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Ann Laquer Estin

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Edited by

Ann Laquer Estin

Aliber Family Chair

University of Iowa College of Law, USA

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International Family Law

Volume II

International Law

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Part I
Parents and Children

A Children's Rights

THE BEST INTERESTS PRINCIPLE: TOWARDS A RECONCILIATION OF CULTURE AND HUMAN RIGHTS

PHILIP ALSTON*

ABSTRACT

The 'universality' to which international human rights standards aspire has been strongly contested in recent years. Nevertheless, the Convention on the Rights of the Child is likely to achieve near-universal ratification within the next year or two. This analysis uses the Convention, and especially Article 3(1), which incorporates the principle that, in all actions concerning children, 'the best interests of the child shall be a primary consideration', to examine the broader relationship between culture and human rights.

1. INTRODUCTION

The present analysis, like those that follow it in this collection, aims to explore the meaning and significance of the 'best interests' principle recognized in Article 3(1) of the United Nations Convention on the Rights of the Child.¹ It seeks to do so not only in relation to the Convention itself, or to children's rights, but also in the overall human rights context. Article 3(1) provides that:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

The Convention represents, in a number of respects, the culmination of half a century of international efforts to set 'universal' standards in the field of human rights.² While the treaty is clearly consistent with the principles enshrined in the Universal Declaration of Human Rights some forty-five years ago, it has developed and built upon those principles in many ways. As a result, it is by far the most detailed and comprehensive (in terms of the rights recognized, as opposed to the categories of persons covered) of all of the existing international human rights instruments. Its importance is further underscored by the unprecedented rapidity with which States have ratified or acceded to it and

* Centre for International and Public Law, Australian National University, Canberra ACT 0200, Australia.