INTRODUCTION

By analogy with the rules which exist to provide legal, social and economic aid to the victims of national or international crimes, it may be possible to suggest that there is also an established legal duty for all states to provide access to resources which can, under reasonable criteria, protect children from the improper conducts of individuals, organisations, and the administration of justice. However, what constitutes the definition of the child is a very intricate question. In accordance with the Convention on the Rights of the Child, a child is a person under 18. It is, not however, easy to describe the precise acceptance or rejection of this age within the national systems of different states. Some states have adhered to this age limit under the Convention, some have accepted it with reservations, and still others have rejected it entirely. Nevertheless, the real issue does not actually relate to recognizing the age limits of childhood or adulthood, but rather the way in which we deal with different matters concerning children under our legal systems. Their rights have not only been given insufficient attention under the jurisdiction of states, but have also been seriously violated by transnational or international criminal actions. The ignoring of children's rights under the jurisdiction of a state covers legislative, judicial, and administrative measures and practices.

It is far from easy to state the current legal position of children in terms of the conventional, customary, general principles of law and case law, although many international treaties dealing directly or indirectly with the rights of children have been ratified. Modern writers therefore assert that there is a trend within the legal machinery of states towards encouraging the doctrine of the protection of children under a particular realm of law called the sovereignty of children. Yet the practice of different legal systems is far from consistent, and there is a persistent divergence between legislation supporting the theory of the recognition of the rights, self-protection, various securities, or autonomous personality of children, and that of the restrictive personality of children under the complete supervision of parents or guardians.

The increased complexity in estimating the effect of ignoring the rights of children under national practices, and the irreversible harm to children

which has been caused by the provisions of different legislations and legal authorities, has resulted in conscious efforts in national and international legal and political communities for the establishment, improvement and protection of the rights of children. This effort has been especially strengthened as a result of the physical and psychological vulnerability of children confronting national, regional, and international problems, for example: the 1989 Convention on the Rights of the Child; the 2000 Optional Protocols on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography; the 1980 Hague Convention on the Civil Aspects of International Child Abduction; the 1993 Hague Convention on Protection of Children and Cooperation in respect of Inter-Country, as well as the 1980 European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children. The frameworks of these conventions must be regarded as integral parts of the *jus cogens* system. This is because their provisions are crucial to the protection of the rights of children as a whole, and are therefore obligatory upon all states.

This book examines many different areas of the law, dealing with the rights of children like the philosophy of law, civil law, health law, social law, tax law, criminal law, procedural law, international law, human rights law and humanitarian law of armed conflict. The intention is to show that there are many rules, provisions, norms, and principles within various areas of the law that relate to the rights of children. The anthology of these rights undoubtedly implies the existence of certain regions of law which have to be acknowledged and respected by the national authorities. However, acknowledgement of rights is also a matter of intention, and may be implied or expressed by the practice of the authorities. The question of the child constituting a self-ruling subject of justice and its legal ability to create an independent individual legal personality for the protection of its rights, but not necessarily for the exercise of those rights, are central issues of this book.

The book is the result of a number of different scholars dealing in different ways with the questions of children's issues. These specialist writers, from different parts of the world, examine the impact of regulations and practices relating to children in different legal areas. The intention of these articles is to scrutinize different legal systems in Africa, Asia, Europe and the United States. The editing of the book has therefore been a challenge, owing to the fact that regulations and practices in different societies

diverge to some extent from one another. By presenting them simultaneously, our purpose has been to struggle against the defects of the law and the serious ignorance of legal authorities concerning the issues of children. The themes and the conclusions of different articles demand the modifications, amendments, draft or strengthening of regulations applicable to the rights of children.

It is axiomatic that as long as children are considered inferior human beings and not one of the significant subjects of national law, violations of their rights by different means will, critically, not be recognized as violations. The problems of children, whether cultural, social, economic, educational, medical, criminal, procedural or otherwise, may not be resolved merely by formulating children's terms into national, regional or international legislation. The legal body of law, and the legal practice including the cultural attitudes of various nations have to adapt themselves to the new conditions of the protection of children by exposing and then shifting from traditional methods such as ignorance, threat or force. The fundamental mechanisms of our societies, such as economy, culture and religion, must take into account that the protection of children cannot be carried out by physical force or the unsuccessful words of parents, guardians, teachers, social workers, lawyers, judges or rehabilitation teams.

We have to learn that the integrity of our children cannot solely be guaranteed by the expression of the word love, but by full respect of their position and rights. Strange as it may seem, when we do not respect the rights of others, it might be considered a civil violation or a crime. But when the rights of children are violated it has, on many occasions, been dismissed as custom or argued that they gave their express consent. For example, in the nineties, when a child of 11 was raped in Sweden, the judgment concluded that there was an implicit consent. Similarly, when a child of 7 was raped by an Iranian priest in a Mosque, it was judged as the victim receiving spiritual enlightenment. It is, in principle, true that literally millions of people believe that children are their property or that a child has no rights of his or her own, and thus the conduct of parents, guardians, representatives of organisations, and the administration of justice relating to children are permitted as a matter of law or nature. This basic misunderstanding has to be rectified and the general attitudes of many nations which basically have a culture which decides on children must be promoted by laws. As the United Nations Millennium Declaration of 2000 points out, as leaders we therefore have a serious responsibility to

the entire world, “especially the most vulnerable and, in particular, the children of the world, to whom the future belongs”.

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