The Protection of Children’s Rights and the United Nations

By Yo Kubota*

I. Birth of Children’s Rights
Many children have been exploited, neglected, abandoned, mistreated, abused (sexually or otherwise), beaten, sold into slavery, mutilated, forgotten, ignored, or even killed with impunity, especially in circumstances of hunger, war or other difficulties. Orphaned, illegitimate, disabled and female children have been more often subjected to discrimination, exploitation and even infanticide. They have been the first victims of human rights violations.¹

For centuries, the parents or fathers enjoyed an absolute right to control and dominate and dispense with the child and any property the child might hold. On the contrary, the child had to fulfil duties toward his parents, especially duties to provide services and earnings, as well as duties of obedience and subservience. Various social norms, including the law provided, reinforced parental authority in the form of severe sanctions by the authorities for filial recalcitrance. Naturally, it was difficult to expect that children were to be protected by the State or by the society.²

The promotion of separate rights for children is comparatively a modern development. With the reformation movements of the nineteenth century, the traditional “unqualified” power of fathers over children was gradually reduced, in particular in Europe. This transformation was due to several causes; but it could be said that primarily it was a result of social structural changes, accompanied by social legislation following industrialization and to the emergence of women’s rights. Having reached this point, many legal systems began to restrict parental authority in a comprehensive way, i.e. limiting the powers of the father and imposing duties and responsibilities on parents and sanctions for any violations of them.³ By the end of the nineteenth century, the State had assumed a more active role as protector of the child against the power of parents and economic and other forms of exploitation.

Important changes which significantly affected the legal status of the child were the introduction and adoption of labour laws and compulsory education. The legal evolution spawned substantial improvements and developments in the area of children’s rights, especially in States which have material and financial means at their disposal.

Yet, even in our contemporary world, there are still many problems in the field of children’s rights to be resolved. The United Nations human rights bodies have, therefore, been concerned with such questions as: child labour, the

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The views expressed in the present article are personal and not necessarily those of the United Nations.
sale of children, child prostitution, child abuse, juvenile delinquency, juvenile justice questions, etc.

The present article intends to review past and recent developments concerning children's rights that have taken place within the United Nations human rights bodies, such as the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Working Group on Contemporary Forms of Slavery and the Working Group on a Draft Convention on the Rights of the Child and to note various actions that have been taken by them. The topics which are excellently dealt with in the other articles of this volume are generally excluded, or not necessarily extensively discussed.

II. International Instruments on Children's Rights

International Efforts to promote and protect children's rights date back to the period of the League of Nations, with the adoption of the League's conventions prohibiting traffic in women and children (1921) and slavery and slave trade (1926). Parallel to these actions, the International Labour Organization, which was established in 1919, assigned a large place to social justice and welfare, adopted numerous conventions and recommendations and made a series of actions aiming at the elimination of the exploitation of child labour, as well as a great number of instruments which established a framework for the protection of working children with regard to conditions and terms of employment.

The first comprehensive and significant international instrument for the promotion and protection of children's rights was the Declaration of Geneva, also known as the Declaration of the Rights of the Child of 1924, adopted by the Assembly of the League of Nations. The Declaration, in recognizing that mankind owes to the child the best it has to give, declared and accepted men's, women's and all nations' duty to protect children. Though this Declaration was essentially an aspirational document, by introducing basic principles on the international plane, it did prepare the ground for the progressive development of international norms and standards with regard to the rights and well-being of the child. The principles provided by the Declaration were later to form the basis for the Declaration of the Rights of the Child, adopted by the United Nations General Assembly in 1959.

The increased interest in and awareness of the importance of the protection of human rights after the Second World War played an unquestionably essential role in persuading the world community to recognize the rights to health, welfare and well-being, as well as other human rights and fundamental freedoms. The United Nations Charter, which was written in a atmosphere of determination to improve the prospects for international peace and security through the promotion and protection of human rights, stipulates that "the United Nations shall promote universal respect for and observance of human rights and freedoms of all".

The Universal Declaration of Human Rights of 1948, which was the first universal human rights catalogue in history, set forth and defined the contents of human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled without any discrimination.

It is clear that these provisions directed to all persons, do in fact cover and