Implementation of the United Nations Convention on the Rights of the Child in Israel, the West Bank and Gaza

PHILIP E. VEERMAN* and BARBARA GROSS**

1. Introduction

The United Nations Convention on the Rights of the Child (CRC) was concluded on 20 November, 1989 and entered into force on 2 September, 1990. Since that time 176 States have moved quickly to ratify the Convention (listing as of July 12, 1995). Signing the Convention is the first step for a State, ratification is the second. The essential third step, and the focus of this article, is implementation of the Convention’s provisions.

Several times a year, the international secretariat of Defence for Children International publishes lists of States which have ratified the Convention with the date of signature, date of receipt of the instrument of ratification, accession or succession at the U.N., and the date of entry into force. However, these lists are misleading, because there are great differences in the status of the Convention between the States that have ratified the Convention. In some States it is law of the land, while in others, ratification by the government is not in itself sufficient to make it into law of the land. The latter is the position of Israel, in company with other common law countries, such as the United Kingdom, Australia, and New Zealand.

What are the requirements for implementation of the United Nations Convention on the Rights of the Child? Article 4 of the U.N. Convention sets out the requirements for implementation by States Parties. Regarding civil and political rights it stipulates that “States Parties shall undertake all appropriate legislative, administrative and other measures, for the implementation of the rights recognized in the present Convention.” The requirements for the implementation of economic, social and cultural rights are somewhat different. Here, “States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.”

* Philip E. Veerman is the Executive Director of the Israeli Section of Defence for Children International (DCI) in Jerusalem, Israel.
** Barbara Gross is a candidate for the degree of Juris Docteur, at Yale Law School at Yale University, New Haven, Connecticut, U.S.A. She was an intern in the summer of 1994 at DCI-Israel.

2 Ibid.
This Article of the Convention indicates that ratification in itself is insufficient. States Parties to the Convention have an international obligation to implement the provisions of the U.N. Convention, especially those provisions dealing with civil and political rights, since these must be implemented unconditionally. Each State Party, however, has its own method for domestic implementation. These methods are determined by the particular legal rules that govern the adoption, implementation and interpretation of treaties in a country. Further, States Parties may adopt certain reservations to the Convention, thus seriously weakening its implementation. For example, Indonesia not only made reservations to Articles 1 (definition of the child), 14, 16, 17, 21, 22, and 29, but also stated that “ratification does not imply the acceptance of obligations going beyond the constitutional limits” (document CRC/C/2/Rev. 2).

It is up to each individual State Party to decide how implementation of the provisions should be achieved. However, States Parties to the Convention on the Rights of the Child must harmonize national laws with the provisions of the Convention even if the principles are not self-executing. Furthermore, Article 44(1) requires States Parties to report to the treaty body in Geneva, the U.N. Committee on the Rights of the Child, on “measures that they have adopted which give effect to the rights recognized” in the Convention. Thus, implementation of the Convention is clearly an obligation, not a matter of choice.

2. Why Israel is a good model for studying the problems associated with treaty implementation

Since Israel is a common law country, the CRC must be implemented through specific legislation in order for it to become effective domestically. The Israeli Section of Defence for Children International has taken an initiative to present a law proposal to the Ministry of Justice to make the U.N. Convention the law of the land in Israel. If adopted by the Israeli government (and the initial response is positive), and the Knesset (Parliament), it may serve as a unique example for other children’s rights organizations to push for full adoption of the Convention in their own countries.

Ratification by Israel is also of special interest, to a large extent because of the present uncertain status of the Occupied Territories, Gaza, Jericho and the new areas of the Palestinian self-governing authority, to which the power to conduct daily affairs has been delegated. As will be discussed later, the Palestinian Authority does not have full legislative or executive power and even when the Palestinian Council is inaugurated (as agreed in the new Interim

3 For a discussion on the issue of self-executing versus non-self-executing treaties, see infra pp. further on in this article.