

WARSAW CONFERENCE ON THE LEGAL PROTECTION OF THE RIGHTS OF THE CHILD

From 16-19 January 1979, a Conference on the Legal Protection of the Rights of the Child was held in Warsaw, Poland, organized by the International Commission of Jurists, the International Association of Democratic Lawyers and the Polish Association of Jurists. Dr. O.M. Stone was a delegate to the Conference and was also an official rapporteur There follows a brief report on the Conference, the paper presented by Dr. Stone and the statements of principles unanimously adopted by the delegates.

I. THE CONFERENCE

On 20th November, 1959, the General Assembly of the United Nations unanimously adopted a declaration of the Rights of the Child. It was to celebrate the passage of twenty years since the adoption of this document that the year 1979 was designated The International Year of the Child.

The opportunity was seized by the International Commission of Jurists, based at Geneva, Switzerland, to make contact with its rival and the reason for its foundation: The International Association of Democratic Lawyers, of Eastern Europe. This is the first time that any attempt had been made at collaboration between these two International Legal Associations. The result was a seminar which took place in the Palace of Culture and Science in Warsaw in January 1979.

Apart from numerous Polish jurists, some 50 participants came from other countries, approximately half from the countries of eastern Europe (Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Rumania, USSR and Yugoslavia) and half from Western Europe (Austria, Belgium, France, German Federal Republic, Ireland, Italy, Netherlands, Norway, Sweden, Switzerland and the United Kingdom), as well as representatives of the UN Secretariat for the International Year of the Child, the UN Division of Human Rights and the UN High Commissioner for Refugees. Many of the participants were jurists of considerable eminence with experience and expertise in the field of family law.

Working Papers were prepared by the three General Rapporteurs for the three Commissions of the Conference as follows:—

- I The Evolution of the Concept of the Rights of the Child, by Maitre Roland Weyl (France, IADL);
- II The Responsibility of the Family and of Society towards the Child, by Dr. Olive Stone (UK and Canada, ICJ);
- III State Organs Empowered to take Decisions about Children, by Dr. Marta Katona Soltes (Presidente de Chambre de Famille, Supreme Court of Hungary).

Several other very informative papers were prepared by participants describing the legislation and practice concerning the rights of the child in their own countries.

II THE REPORT FOR COMMISSION II BY O.M. STONE

Summary of UNDERLYING PRINCIPLES AND CONCLUSIONS AS TO THE COMMON LAW IN ALBERTA, CANADA AND ENGLAND AND WALES ON THE RIGHTS OF THE CHILD.

COMMISSION II: THE RESPONSIBILITY OF THE FAMILY AND OF SOCIETY TOWARDS THE CHILD

1. The common law starts with the presumption, which I find reasonable, that in the vast majority of cases parents love and understand their children and know better than any public servant what is best for them. The fact is that society has so far failed to invent any other institution half as good as the average family (with all its faults) for sheltering without restricting the growing child and introducing him gradually, at his own pace, into society as a whole.

There is an extremely small minority of parents who are indifferent, neglectful, mentally incapable of deciding what is in the children's best interests, or even some who act with malice and cruelty towards the helpless being in their care. Any rules of law designed to deal with this small minority should be framed with great care, so that they do not impinge on the vast majority of good parents who, (full of human failings as no doubt they are,) nevertheless know what they are about and do not need any public employee to interfere between them and their children.

2. Both the common law systems discussed, in England and in Alberta, rely in the first place on co-operation of parents in the restriction of their own authority. In both countries financial assistance is available in the form of social assistance or security payments, and no parent is today obliged to part from her or his child because of poverty. In both systems, the parent who for other reasons cannot cope with the upbringing of her or his child may either persuade public authorities to take over the child's upbringing in emergency or for a temporary period while retaining the parental relationship, or may voluntarily relinquish the relationship with the child, who may be placed for adoption. Clearly parents who cannot adequately cope with the upbringing of their children should receive every encouragement to take the initiative in remedying the situation, and only where they do not do so should any state authority be brought to bear.

3. Because negligent or cruel parents are such a small minority, they pose delicate problems to society. Their conduct must constitute a criminal offence, since (a) this has educative value amongst the population as a whole, demonstrating that society shuns such behaviour and will act against it. Good citizens, including all public servants, will be encouraged to inform the appropriate authorities; (b) it enables a trained body of public servants, welfare workers, the police or other bodies, to move with speed and determination to remedy the situation in case of need.

It is, however, important that (i) protection and future nurturing of the child should be kept as distinct as possible from (ii) treatment, (including where necessary the imposition of needed discipline,) for parents who have misused or exploited their legal authority over a child in their care. The termination of parental rights straddles both aspects, and its importance in enabling remedial action to be taken for the benefit of the child should be stressed rather than its possible punitive aspects for the parent(s). In all common law countries, before anyone can be convicted of a criminal offence, his guilt must be proved beyond reasonable doubt, and for a serious offence

twelve of his fellow-citizens must be satisfied that this has been done. I suggest that the criminal standard of proof should not necessarily apply before parental rights can be restricted or even terminated, and that they should be restricted at least temporarily, wherever it appears that this may be in the child's best interests. In many cases what the parents need may be principally information, training or support, and when this is made available by restriction of their own authority it may soon be possible to remedy the situation and for the public servants gradually to withdraw.

Education

4. There has been increasing recognition in common law countries of the undesirability of regarding education as something that happens only in the schools. Various unofficial and extra-legal actions have been taken to associate the parents more closely with the schools and the teachers. Most of today's parents have themselves been through the school system in their local community, and particularly where additions are made to the school curriculum, as with new math or sex education, it is important that the teachers understand the desirability of first putting the parents fully in the picture, so that they understand what is being attempted and why, and will co-operate intelligently with these efforts at home. For all but the youngest children home lessons are also set, and again the co-operation and understanding of the parents in the home is necessary, and teachers should be encouraged to seek it.

These are not matters that can or should be dealt with by the law, but the law functions well against a general background of understanding and good will, and not otherwise.

5. The recent diminution of parental authority over older children is welcome. As the Latey Committee on the *Age of Majority* said in England in 1967: "By 18 most young people are ready for full responsibilities and rights and would greatly profit by them; as would the teaching authorities, the business community, the administration of justice and the community as a whole." If by the age of 18 the parent has not engendered sufficient trust in his child for the child to follow parental advice where it is against his own inclinations, the parent has not been sufficiently successful in bringing up the child for the law to wish to bolster her or his authority. I also welcome the giving of legal authority on certain matters to children at ages below 18, on the grounds that (a) development is and should be recognized as a gradual process and not a sudden traumatic leap, and (b) parents should be encouraged to relinquish their authority over their children as soon as the children show a willingness and ability to take on this responsibility for themselves. It is the immature parent who wants to keep his child dependent on her or him. The successful parent will teach the child as early as possible to make his own decisions and abide by their consequences.

The Inefficiency of Public Intervention

6. I am increasingly impressed with the proved inefficiency of public intervention, even in countries such as England and Alberta, where public services are honest and comparatively efficient. The public employee working a fixed number of hours for a fixed wage can never be better than a very poor substitute for an active, intelligent and loving parent. A survey carried out in England in 1974 on probation officers showed that these officers, sincere and hard-working as no doubt they were, spent so much time travelling and reporting on their activities to their superiors (which is essential in any

public service) that they had really very little time left to advise those who are referred to them for advice. I think the same must be true of every public service. If one imagines the married woman with three young children being required to report in writing each day for the public records every decision she had made during the day, all actions taken and all orders given, (as would be essential if she were using public money) it is clear that much of what she needed to do for her children, her husband and her household would have to remain undone.

Much as in theory I favour public involvement, I do not think this basic dilemma has yet been solved, and until it is greatly diminished in importance and extent I think public intervention should be considered a last resort and that our principal reliance should be on private action in the domestic sphere, not on the ground of parental right, but rather on that of no viable alternative.

III. OFFICIAL STATEMENT OF PRINCIPLES AND RESOLUTIONS ADOPTED ON THE LEGAL PROTECTION OF THE RIGHTS OF THE CHILD

A. *Principles Accepted*

At the final plenary session of the Conference the participants, who came from 19 countries of eastern and western Europe, agreed unanimously upon the following principles:—

1. The State has an important responsibility to secure the Right of the Child through support to the family in need, and thus to ensure that the child will grow up happily from its birth.
2. To this end, the State should set out clearly what is required of parents to ensure the welfare of the child in society, and also how the State and organizations and individuals in society propose to assist parents in the upbringing of their children.
3. At the same time, both the State and parents should respect the right of the child to be consulted about its welfare whenever the child is in a position to express such opinions.

In particular areas of the child's development which are the subject of education, health and recreation, the following more detailed conclusions were reached:—

Education

4. The duty to provide the means of education (including the training of teachers in adequate numbers) falls in the first place on the State.
5. In deciding on the content and form of programmes of education, the State, parents, teachers and the children themselves, and their representative organizations, all have an important role. How the responsibility for those decisions is distributed must depend in part on the institutional and social structures and traditions of different countries, but there are dangers in placing too great a degree of responsibility on any one of the four parties to the exclusion of the others. Therefore, even where the law places that responsibility on a single organ, that organ should ensure that all the other parties are able to participate in the making of decisions.
6. So far as possible, both parents and children should benefit from improvements in methods of education by having a choice of those best suited to enable the child to develop its abilities to the full.

7. Although it is desirable to provide special educational facilities for children who are exceptional either in their talents or in their handicaps, it is important that their education should, so far as possible, be integrated with that of other children.

8. Where it has not yet been realized both in law and in fact, priority should be given, within the available resources, to equating education for girls and women with that of boys and men, in all fields and at all levels, including mathematics, science, engineering, economics, medicine (including all its specialities), and administration, as well as the arts, humanities and sports.

Health

9. The obligation to provide adequate health care for all children falls primarily upon the State.

10. As a child becomes older and more responsible, its own views on the events which will shape its future become increasingly important. Even before it reaches the age of legal majority, it should be able to participate in any major decisions about its physical and mental health. In order that its participation should be both free and informed, the child should have access to full information and independent advice, and procedures should be made available for the resolution of differences between the views of the child and those of its parents.

11. The primary responsibility for preventing a child from pursuing activities harmful to itself (such as drinking alcohol, smoking tobacco, or taking drugs) falls upon the parents, both by education and by example. Although the State can reinforce this protection by suitable legislation and education, there is an age (not later than the age of legal majority) after which a person has the sole moral responsibility to make decisions on these matters, and accept the consequences which the laws of his country impose.

Recreation

12. The obligation to provide means for the recreation of children falls primarily on the State.

13. As their age increases, the choice by children of different forms of recreation should increase also. Older children should not be forced to engage in forms of recreation which they do not wish to pursue: at the same time, they should be free to pursue forms of recreation which they enjoy and which do not harm others.

Child Labour

14. Further, as child labour is damaging for the development of the child in its education, its health and its recreation, we demand the end of child labour everywhere and we call for all nations to implement the provisions of Convention No. 138 of the International Labour Organisation.

Accordingly, the Conference concludes that:—

15. A distinction should be drawn between the way of dealing with rights concerning children whose age entails their absolute legal incapacity, and those for whom, by reason of their greater maturity, the law can provide forms of partial legal capacity, especially in the choice of their studies, their profession and, if necessary, their residence, which will prepare them by stages for the exercise of their full legal capacity on attaining majority.

16. Protection of the child should, in the case of interventions by public authorities, be accompanied by legal procedures which ensure judicial con-

trol, full discussion and rights of appeal, so as to ensure that the concept of the 'interests of the child' shall be applied in the most objective way taking into account the complex realities of specific situations.

17. In their relations with families and individuals concerning children, State institutions and social organisations should avoid as far as possible making the child and object of dispute and should act in a spirit of the widest possible cooperation, as indeed should individuals, and particularly the parents, in their relations with each other.

18. Particular importance attaches to Principle 7 of the UN Declaration on the Rights of the Child, since the interests of the child include the right to be prepared by an adequate education so as to be able to face the complex problems of his or her future adult life, including all that this implies in terms of the duties, efforts and constraints inherent in social life.

19. The children of refugees and child refugees should be treated in the same way as other children and enjoy the same protection, both in their country of asylum and abroad.

20. The same principle should be applied to the children of migrant workers.

21. It follows also that equality of opportunity should be effectively guaranteed to children by the provision of the necessary material and cultural means. This should be done both by public facilities placed by the community and the State at the disposal of the children and of the adults responsible for them, by reason of their importance for the multilateral development of the child, as well as through social security and welfare benefits which will ensure to the families the material and cultural conditions of life to enable them to fulfil their role under truly favourable conditions. The satisfaction of these needs should become an integral part of the development plan of each country.

B. Resolution In Support of the Adoption of An International Convention On The Rights Of The Child

We, the participants at the International Conference on the Legal Protection of the Rights of the Child held under the auspices of the International Commission of Jurists and the International Association of Democratic Lawyers,

Having met in Warsaw, capital of a country which lost more than two million children during the second world war,

Convinced that our organizations and all lawyers should support every initiative aimed at realizing progressive and humanist ideals in the service of greater respect for the dignity and value of man, as social progress and the creation of better conditions of life in greater freedom,

Being agreed that mankind should always give of its best to every child,

Welcome with satisfaction the initiative of the 34th Session of the Commission on Human Rights in March 1978 contained in its resolution 20/XXXIV and confirmed in resolutions of the Economic and Social Council and the 33rd Session of the General Assembly of the United Nations, aimed at the acceptance by the United Nations, if possible in 1979, of an International Convention on the Rights of the Child.

Every child needs care, education and the assurance that its material needs will be met. He has a right to full development. For balanced development of

his personality, he needs love, understanding and a sense of security. All these can and should be assured to the child by adults. It is their duty to protect the child against neglect, cruelty and exploitation. It is also their duty to bring up the child in the spirit of peace and humanity and to provide conditions which will ensure that the rights of the child are respected and the obligations of society towards the child are carried out.

Special protection of the child requires legally guaranteed opportunities and facilities for his physical, mental, moral, spiritual and social development in freedom and dignity. This applies too all children without exception, distinction or discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, social origin, property, birth or for any other reason relating to the child or his family.

These duties towards the child, which are now a supreme moral imperative of society, should be reinforced by giving them the status of norms under international law in the form of an International Convention on the Rights of the Child.

For this reason we call upon all who cherish the ideals of law and democracy to support actively the initiative for the speedy adoption of such a Convention.

In common with all progressive opinion throughout the world, we consider it necessary to draw attention to the need to take energetic measures for the purpose of realizing the ideals which led to the proclamation of 1979 as the International Year of the Child.

We lawyers from every part of Europe, meeting in Warsaw, consider that the adoption of an International Convention on the Rights of the Child would be a highly significant event in the service of achieving these goals, bringing nearer the realization of the rights of childhood, the recognition and assurance of which are in the interest of all progressive States and of all humanity.

C. Resolution In Support of the Implementation of The United Nations' Declaration on the Preparation of Societies For Life In Peace

By adopting at the 33rd session of the General Assembly a Declaration on the preparation of societies for life in peace, the United Nations made a solemn appeal to all States to be guided in their actions by recognition of the supreme importance and necessity of establishing, maintaining and strengthening a just and durable peace for the present and future generations, and to take steps perseveringly and consistently to educate society, and particularly the young generations, in a spirit of peace.

The participants at the International Conference on the legal protection of the rights of the child welcome with joy and satisfaction this Declaration and express their full support for it in word and spirit.

The source of the Polish initiative for the adoption of this Declaration by the United Nations was the conviction that, since wars have their origin in the human mind, it is in the human mind that the defence of peace must be created.

Peace belongs to all peoples. Every individual has the inalienable right to live in peace. Respect for this right is in the interest of all humanity and calls for the common effort of all humanity. For peace cannot be left to chance and depends on mankind for its maintenance.

In adopting the Declaration on education for peace the United Nations shared this conviction. Indeed, it cannot be contested that the education of man for peace is essential in addition to the efforts made on the economic, social and political level — especially in favour of disarmament — towards the reestablishment and maintenance of peace. This is the proper role of the United Nations, of State governments and of a society committed to peace.

The Declaration on education for peace offers a lasting basis for activities and efforts aimed at eliminating hatred, all forms of discrimination, and the cult of war and violence which are incompatible with the spirit of peace and the hope to make it lasting. In particular, the education of the young generations — both children and the youth — in a spirit of peace, offers in this respect an immense opportunity which we have no right to let slip.

It is a cause for all progressive social forces and all men of good will.

We, the participants at the Conference on the legal protection of the rights of the child, call upon everyone, and particularly those engaged in moulding the spirit and character of the young generations, to support by their action the United Nations Declaration on the preparation of societies for life in peace.

A special role in this respect falls upon lawyers. The provisions of the Declaration should be reflected both in the provisions of the national law of all States and in their social practice which the law helps to strengthen.

Active support of the ideas of the Declaration on education for peace and effective measures for its full application are a precondition of the preservation of the supreme good, namely peace.

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