proceedings, 4 lunches and the banquet.

Before	After
15 March 1992	15 March 1992
US \$150	US \$200

Conference Secretariat

CHILDREN AT RISK
The Norwegian Centre for Child Research
The university of Trondheim
N-7055 Trondheim
NORWAY
Tel: + 47 7 59 62 40
Fax: + 47 7 59 62 39

