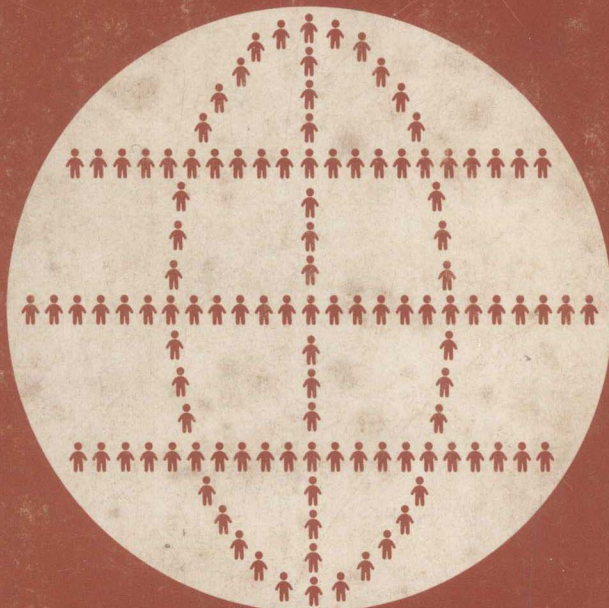


LAW AND THE STATUS OF THE CHILD

ANNA MAMALAKIS PAPPAS



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DISCLAIMER

Child legislation is a particularly fluid area in which the laws are changing daily. While the editors have attempted to insure that the citations here are as accurate and current as possible, some of the materials cited in these articles are unavailable in the United States. We recommend that readers check the present status of particular laws in which they are interested.

At press time, it came to the attention of the editors that certain laws discussed in the text had been repealed, amended, or superseded. References to such changes were inserted in the corresponding footnotes (*see, e.g.*, note 110 of the chapter on Greece where mention is made of Law No. 1329 of February 18, 1983, which reduced the age of civil majority to eighteen and modernized the Greek family law in ways the author had recommended in the text).

PREFACE

The United Nations Institute for Training and Research (UNITAR) is an autonomous institution within the framework of the United Nations, established to enhance the effectiveness of the United Nations, particularly in the areas of peace and security and the promotion of economic and social development.

The two functions of the Institute are training and research.

The Institute provides training at various levels to persons, particularly from developing countries, for assignments within the United Nations system or with foreign ministries and other national services connected with the work of the United Nations.

The Institute conducts research and sponsors seminars related to the functions and objectives of the United Nations. Such activities give appropriate priority to the requirements of the Secretary-General, United Nations organs, and the specialized agencies.

This study, which was made possible by a grant from the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention, augments the work currently underway within the United Nations system to prepare an international convention setting forth minimum standards for the protection of children's rights. In this connection, UNITAR was instrumental in establishing reporting groups of lawyers and experts of sixty countries in all regions of the world. These reports were carefully noted, analyzed, and edited by the UNITAR Project Officer and a broadly representative sample of the reports has been set forth in this volume. The purpose is to highlight the varying successes and problems encountered by different societies in dealing with this important subject. Those who would prescribe a common global standard undoubtedly have much to learn from the experience of the States which participated in our project.

The views and conclusions in this study are the responsibility of the individual authors and do not necessarily reflect the opinions of the Board of Trustees or officials of UNITAR. Although UNITAR takes no position on the views and conclusions expressed by the authors of its studies, it does assume responsibility for determining whether a study merits publication.

Davidson Nicol
former Executive Director
UNITAR

The plight of the world's children is a matter of urgent concern at the international and national levels. A *sine qua non* for redressing the prevalent inequities that adversely affect the welfare of children is to establish and reinforce appropriate standards for the over-all protection of the young.

The United Nations has taken up this cause as a central component of a general crusade to promote and encourage respect for human rights and fundamental freedoms, which is one of the stated objectives of the Organization.

The publication of these volumes on the rights of children is the culmination of a collaborative effort between UNITAR and the International Year of the Child Secretariat and UNICEF. It promises to be an important contribution to the work of the United Nations in the field of human rights. The project canvassed the legislation of sixty countries and the studies published here are a representative grouping of the studies made. It is hoped that the work of UNITAR in this area will be sustained by all appropriate organs of policy making and implementation, and that other legislative surveys will be made, until the legislation of all nations is systematically and analytically reviewed and appropriately reformed where necessary.

As the successor to Dr. Davidson Nicol in the position of Executive Director of UNITAR, it has been my privilege to preside over the publication phase of the project. I am pleased to add these introductory remarks to those of Dr. Nicol, and to those of Mr. Grant, Executive Director of UNICEF, the United Nations agency whose work in the field of child welfare has been and is invaluable and inspirational. I am further pleased to express the appreciation of UNITAR for the financial support that the United States Department of Justice has given to this project.

Michel Doo Kingué
Executive Director
UNITAR

FOREWORD

by
James P. Grant*

The rights of the child are amongst the most essential principles etched in the statutes of humanity. They are also the most frequently disregarded.

One of the principal reasons for this disregard is the fact that the ability of parents to nurture the welfare of the child has been weakened. The social upheavals and economic crises that have characterized the rapid and profound changes of our time have resulted in undermining family structures, and have brought under pressure the primary responsibilities of the parents. This has meant the dilution of traditional sustenance and support for millions of children. And there are many more—orphans, refugees, abandoned children, the offspring of broken homes—who enjoy no protection at all from the family or the community.

The law, however, can reinforce tradition and institutionalize protection by assigning responsibility and can provide a means to build efforts for providing improvements in the well-being of children. Among central actions of UNICEF in preparation for the International Year of the Child (I.Y.C.) in 1979 were therefore appeals to all Governments to review their legislation on children. Our I.Y.C. secretariat also circulated a classification plan prepared by three distinguished professors to be used by national I.Y.C. committees to determine whether existing laws were adequate to deal with the new realities and deprivations facing their children.

In a related effort, the United Nations Institute for Training and Research, with the full cooperation of the I.Y.C. secretariat, undertook a comparative study of children's legislation around the world. The result of that study is this publication which must rank as one of the most important by-products of the International Year of the Child. It is my sincere hope that it will serve as inspiration to the nations of the world to enact legislation designed to meet all the essential needs of their children.

The list of these needs is cruelly compounded by children's fragility. Whether in continuing crisis of poverty, hunger and disease, or a natural calamity such as floods or an earthquake, it is children who succumb first, lacking the resources or ability to surmount situations of adversity. It is this vulnerability, and the often irreversible emotional or physiological traumas which result, which compels our urgent attention and action.

Tomorrow's world will be fashioned by the tools our children receive from us today. Will they struggle towards that world undernourished, abused, ignorant, and exhausted? Or can the adult world take the steps necessary to protect their

* Executive Director of UNICEF.

health and ensure their security allowing them a chance to fulfil their own potential and play a role in the development of society.

I am convinced that the will exists everywhere to nurture our children and safeguard their rights. Giving practical effect to this universally accepted imperative is the task of the law. This study is therefore an important step toward ensuring that the rights of children take their proper place in the laws of every country.

ACKNOWLEDGMENTS

This symposium of studies would not have been possible without the assistance, cooperation, and input of several individuals within and outside the United Nations system. Foremost credit goes to Dr. Luke T. Lee, former Executive Secretary of the International Advisory Committee on Population and Law, who conceived the idea of this phase of the UNITAR project on the rights of the child, co-authored (with Professors Morris L. Cohen and Jan Stepan) the classification plan utilized by the participants in fashioning the format of the studies submitted, prepared the initial project guidelines, and gave generous support and advice to UNITAR staff throughout.

A large measure of appreciation is also due the following officials and members of UNITAR: Dr. Davidson Nicol and Dr. Michel Doo Kingué, former and current Executive Directors of UNITAR, respectively, for their unfailing support and guidance; Dr. Thomas M. Franck, under whose directorship of the UNITAR Division of Research this phase of the project was implemented and completed, for his inspirational and meticulous supervision; Dr. John P. Renninger, UNITAR Research Officer, who launched the project at UNITAR and continued giving it the benefit of his keen insight; and Ms. Remedios De Jesus for secretarial and administrative assistance of the highest quality and efficiency.

Special thanks must also be extended to Dr. Vladislav Tikhomirov, UNITAR Deputy Director of Research (particularly for his help with the monographs from the Socialist States); Dr. Mohamed El-Baradei, UNITAR Research Officer (particularly for his help with the Arabic monographs); Mrs. Laurel Isaacs, UNITAR Publications Officer; Ms. Maria-Luisa Chavez, former UNITAR Research Assistant; and Mr. Fernando Ortiz, Jr., UNITAR Research intern.

Additionally, officials at UNICEF headquarters and officials of the International Year of the Child Secretariat, as well as numerous UNICEF field officers, generously collaborated with UNITAR from the inception of the project in numerous ways, and specifically in providing liaison between UNITAR and the national IYC Commissions which designated the experts for the project in each of the participating countries. Invaluable co-ordination services were rendered in particular by: Mr. Edward Marks, Associate Director, IYC Secretariat; Ms. Danica Adjemovitch, Senior Technical Officer, IYC Secretariat; and Ms. Dorothea Banks, Programme Officer at UNICEF headquarters, to all of whom UNITAR and the project staff are greatly indebted.

This publication was enhanced by the participation in the project of many experts throughout the world, who contributed a total of sixty national monographs. This great number of reports supplied the broad spectrum of material and larger perspective which made this representative grouping of studies possible. The participation of the following scholars from the following countries is thankfully acknowledged:

Afghanistan	Mr. Mohammad Sadiq Paikar
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Barbados	Dr. N.J.O. Liverpool
Brazil	Ms. Cassia Maria S. Ganem
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Costa Rica	Ms. Ofelia Vincenzi
Cyprus	Mr. Stelios Theodoulou
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Denmark	Mr. Jorgen Graversen
Dominican Republic	Ms. Ana Rosa B. De Farray
El Salvador	Ms. Emma Esther C. De Pinzon
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Turkey	Mr. Muslih Fer
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	Ms. Christine N. B. Kitumba
Zambia	Mr. Geoffrey Haamaundu

UNITAR and the project staff are also grateful to Jessica Pincus, Editor-in-Chief of the Columbia Human Rights Law Review for the year 1983-1984, for her cooperation in the publication of this book.

Anna Mamalakis Pappas

Declaration of the Rights of the Child

Proclaimed by the General Assembly of the United Nations on
20 November 1959 (General Assembly resolution 1386 XIV)

Preamble

Whereas the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Whereas the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,

Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children,

Whereas mankind owes to the child the best it has to give,

Now therefore,

The General Assembly

Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

Principle 1

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

Principle 3

The child shall be entitled from his birth to a name and a nationality.

Principle 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

Principle 5

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Principle 6

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Principle 7

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture, and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

Principle 8

The child shall in all circumstances be among the first to receive protection and relief.

Principle 9

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

Principle 10

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

CLASSIFICATION PLAN FOR LAWS AFFECTING THE RIGHTS OF THE CHILD

100 *Definition of "Child"*

110 By age

120 Civil majority

122 Criminal responsibility

124 Marriage age

126 Military service

128 Labor age

130 Others: See also ages for alcoholic beverages, driver's license, entertainment, and voting, where relevant

150 By status or emancipation (*e.g.*, marriage, military service)

200 *Non-Discrimination*

210 Sex

220 Race, color and caste

- 230 Handicaps
 - 232 Physical
 - 234 Mental
 - 236 Social
- 240 Language
- 250 Religion
- 260 Political or other opinion
- 270 National or social origin
- 280 Property
- 290 Birth status
- 295 Marital status

- 300 *Name, Nationality and Registration*
 - 310 Name
 - 320 Citizenship
 - 324 *Jus solis*
 - 326 *Jus sanguinis*
 - 328 Naturalization
 - 330 Immigration and emigration
 - 332 Passports
 - 334 Visas
 - 340 Residency (father's, mother's, guardian's)
 - 342 No fixed residency (nomads, floating population, gypsies, etc.)
 - 350 Membership in ethnic or religious groups
 - 360 Vital registration

- 400 *Family Relations*
 - 410 Impact of dissolution of marriage or parental disagreement
 - 415 Right not to be separated from family or either parent
 - 420 Custody and visitation rights
 - 430 Legal status in relation to marriage of parents
 - 435 Determination of paternity
 - 440 Parents' obligations and rights
 - 442 Physical care and upbringing (see also Neglect and Cruelty, Section 710 below)
 - 444 Support or maintenance
 - 445 Administration of child's property
 - 446 Representation of the child
 - 448 Choice of child's occupation
 - 450 Right to inheritance
 - 460 State supervision of parental obligations
 - 465 Abolishing or restricting parental rights; removal of child from parents

- 470 Guardianship
 - 472 Orphans
 - 474 Incapacity of parents
- 480 Adoption; foster care
- 490 Family counselling; parents' education
- 495 Family planning services

500 *Protection of Child's Health*

- 505 Prenatal care of mother
- 510 Nutrition
- 515 Prevention of diseases; immunization
- 520 Safety of procedures
- 525 Health care (physical as well as mental)
 - 527 Free health services and hospitalization
 - 529 Parental consent for medical procedures
- 530 Recreation: sports
- 540 Alcohol and tobacco; drug abuse

550 *Child's Welfare*

- 555 State role in general: moral and material security
- 560 Care facilities
 - 562 Day-care centers
 - 564 Orphanages
- 570 Housing
- 580 Social benefits related to children; child allowances
- 590 Taxation

600 *Property and Economic Rights*

- 605 Contracts and sales
- 610 Banks and checking accounts
- 615 Personal property
- 620 Real property
- 625 Others

630 *Education*

- 635 Right to education
 - 636 Compulsory education
 - 637 Free education
 - 638 Access to special or private schools
- 640 Parents' rights related to education of children
 - 645 Freedom of choice of language

- 650 Teaching subjects and curricula
 - 655 Population, family and sex education
- 660 Institutional discipline (corporal punishment, suspension, etc.)
- 665 Religious control of schools
- 670 *Labor*
 - 675 Age restrictions
 - 680 Conditions of work
 - 682 Minimum wage
 - 685 Restrictions as to the kind of work; working time
 - 690 Conditions of work of pregnant women and mothers
 - 695 Vocational training
- 700 *Special Aspects of Protection of Children*
 - 710 Neglect and cruelty
 - 720 Homeless children
 - 730 Traffic in children
 - 740 Prostitution
 - 745 Statutory rape or age of consent
 - 750 Using children for entertainment purposes
 - 755 Protection against violence and obscenity spread in the media, shows and literature
 - 760 Protection of privacy
 - 765 Organizations for protection of and aid to children
 - 770 Children ombudsman ("protector")
 - 780 Protection during war and violence
 - 790 International agreements relating to protection of children
- 800 *Children in Judicial and Administrative Procedures*
 - 810 National versus local jurisdiction
 - 820 Child as a witness
 - 824 In family litigations
 - 828 On sexual matters
 - 830 Right to counsel
 - 840 Representation of child's interest in proceedings
 - 850 Standing in courts—to sue and be sued
 - 860 Cooperation with experts on child's psychology, psychiatry and pedagogy
 - 870 Conflict of laws issues