International Children’s Rights
Carolina Academic Press
Law Casebook Series
Advisory Board

Gary J. Simson, Chairman
Case Western Reserve University School of Law

John C. Coffee, Jr.
Columbia University Law School

Randall Coyne
University of Oklahoma College of Law

Paul Finkelman
Albany Law School

Robert M. Jarvis
Shepard Broad Law Center
Nova Southeastern University

Vincent R. Johnson
St. Mary’s University School of Law

Michael A. Olivas
University of Houston Law Center

Kenneth L. Port
William Mitchell College of Law

H. Jefferson Powell
Duke University School of Law

Michael P. Scharf
Case Western Reserve University School of Law

Peter M. Shane
Michael E. Moritz College of Law
The Ohio State University

Emily L. Sherwin
Cornell Law School

John F. Sutton, Jr.
Emeritus, University of Texas School of Law

David B. Wexler
John E. Rogers College of Law, University of Arizona
University of Puerto Rico School of Law
International
Children’s Rights

Sara Dillon
Suffolk University Law School

CAROLINA ACADEMIC PRESS
Durham, North Carolina
To Kasia and Theo, 
my little doves
Contents

Table of Cases                                       xxiii
Preface                                             xxv

Chapter One · Introduction to International Children’s Rights and the
  United Nations Convention on the Rights of the Child  3
  I. International Children’s Rights as a Separate Field of Study  3
     A. Background to International Children’s Rights  3
        Notes and Questions  11
  B. The Origins and Early Development of the UNCRC  11
     Nigel Cantwell, *The Origins, Development and Significance of
     Convention on the Rights of the Child: Background: An Introduction
     Notes and Questions  23
  C. Application and Implementation of the Convention on the Rights of
     the Child  23
     1. UNCRC Committee Implementation  23
        Cynthia Price Cohen, *Implementing the U.N. Convention on the
        Rights of the Child*  23
        Cynthia Price Cohen & Susan Kilbourne, *Jurisprudence of the
        Committee on the Rights of the Child: A Guide for Research
        and Analysis*  27
        Notes and Questions  29
     2. Examples from Country Reports, NGO Alternative Reports, and
        Concluding Observations by the Committee on the Rights of
        the Child  30
        Brazil State Party Report  31
        Report of Civil Society on the Situation of the Rights of the Child
        and the Adolescent in Brazil  32
        United Nations Convention on the Rights of the Child [CRC],
        Concluding Observations of the Committee on the
        Rights of the Child  34
        Kenya State Party Report  34
        Supplementary Report to Kenya’s First Country Report on
        Implementation of the UN Convention on the Rights
        of the Child  37
        United Nations Convention on the Rights of the Child [CRC],
        Concluding Observations of the Committee on the
        Rights of the Child  39
## CONTENTS

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Korea State Party Report</td>
</tr>
<tr>
<td>United Nations Convention on the Rights of the Child [CRC], Concluding Observations of the Committee on the Rights of the Child</td>
</tr>
<tr>
<td>India State Party Report</td>
</tr>
<tr>
<td>The Status of Children in India</td>
</tr>
<tr>
<td>United Nations Convention on the Rights of the Child [CRC], Concluding Observation of the Committee on the Rights of the Child</td>
</tr>
<tr>
<td>Notes and Questions</td>
</tr>
<tr>
<td>D. Beyond the Committee on the Rights of the Child: How Individual States Approach UNCRC Implementation</td>
</tr>
<tr>
<td>1. National judicial application</td>
</tr>
<tr>
<td>Notes and Questions</td>
</tr>
<tr>
<td>2. Case Study on Integrating CRC Principles into a National Constitutional Order</td>
</tr>
<tr>
<td>Notes and Questions</td>
</tr>
<tr>
<td>3. National Reservations to the UNCRC</td>
</tr>
<tr>
<td>United Nations Treaty Collection</td>
</tr>
<tr>
<td>Notes and Questions</td>
</tr>
<tr>
<td>II. Critical Perspectives on the UNCRC</td>
</tr>
<tr>
<td>A. The UNCRCA and the Developing World: Is There a “Universal Child”?</td>
</tr>
<tr>
<td>Vanessa Pupavac, <em>The Infantilization of the South and the U.N. Convention on the Rights of the Child</em></td>
</tr>
<tr>
<td>Eva Brems, <em>Children's Rights and Universality</em></td>
</tr>
<tr>
<td>Notes and Questions</td>
</tr>
<tr>
<td>Problem for Discussion</td>
</tr>
<tr>
<td>Child Marriage</td>
</tr>
<tr>
<td>Early Marriage Child Spouses</td>
</tr>
<tr>
<td>Elizabeth Warner, <em>Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls</em></td>
</tr>
<tr>
<td>FGM</td>
</tr>
<tr>
<td>Female Genital Mutilation/Cutting: A Statistical Exploration</td>
</tr>
<tr>
<td>Questions for Discussion</td>
</tr>
<tr>
<td>B. The UNCRC As a “Mythic” Document</td>
</tr>
<tr>
<td>David M. Smolin, <em>A Tale of Two Treaties: Furthering Social Justice Through the Redemptive Myths of Childhood</em></td>
</tr>
<tr>
<td>Notes and Questions</td>
</tr>
<tr>
<td>C. The UNCRC and American Ratification: Will It Ever Happen?</td>
</tr>
<tr>
<td>1. The Anti-Ratification Position</td>
</tr>
</tbody>
</table>
CONTENTS

Notes and Questions 98
Notes and Questions 100
2. Advocates for U.S. Ratification
Notes and Questions 105
Tamar Ezer, A Positive Right to Protection for Children 106
Notes and Questions 110
III. The Convention on the Rights of the Child as a Living Document:
Is It Making a Measurable Difference to the World’s Children? 111
A. Conflicting Assessments of Effectiveness
Cynthia Price Cohen, Implementing the U.N. Convention on the Rights of the Child 111
Notes and Questions 113
UNICEF, Convention on the Rights of the Child: Setbacks and Successes 113
Notes and Questions 120
The Human Rights Watch assessment of the UNCRC at Ten 120
Human Rights Watch, World Report 2000: Children’s Rights 120
Notes and Questions 127
B. Children’s Lives versus Children’s Rights?
Notes and Questions 129
IV. Critical Perspectives on the United Nations Human Rights Regime 130
A. Improving the Human Rights System
The UN Human Rights Regime: Is It Effective? 130
Hilary Charlesworth, Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations 133
Notes and Questions 136
B. The UNCRC and Its Ultimate Paradox: Reconciling Protection and Liberation
Michael Freeman, Beyond Conventions — Towards Empowerment 136
Notes and Questions 137

Chapter Two · Child Labor: The Children’s Rights Dimension 143
I. The Child Labor Debate: Prevention, Empowerment, and “Worst Forms” 143
Notes and Questions 152
Bozena Maria Celek, The International Response to Child Labor in the Developing World: Why Are We Ineffective? 153
Contents

Notes and Questions 157
Notes and Questions 162
Notes and Questions 166
II. International Labor Organization Standards 166
A. Overview of the ILO 166
Matteo Borzaga, Accommodating Differences: Discrimination and Equality at Work in International Labor Law 167
Notes and Questions 172
Notes and Questions 175
B. The Recent Emphasis on Worst Forms of Child Labor 176
Yoshie Noguchi, ILO Convention No. 182 on the Worst Forms of Child Labour and the Convention on the Rights of the Child 176
Mary Gray Davidson, The International Labour Organization’s Latest Campaign to End Child Labor: Will It Succeed Where Others Have Failed? 179
Notes and Questions 183
III. Case Studies in Worst Forms of Child Labor 184
A. Bonded Labor in South Asia: A Tradition of Child Slavery 184
India and Bonded Child Labor 185
Human Rights Watch, Small Hands of Slavery: Bonded Child Labor in India 185
Notes and Questions 192
Notes and Questions 197
Ranjan K. Aharwal, The Barefoot Lawyers: Prosecuting Child Labour in the Supreme Court of India 197
Notes and Questions 201
Amelia Gentleman, Indian Ban on Child Labor: Who Will Clean the Houses? 202
Notes and Questions 204
Aine Smith, Child Labor: The Pakistani Effort to End a Scourge upon Humanity — Is It Enough? 204
Notes and Questions 208
B. Child Labor in Its Worst Forms in Ecuador’s Banana Sector 209
Human Rights Watch, Tainted Harvest: Child Labor and Obstacles to Organizing on Ecuador’s Banana Plantations 209
Human Rights Watch, Tainted Harvest: Child Labor and Obstacles to Organizing on Ecuador’s Banana Plantations 216
Notes and Questions 219
IV. Child Labor in the United States, Including Worst Forms 219
## CONTENTS

Seymour Moskowitz, *Malignant Indifference: The Wages of Contemporary Child Labor in the United States*  
Notes and Questions  

Notes and Questions  

V. Possible Remedies in the Child Labor Arena  
A. The Alien Tort Claims Approach: A Potent Remedy for a Narrow Band of Abuses  
   Marisa Anne Pagnattaro, *Enforcing International Labor Standards: The Potential of the Alien Tort Claims Act*  
   Notes and Questions  
   Sosa v. Alvarez-Machain  
   Notes and Questions  
   Notes and Questions  

B. Trade-Based Strategies to Eliminate Child Labor  
   Frank Garcia & Soohyun Jun, *Trade-Based Strategies for Combating Child Labor*  
   Notes and Questions  
   Sara Dillon, *A Deep Structure Connection: Child Labor and the World Trade Organization*  
   Notes and Questions  
   Frederick Jonassen, *A Baby-Step to Global Labor Reform: Corporate Codes of Conduct and the Child*  
   Notes and Questions  

C. International Elimination of Child Labor (IPEC)  
   IPEC (International Programme on the Elimination of Child Labour) *Action Against Child Labour*  
   Notes and Questions  

**Chapter Three · Children in the Sex Industry**  
I. Overview of the Exploitation of Children in the Global Sex Industry  
   A. The Generic Approach: Human Trafficking as a Unitary Phenomenon  
      Kevin Bales, *Disposable People: New Slavery in the Global Economy*  
      Notes and Questions  
      Notes and Questions  

II. Historical and Contemporary Legal Approaches to Trafficking for Purposes of Sexual Exploitation  
   A. Background to the United Nations Trafficking Protocol  
   Kathryn E. Nelson, *Sex Trafficking and Forced Prostitution: Comprehensive New Legal Approaches*  

## CONTENTS

Notes and Questions 285
B. On What Constitutes Trafficking 285
   Abigail Schwartz, *Sex Trafficking in Cambodia* 285
   Notes and Questions 288
C. How National Legislatures Should Respond 288
   Notes and Questions 295
   Judge Nimfa Cuesta Vilches, *Trafficking of Women and Children* 295
   Notes and Questions 297

III. Commercial Sexual Exploitation of Children: The Same Issues from a Different Conceptual Angle 298
A. Introduction to the UNCRC’s Optional Protocol on the Sale of Children 298
   Notes and Questions 301
   Notes and Questions 305
B. Child Sexual Exploitation in Southeast Asia 305
   Abigail Schwartz, *Sex Trafficking in Cambodia* 306
   Notes and Questions 315
   Kevin Bales, *Disposable People: New Slavery in the Global Economy* 315
   Human Rights Watch, *A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand* 319
   Notes and Questions 321
C. Sex Trafficking in India 321
   Notes and Questions 325
   Human Rights Watch, *Rape for Profit: Trafficking of Nepali Girls and Women to India’s Brothels* 325
   Notes and Questions 334
D. Sex Trafficking in Eastern Europe 334
   ECPAT European Law Enforcement Group, *Joint East West Research on Trafficking in Children for Sexual Purposes in Europe: The Sending Countries* 334
   Notes and Questions 340
E. Sex Trafficking to and within the United States 340
   Peter Landesman, *The Girls Next Door* 341
   Notes and Questions 352
F. Legal Response to Sex Trafficking in the U.S. 352
   Susan W. Tiefenbrun, *Sex Slavery in the United States and the Law Enacted to Stop It Here and Abroad* 352
   Notes and Questions 361
IV. The U.S. Government and International Sex Trafficking 361
   U.S. Department of State, 2008 Trafficking in Persons Report 362
CONTENTS

Notes and Questions 383
V. Sex Tourism and the Issue of the Customer 384
A. Traveling to Exploit 384
Diane Taylor, Preying Fields 385
Notes and Questions 388
B. Overview of Legal Efforts against Sex Tourism 388
Naomi L. Svensson, Extraterritorial Accountability: An Assessment of the Effectiveness of Child Sex Tourism Laws 388
Notes and Questions 395
The PROTECT Act 396
Karene Jullien, The Recent Efforts to End Commercial Sexual Exploitation of Children 397
Notes and Questions 403
C. United States Efforts at Prosecuting Sex Tourists 404
Sex Tourism: Big Apple Oriental Tour Operators Indicted for Promoting Prostitution 410
Notes and Questions 411
D. Understanding Demand: The Role of Images 412
Charles Miranda, A Webcam World of Depravity 412
Michelle R. Adelman, International Sex Trafficking: Dismantling the Demand 415
Notes and Questions 419
Kate Dugan, Regulating What’s Not Real: Federal Regulation in the Aftermath of Ashcroft v. Free Speech Coalition 420
Ashcroft v. The Free Speech Coalition 434
Notes and Questions 443

Chapter Four · Children Living on Their Own: A Global Cohort 445
A. Defining the Problem 447
Lynn D. Wardle, Parentlessness: Adoption Problems, Paradigms, Policies, and Parameters 447
Notes and Questions 449
UNICEF, Child Protection Information Sheet: Children without Parental Care 450
Notes and Questions 451
B. Confronting the Problem: In Search of Best Practice 451
Draft UN Guidelines for the Protection and Alternative Care of Children without Parental Care 452
Notes and Questions 458
II. Children in State Care and the Intercountry Adoption Debate 458
A. Children Out of Family Care 459
1. Human Rights Watch Revelations from Orphanages in China and Russia: The 1990s 460
Human Rights Watch, Death by Default: A Policy of Fatal Neglect in China’s State Orphanages 461
Notes and Questions 464
## CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human Rights Watch, Abandoned to the State: Cruelty and Neglect in Russian Orphanages</td>
<td>465</td>
</tr>
<tr>
<td>Notes and Questions</td>
<td>470</td>
</tr>
<tr>
<td>2. More Hidden Camera Revelations</td>
<td>470</td>
</tr>
<tr>
<td>Mental Disability Rights International, Hidden Suffering: Romania’s Segregation and Abuse of Infants and Children with Disabilities</td>
<td>470</td>
</tr>
<tr>
<td>Notes and Questions</td>
<td>476</td>
</tr>
<tr>
<td>3. Damaging Effects of Residential Care</td>
<td>477</td>
</tr>
<tr>
<td>UNICEF Press Center, Children in Residential Institutions</td>
<td>477</td>
</tr>
<tr>
<td>Desperately Vulnerable to Abuse</td>
<td></td>
</tr>
<tr>
<td>Kathleen Ja Sook Bergquist, International Asian Adoption: In the Best Interest of the Child?</td>
<td>480</td>
</tr>
<tr>
<td>Notes and Questions</td>
<td>484</td>
</tr>
<tr>
<td>Elizabeth Bartholet, International Adoption: Propriety, Prospects and Pragmatics</td>
<td>485</td>
</tr>
<tr>
<td>Notes and Questions</td>
<td>486</td>
</tr>
<tr>
<td>David Smolin, Intercountry Adoption as Child Trafficking</td>
<td>487</td>
</tr>
<tr>
<td>Notes and Questions</td>
<td>494</td>
</tr>
<tr>
<td>Notes and Questions</td>
<td></td>
</tr>
<tr>
<td>C. Intercountry Adoption — The Case of Romania</td>
<td>504</td>
</tr>
<tr>
<td>Elisabeth Rosenthal, Law Backfires, Stranding Orphans in Romania</td>
<td>504</td>
</tr>
<tr>
<td>UNICEF Romania Media Center, Letter to Prime Minister Regarding Inter-Country Adoption</td>
<td>507</td>
</tr>
<tr>
<td>Notes and Questions</td>
<td>510</td>
</tr>
<tr>
<td>III. Sex-Selective Abortion and Abandonment of Girls</td>
<td>510</td>
</tr>
<tr>
<td>Lesley Wexler, Allowing Girls to Hold Up Half the Sky: Combining Norm Promotion and Economic Incentives to Combat Daughter Discrimination in China</td>
<td>511</td>
</tr>
<tr>
<td>Notes and Questions</td>
<td>514</td>
</tr>
<tr>
<td>Uma Girish, For India’s Daughters, A Dark Birthday: Infanticide and Sex-Selective Abortion Yield a More Skewed Gender Ratio</td>
<td>515</td>
</tr>
<tr>
<td>Alison Wood Manhoff, Banned and Enforced: The Immediate Answer to a Problem without an Immediate Solution — How India Can Prevent Another Generation of “Missing Girls”</td>
<td>516</td>
</tr>
<tr>
<td>Notes and Questions</td>
<td>522</td>
</tr>
<tr>
<td>IV. Children Living on the Streets</td>
<td>522</td>
</tr>
<tr>
<td>A. Setting the Scene: Introductory Articles</td>
<td>522</td>
</tr>
<tr>
<td>Mona Pare, Why Have Street Children Disappeared? — The Role of International Human Rights Law in Protecting Vulnerable Groups</td>
<td>523</td>
</tr>
<tr>
<td>Notes and Questions</td>
<td>523</td>
</tr>
<tr>
<td>B. UN Recognition of the Problem of Street Children</td>
<td>524</td>
</tr>
<tr>
<td>United Nations, The Plight of Street Children</td>
<td>525</td>
</tr>
<tr>
<td>C. Street Children and International Human Rights</td>
<td>527</td>
</tr>
</tbody>
</table>
CONTENTS

Mona Pare, *Why Have Street Children Disappeared? — The Role of International Human Rights Law in Protecting Vulnerable Groups* 527

Notes and Questions 537

Marc D. Settles, *Effect of the Convention on the Rights of the Child upon Street Children in Latin America: A Study of Brazil, Colombia, and Guatemala* 538

Notes and Questions 544

Casa Alianza, *Our Integrated Approach* 544

Notes and Questions 545

D. Response of State Law Enforcement to Street Children 546

Egypt: Arbitrary Arrest and Detention 546

Human Rights Watch, *Charged with Being Children: Egyptian Police Abuse of Children in Need of Protection* 546

Notes and Questions 550

Vietnam: One Child’s Story 550

Human Rights Watch, “Children of the Dust”: *Abuses of Hanoi Street Children in Detention* 550

Notes and Questions 554

V. Unaccompanied Minors — Juvenile Refugees and Asylum Seekers 554

E. Unaccompanied Minors in the United States 555

Christopher Nugent, *Whose Children Are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children* 555

Notes and Questions 561

F. Unaccompanied Minors in Spain: A Case Study 562

Human Rights Watch, *Nowhere to Turn: State Abuses of Unaccompanied Migrant Children by Spain and Morocco* 563

Concluding Observations of the Committee on the Rights of the Child: Spain 572

Notes and Questions 573

Chapter Five · Children and Punishment 575

I. Introduction to Children and Punishment: The Anti-Corporal Punishment Movement and Juvenile Justice Issues 575

II. The Anti-Corporal Punishment Movement 577

A. Whether to Ban the Practice of Physical Punishment 577

Deana Pollard, *Banning Corporal Punishment* 578

David Benatar, *Corporal Punishment* 585

Notes and Questions 589

B. Europeans Out in Front on Banning Corporal Punishment 590

Europe-Wide Ban on Corporal Punishment of Children 590

Notes and Questions 596

C. Creating a European Consensus against Physical Punishment 596

Portugal: Condemned for Tolerating Violence against Children 597

Notes and Questions 598

Global Initiative to End All Corporal Punishment of Children 598

Notes and Questions 603

D. Ending Corporal Punishment by Judicial Decision: Israel and the Plonit Case 604

Tamar Ezer, *Children’s Rights In Israel: An End to Corporal Punishment?* 604
Notes and Questions

E. The Argument for a U.S. Anti-Spanking Statute 607

Notes and Questions 612

III. Corporal Punishment in the Educational Context: Physical Discipline in Schools 612
A. Corporal Punishment in U.S. Schools 612

Notes and Questions 618

B. Contrasting Judicial Views of Punishment and the Educational System: The United States and South Africa 619
*Ingraham v. Wright* 619
*Christian Education South Africa v. Minister of Education* 623

Notes and Questions 632

C. Changing an Educational Culture: The Case of Kenya 633
Human Rights Watch, *Spare the Child: Corporal Punishment in Kenyan Schools* 633

Notes and Questions 637

D. The State and the Family: From Non-Intervention to Absolute Bans on Corporal Punishment 638
Benjamin Shmueli, *Who’s Afraid of Banning Corporal Punishment? A Comparative View on Current and Desirable Models* 638

Notes and Questions 648

IV. Juvenile Justice — Children in Conflict with the Law 649
A. International Principles and Social Realities 649
Geraldine Van Bueren, *A Curious Case of Isolationism: America and International Child Criminal Justice* 650

Notes and Questions 656

B. The Reality of Juvenile Justice Standards 657
Anthony N. Doob and Michael Tonry, *Varieties of Youth Justice* 657

Notes and Questions 662

Erika Rickard, *Paying Lip Service to the Silenced: Juvenile Justice in India* 663
Notes and Questions 667

Matthew Solis, et al., *International Legal Updates* 668

Human Rights Watch, *In the Dark: Hidden Abuses against Detained Youths in Rio de Janeiro* 669

C. The Death Penalty for Juveniles 671
*Roper v. Simmons* 671

Notes and Questions 680

Amnesty International, *Philippines: Something Hanging Over Me — Child Offenders under Sentence of Death* 681

Notes and Questions 684

D. From Punishment to Child Rights: The Case of South Africa 684

Notes and Questions 692
Chapter Six · Children and Armed Conflict

I. The Machel Report and Its Fallout — An Introduction to Children and Armed Conflict

A. Machel and Her Report

Graça Machel, Impact of Armed Conflict on Children
Notes and Questions

B. Aftermath of the Machel Report

Stephen Hick, The Political Economy of War-Affected Children
Notes and Questions

II. International Laws Relating to Children and Armed Conflict

A. The Evolution of an International Law on Children and Armed Conflict

Nsongurua J. Udombana, War Is Not Child’s Play! International Law and the Prohibition of Children’s Involvement in Armed Conflicts
Notes and Questions

B. Culpability of the Child Soldier: Should Juveniles Ever Be Treated as War Criminals?

Nienke Grossman, Rehabilitation or Revenge: Prosecuting Child Soldiers for Human Rights Violations
Notes and Questions

Amnesty International, Child Soldiers: Criminals or Victims?
Notes and Questions

III. Beyond the Legal Norms: Recent Global Reaction to Children and Armed Conflict

A. Have We Begun to Care?

P.W. Singer, Talk Is Cheap: Getting Serious about Preventing Child Soldiers
Notes and Questions


Press Release, Office of the Special Representative for Children and Armed Conflict, UN Security Council Establishes First Comprehensive Monitoring and Reporting System to Protect Children Affected by Armed Conflict

Notes and Questions

The Secretary-General, Report of the Secretary-General on Children and Armed Conflict
Notes and Questions

B. Machel at 10: Another Retrospective

Special Representative of the Secretary-General for Children and Armed Conflict, Report of the Special Representative of the Secretary-General for Children and Armed Conflict (“Machel 10 Year Review”)
Notes and Questions

IV. Child Soldiers in Particular Conflicts

A. The Case of Uganda

1. Background to the Tragedy

Hema Chatlani, Uganda: A Nation in Crisis
Human Rights Watch, The Scars of Death: Children Abducted by the Lord’s Resistance Army in Uganda
Notes and Questions 776
2. Legal Response to the Ugandan Conflict 776
   Press Release, International Criminal Court, Warrant of Arrest
   Unsealed against Five LRA Commanders 777
   Noah Benjamin Novogrodsky, Challenging Impunity 779
   Notes and Questions 781
Manisuli Ssenyonojo, Accountability of Non-State Actors in Uganda
   for War Crimes and Human Rights Violations: Between
   Amnesty and the International Criminal Court 781
   Notes and Questions 789
   Maggie Alerotek, Bad Timing: ICC Justice Should Wait 789
   Notes and Questions 791
Luis Moreno-Ocampo, Keynote Address, Integrating the Work of the
   ICC Into Local Justice Initiatives 792
   Notes and Questions 795
B. The Case of Sierra Leone 796
1. Background to the Conflict 796
   Truth and Reconciliation Commission of Sierra Leone, Witness to
   Truth: Report of the Sierra Leone Truth and Reconciliation
   Commission 797
   Notes and Questions 799
   Human Rights Watch, Sowing Terror: Atrocities Against Civilians in
   Sierra Leone 800
   Human Rights Watch, Forgotten Children of War: Sierra Leonean
   Refugee Children in Guinea 807
   Notes and Questions 809
2. Legal Response to the Conflict in Sierra Leone 810
   Statute of the Special Court for Sierra Leone 812
   Stephanie Bald, Searching for a Lost Childhood: Will the Special
   Court of Sierra Leone Find Justice for Its Children? 813
   Notes and Questions 814
   Press Release, Special Court for Sierra Leone, Appeals Chamber
   Rules Recruitment of Child Combatants a Crime under
   International Law 815
   Lisa Clifford & Katy Glassborow, ICC Examines Child Solider
   Convictions 816
   Notes and Questions 818
C. The Case of Colombia 818
1. Background and Description of the Conflict 818
   Notes and Questions 820
D. Effect of Economic Sanctions on Children 821
   Graça Machel, Impact of Armed Conflict on Children 821
   Amy Howlett, Getting “Smart”: Crafting Economic Sanctions That
   Respect All Human Rights 823
   Notes and Questions 828
   Robin Geiss, Humanitarian Safeguards in Economic Sanctions Regimes:
   A Call for Automatic Suspension Clauses, Periodic Monitoring,
   and Follow-Up Assessment of Long-Term Effects 828
   Notes and Questions 832
Chapter Seven · Enforcement of Children’s Rights through Regional Human Rights Systems

I. The Emerging Role of Regional Human Rights Systems in the Enforcement of Children’s Rights
   Bernardine Dohrn, *Something’s Happening Here: Children and Human Rights Jurisprudence in Two International Courts*
   Notes and Questions

II. The Enforcement of Human Rights in Europe
   A. Overview of the European Human Rights System
      Dinah Shelton, *The Boundaries of Human Rights Jurisdiction in Europe*
      Notes and Questions
   B. The European System as a Model for American Advocates for Children’s Rights
      Tania Schriwer, *Establishing an Affirmative Governmental Duty to Protect Children’s Rights: The European Court of Human Rights as a Model for the United States Supreme Court*
      Notes and Questions
   C. The European Human Rights System and the UNCRC
      Notes and Questions

III. The Inter-American Human Rights Systems
   A. Overview of Regional Human Rights in Latin America
      Notes and Questions
   B. The Inter-American System in Focus
      Organization of American States, American Convention on Human Rights
      Ann Birch, *State of Guatemala Condemned in Historic Court Case*  
      Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala
Notes and Questions 942

Jennifer Bol, Using International Law to Fight Child Labor: A Case Study of Guatemala and the Inter-American System 943

Israel de Jesús Butler, The Rights of the Child in the Case Law of the Inter-American Court of Human Rights: Recent Cases 949

Notes and Questions 957

IV. The African Human Rights System 957

A. Overview of the African Human Rights System 957


Notes and Questions 966

Vincent O. Nmehielle, Development of the African Human Rights System in the Last Decade 966

Notes and Questions 967

B. The African System in Focus 967

African Charter on the Rights and Welfare of the Child 967


Notes and Questions 973

Index 975

Appendices

(The appendices are contained in an Adobe Acrobat PDF file on the included CD. The Acrobat Reader program can be downloaded for free at http://www.adobe.com.)


Declaration of the Rights of the Child A1


Appendix to Chapter Two · Child Labor: The Children's Rights Dimension A20

Convention Concerning Minimum Age for Admission to Employment (ILO No. 138) A20

R146 Recommendation concerning Minimum Age for Admission to Employment (June 26, 1973) A26

Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182) A30

R 190 Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999 A33

International Labour Organization, ILO Declaration on Fundamental Principles and Rights at Work A37

Appendix to Chapter Three · Children in the Sex Industry A41

CONTENTS

Violents of Trafficking and Violence Protection Act of 2000  A55
Trafficking Victims Protection Reauthorization Act of 2003  A66
Trafficking Victims Reauthorization Act of 2005  A78
William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008  A91
Selections from the 2009 Trafficking in Persons Report, U.S. Department of State  A135

Appendix to Chapter Four · Children Living on Their Own: A Global Cohort
Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption  A273
Protocol Relating to the Status of Refugees  A283

Appendix to Chapter Five · Children and Punishment

Appendix to Chapter Six · Children and Armed Conflict
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict  A311
Rome Statute of the International Criminal Court  A315

Appendix to Chapter Seven · Enforcement of Children’s Rights through Regional Human Rights Systems
Case of Gaskin v. United Kingdom  A397
Case of Ignaccolo-Zenide v. Romania  A412
Evans v. the United Kingdom  A432
American Convention on Human Rights  A456
African (Banjul) Charter on Human and Peoples’ Rights  A475
African Charter on the Rights and Welfare of the Child  A485
Table of Cases

Principal cases appear in bold. Page numbers preceeded by 'A' can be found in the appendices, which are contained on the enclosed CD.

<table>
<thead>
<tr>
<th>Case</th>
<th>Page</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. v. United Kingdom, 839, 856-857</td>
<td>838-839</td>
<td></td>
</tr>
<tr>
<td>Abdulaziz, Cabales and Balkandali v. the United Kingdom, 886</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Airey v. Ireland, 850</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Booksellers Association v. Hudnut, 426</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anti-Fascist Comm. v. McGrath, 623</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aschcroft v. The Free Speech Coalition, 420-422, 424, 426-433, 434</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Atkins v. Virginia, 673-677, 679</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aydin v. Turkey, 837</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A.Z. v. B.Z., A444</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B v. the United Kingdom, A409</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Baker v. Owen, 615-616</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bartnicki v. Vopper, 440</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Board of Regents v. Roth, 621</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Book Named “John Cleland’s Memoirs of a Woman of Pleasure” v. Attorney</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General of Mass., 438</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brandenburg v. Ohio, 441</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brasserie du Pecheur v. Germany, 851</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Broadrick v. Oklahoma, 436, 441</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brown v. Board of Education, 852</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bulacio v. Argentina, 841</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Butler v. Michigan, 440</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Campbell v. UK, 631</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Canadian Foundation for Children, Youth and the Law v. Canada, 844</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carey v. Population Services Int’l, 437</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Christian Education South Africa v. Minister of Education, 623</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Christine Goodwin v. the United Kingdom, 840</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coker v. Georgia, 675, 679</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costello-Roberts v. United Kingdom, 838-839</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Davis v. Davis, A443</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dent v. West Virginia, 621</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DeShaney v. Winnebago County Department of Social Services, 856-858</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dudgeon v. the United Kingdom, A450</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Epperson v. Arkansas, 614</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eriksson v. Sweden, 886, A426</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Escobar v. Gonzales, 562</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Evans v. Amicus Healthcare Ltd, A435</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Evans v. the United Kingdom, 908, A432</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FCC v. Pacifica Foundation, 437</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Filartiga v. Pena-Irala, 247</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flores v. Reno, 557, 561-562</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Free Speech Coalition v. Reno, 426</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Frette v. France, A450</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Furman v. Georgia, 674</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gaskin v. Liverpool City Council, A400</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gaskin v. United Kingdom, 866, A397</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ginsberg v. New York, 440, 443</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goss v. Lopez, 622</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greene v. McElroy, 620</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hatton and others v. the United Kingdom, A452</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hess v. Indiana, 441</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hokkanen v. Finland, A426</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ignacco-Zenide v. Romania, 886, 897, A412</td>
<td></td>
<td></td>
</tr>
<tr>
<td>IIT v. Vencap, Ltd., 246</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ingraham v. Wright, 611, 613-614, 619</td>
<td></td>
<td></td>
</tr>
<tr>
<td>J.B. v. M.B., A444</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
TABLE OF CASES

Johnston v. Ireland, 856, 874
K. and T. v. Finland, A446
Kadic v. Karadzic, 723
Kass v. Kass, A444
Keegan v. Ireland, A426
Keller v. State Bar of Cal., 436
Kingsley Int’l Pictures Corp. v. Regents of Univ. of N. Y., 437, 440
Kois v. Wisconsin, 438
Lawless v. Ireland, 850
Litowitz v. Litowitz, A444
Louisiana ex rel. Francis v. Resweber, 674
Marckx v. Belgium, 868, 886
Margareta and Roger Andersson v. Sweden, A426
McMichael v. the United Kingdom, A427
Meyer v. Nebraska, 621
Miller v. California, 422, 423, 434, 437-438, 440, 442
Minors in Detention v. Honduras, 842
Morrissey v. Brewer, 621-622
Nachmani v. Nachmani, A444
North Valley Baptist Church v. McMah- on, 615
Odiève v. France, 898, A446
Olsson v. Sweden (no. 2), A426, A430
Osborne v. Ohio, 439
Penn v. Lynaugh, 675-676
Pini and Bertani and Manera and Atri-

paldi v. Romania, 839, 886
Poe v. Ullman, 622
Powell v. Texas, 620
Pretty v. the United Kingdom, A446
Prince v. Massachusetts, 630
Prosecutor v. Norman, 719
The Queen v. Jesse Spencer Pearce, 394
R. v. Secretary of State for Health ex parte Quintavalle, A439
Reno v. ACLU, 437
Robinson v. California, 674
Rochin v. California, 621
Roper v. Simmons, 671, 844
Rosenberger v. Rector and Visitors of
Univ. of Va., 436
S v. a Juvenile, 631
S.C. v. United Kingdom, 836
Sable Communications of Cal., Inc. v.
FCC, 437, 440
SERAC v. Nigeria, 961
Serrano Cruz Sisters v. El Salvador, 842
Simmons v. Bowersox, 673
Simon & Schuster, Inc. v. Members of N.
Y. State Crime Victims Bd., 437
Soering v. United Kingdom, 849
Sosa v. Alvarez-Machain, 246
Stanford v. Kentucky, 671, 673, 675-676
Stanley v. Georgia, 440
State ex rel. Simmons v. Roper, 673
State v. Furman, 676
State v. Simmons, 673
State v. Williams, 844
T. v. United Kingdom, 836-837, 864
The ‘Gómez-Paquiyauri Brothers’ v.
Peru, 954
Thompson v. Oklahoma, 674, 677, 679
Trop v. Dulles, 674, 679
Tyrer v. United Kingdom, 838, 859
United States v. Acheson, 425-426, 436
United States v. Barnett, 620
United States v. Fox, 425, 436
United States v. Kozinski, A58
United States v. Mento, 425-426, 436
V. v. United Kingdom, 836-837, 864
Villagrán-Morales et al. v. Guatemala
(Case of the “Street Children”), 840,
924
Vo v. France, A445
W. v. the United Kingdom, A427
Ware v. Hylton, 246
Weems v. United States, 674
Wooley v. Maynard, 436
X. and Y. v. the Netherlands, A450
X, Y and Z v. the United Kingdom, 903,
A450
Preface

As the first chapter in this book points out, the world of international children’s rights is a difficult and complex one, filled with contradictions and paradoxes. While the iconic United Nations Convention on the Rights of the Child provided children with their own human rights instrument, and in essence made children the autonomous holders of rights, what the expression “children’s rights” means in any given situation remains subject to the shared understanding of the adults who have responsibility for the care and protection of those children. As is shown throughout this book, in many areas there is no consensus on what truly constitutes “international children’s rights.” In that sense, this is an exciting and uniquely challenging field of study.

This book is a quintessential reader; it gathers together articles and documents from a wide variety of sources: academic commentary; reports from non-governmental organizations; United Nations and Council of Europe documents; and governmental studies. In addition to structuring the subject matter, I have provided context and interpretation for these readings. The appendix, contained on a cd at the back of the book, contains all major treaties and statutes discussed in the text, as well as some additional case law. My objective has been to present a wide-ranging resource for anyone and everyone interested in the subject of children and their internationally guaranteed rights; undergraduate and graduate students, law students, activists and advocates. It is meant to be used as part of a course or program, or indeed as a guide to further study and research.

One great challenge in the teaching of international children’s rights is that there is such a gap between the suffering created by the violations of these rights and the experience of merely reading about these abuses. In this sense, it is recommended that the readings be supplemented by documentary films and by guest speakers who can assist in bringing the experiences of children to life.

I have tried in each area of concern to demonstrate that there are no easy or obvious answers to such questions as whether children should have the right to work—or by contrast, the right not to work; the degree to which tradition and local control should give way to a generic, global vision of children’s rights; or what should best be done for children who are not living with their families of origin. In each case, I have tried to present at least two sides of the story, and I invite students who use the book to approach the contrasting point of view with an open mind. A principal theme of the book is the question of whether to protect or empower children in specific situations. While the Convention on the Rights of the Child calls for both protective and empowering responses, the former approach may often be more culturally familiar than the latter. Throughout the book, I have tried to choose readings that demonstrate the complexities of applying the usual human rights template to children.

I have chosen the topics that seem to be representative of the major issues in international children’s rights in the world today; specifically, the role of the United Nations
Conven**üon on the Rights of the Child; child labor; children in the global sex industry; children living without parental care; children and punishment; children and armed conflict, including child soldiers; and finally regional approaches to international children’s rights. In this regard, the final chapter argues that midway between the national and the international, regional human rights systems have shown a great capacity to articulate meaningful and effective children’s rights norms. It should become obvious that the line between one cohort of children and another may be less than clear. A child who is vulnerable to one form of abuse or exploitation may well be vulnerable to another.

The book neither denounces nor glorifies the work of the United Nations; the UN has a great and central role to play in the implementation of children’s rights, but its work must be assessed honestly and with objectivity. The book does invite the reader to consider the question of remedies and ask whether children and their rights are well served by the existing system of norm implementation. It is interesting to note that the United States may well be on the verge of ratifying the Convention on the Rights of the Child; the U.S. is, as is often discussed, one of only two countries in the world not to have ratified it.

Not surprisingly, I consider children as a group to be severely underserved by the international human rights system, but I am happy to acknowledge the many ways in which their rights have been promoted in recent years by intergovernmental and non-governmental organizations. In this respect, special mention should be made of the astonishing contribution of Human Rights Watch, a group which has produced reports that draw attention to the lives and suffering of otherwise invisible children in many countries. Their work also serves to keep governments and the United Nations honest, as it is all too easy to fall into platitudes when it comes to describing “progress” in the development and protection of children’s rights.

This book has been a labor of love, and I was fortunate to have a number of wonderful research assistants working with me on it. I would like to thank David Dixon and Elena Mamai, who helped get me get started some years ago by piling reports in the corner of my office. My sincere gratitude also to Millie Sanders, Christy Fujio, and Jennifer Singer for their patience and indispensable help. For pulling so much together at the end, my thanks to Andrea Shannon. I would also like to thank the people at Carolina Academic Press for being so supportive of this project.