

The children's law of nations: The international rights of the child in the Trias pedagogica

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The Children's Law of Nations: the International Rights of the Child in the Trias Pedagogica

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'If States are to fulfill their obligations under the Convention on the Rights of the Child they will have to stop seeing early childhood care as an issue of concern to families alone, as an optional extra, a soft alternative. Investing in ECD [Early Childhood Development] should now be second nature for the human family, as natural and inevitable to our lives as the sun and the rain on a field of rice.'
UNICEF, The State of the World's Children 2002²

1. INTRODUCTION

The general theme of this book is the *children's law of nations*' perspective on violations of children's rights all over the world. Admittedly, the theme is an ambitious one since its main intention is to point out a new horizon, the horizon of state obligations – to the maximum extent of the knowledge and financial means of individual states and the international community – to assist, in a systematic manner, all caregivers and communities in the promotion of the optimal development of children, and the prevention of developmental damage to children. In this fourth and last general chapter, the children's law of nations will be explored, not as a new or emerging branch of international law (which would be rather pretentious and at any rate premature³), but as a way of looking at – a new or more explicit approach to – the international rights of the child. This approach, a developmental, or, to be more precise, a *developmental-and-autonomy rights* approach,⁴ is child-centred but multifocused and multidisciplinary. *Child-centred*, because its basic philosophy is the image of the child as a subject of

¹ The author wishes to thank Martine F. Delfos, Jacqueline Schoonheim and Eugene Verhellen for their comments on earlier drafts of this chapter.

² BELLAMY, 2002, 57.

³ A first introduction to the children's law of nations, i.e. to international (and comparative) pedagogical law, by the present author is in preparation, elaborating on the theoretical basis and terminology of WILLEMS, 1999a.

⁴ A rights approach on principle, since, as BOLLENBACHER (2000, 10) states: 'Rights are fundamental to protection against the abuse, misuse, and naked wielding of power directed at the less powerful.' (See also note 5.)

rights, a subject of – indivisible and interconnected, mutually reinforcing – developmental and autonomy rights. *Multifocused*, because it looks at the child both as an actor, a meaning-maker, within family, community and society, and as a person who is dependent on caregivers, community, culture, state, and states: the international community. *Multidisciplinary*, because it looks at several disciplines other than international (human rights) law in order to make legal principles, human rights and children's rights operational and effective.

In this chapter, the 'object and purpose' of the children's law of nations – as a specific approach to children's rights – will be stated, its concepts and terminology, insofar as relevant to the objectives of this chapter, will be defined and explained, and its (far-reaching) postulates will be related to the – universally signed and almost universally ratified (the exception is well known⁵) – United Nations Convention on the Rights of the Child (CRC, 1989). This will be done in the next, 'preambular' paragraph (para. 2), and will be continued in the following one (para. 3). The main objective of this chapter is to present a children's law of nations' – or socioeducational – interpretative framework for the Convention on the Rights of the Child (para. 3),⁶ an outline of which is presented at the end of this chapter. Besides a socioeducational interpretative framework, a model socioeducational constitutional provision will be presented (also in para. 3), as well as ten programmatic rights, which summarise the children's law of nations' philosophy, purpose and multi-(inter-)disciplinary (legal-pedagogical) research programme (in para. 4). This is followed by the conclusion (in para. 5). Although several references in this chapter are to other work by the author, it should be clear that this is due not only to the fact that, in the opinion of the author, a socioeducational interpretative framework for the Convention on the Rights of the Child is an important step towards a universal model of structural prevention of children's rights violations, but also to the fact that in order to develop one, several new concepts and terms had to be introduced which can only be briefly touched upon within the limits of this chapter.

2. THE CHILDREN'S LAW OF NATIONS: A DEVELOPMENTAL AND CONTEXTUAL APPROACH TO CHILDREN'S RIGHTS

2.1 Concepts and terms

Concepts and terms used and highlighted in this chapter include: (1) the children's law of nations itself and the core concept of the *Trias pedagogica*; (2) the

⁵ Somalia, as a 'failed state,' is not so much an exception for not having signed; the United States, however, is, for having signed but not having ratified. (Cf. WILLEMS, 1999a, 373.) The US appears to disfavour the idea of minors as subjects of rights. For (US) criticisms in relation to the CRC, and suggested responses, see ALDERSON, 2000. Cf. also BOLLENBACHER, 2000, on 'establishing a baseline for children's rights.' With regard to 'the attack on [children's] rights' and 'rights-talk,' see FREEMAN, 1997d.

⁶ An earlier version of this paragraph, as well as of the outline, was presented on an international conference at the University of Ghent on October 19, 2000.

'inherent' right of every child to Become an Optimal Person, i.e. to adequate state, community (extended family, professionals, volunteers, bystanders) and parental care for a *healthy holistic development*; (3) the *developmental and autonomy rights* of the child, based on and subordinated to this inherent right as a fundamental guiding principle; (4) *transism*, or transgenerational discrimination, i.e. transgenerational psychotraumatization *c.q.* transgenerational transmission of psychosocial damage, leading to socioemotional and socioeconomic exclusion, *due to a lack of* empowerment of children, caregivers and communities, or – in terms of the four P's in the literature on children's rights – *a lack of* socioeducational (i.e. sociopedagogical) Provision, structural Prevention, integrated Protection, and both general and rehabilitative/reintegrative Participation; (5) closely linked to the foregoing: the proposed paradigm shift in children's rights theory and practice from Protection (Protection-Prevention) towards Provision (Provision-Prevention) and Participation, and the related twin concept of *empowerment and responsabilisation*⁷ (the contextual approach of assisting caregivers and communities in order to enable them to fully live up to their responsibilities with respect to children, and hold them accountable accordingly).

Before we take a closer look at these concepts and terms, and the objectives and ideals behind them, let us first address the question: what does the children's law of nations – the *Trias pedagogica* approach, the *healthy holistic development* approach, the *empowerment and 'responsibilisation'* of caregivers and communities approach to children's rights – mean for rich and poor countries alike? What does all this mean for the obligations of states, both as individual states, rich or poor, and as members of the international community?

2.2 The children's law of nations binds all states, both rich and poor

Children's rights may be violated in the same manner as adults' rights, but every time the question: *is a child damaged or threatened in his or her development, in his or her 'becoming an optimal – an optimally rational, moral and genuine – person'?* is answered in the affirmative, then children's rights are violated in a manner which distinguishes children's rights from all other human rights. Children's rights by definition find themselves in the dimension of development, in the realm of the inherent right of every child to become an optimal person, regardless whether they specifically bear upon the child's development, his or her becoming a person, or relate to his or her autonomy, his or her being a person, a legal subject from birth on. A legal subject, a human being who is endowed with rights – all kinds of rights, also prenatal rights⁸ – to adequate care for optimal de-

⁷ 'Responsibilisation' is coined from the Franco-Dutch *responsabilisering*, a term used by VAN CROMBRUGGE at a conference in Brussels, October 11-14, 2000. One could call it the responsibility-side of empowerment, the duties, so to speak, that come with the rights (cf. WILLEMS, 2002a).

⁸ Only the born child has human rights, including prenatal rights, since international law leaves it to states to regulate the right of women to abortion (cf. WILLEMS, 1999a, 391-392, n. 57). It would be a violation of the principle of equality and non-discrimi-

velopment, and to respect for personal integrity, evolving capacities, inherent dignity and (growing) autonomy. Regardless, also, whether the cause, or main cause, of the threat or damage to the child's development rests with state officials, state laws or other rules, institutional structures, traditional customs, caregivers within or outside of the family, or professionals, managers, employees, volunteers, or even simple bystanders, in day-care centres, schools, factories, refugee centres, armies or armed groups, churches, sporting clubs, the media, or with what- or whomever.

A simple formal criterion suffices to juridically and psychologically understand this. A child is a minor and a minor is by (legal) definition dependent on a caregiver, be it a (biological) parent or anybody else. A child is at the same time an 'autonomous person' before the law and, from a developmental psychological and pedagogical perspective, a person, an autonomous personality, 'in becoming.' Even though 'becoming a person' lasts, or may last, a lifetime, by legal definition a child becomes a person, is in the process or condition of becoming a person, until (in general) the age of eighteen. Therefore, by definition, a minor is dependent on an adult, and, by definition, a minor is in a pedagogical condition. A child is by definition one of the three actors, albeit the most dependent and vulnerable one, in the Child-Caregiver/Community-State *Trias pedagogica*. The *Trias pedagogica*, therefore, is the foundation – as the inherent right of the child to Become an Optimal Person is the dome – of the children's rights building (or 'temple': see the outline at the end of this chapter). And this is the case for all children, in all countries, in all conditions and situations. The walls of this building, the pillars of this children's rights temple, are formed, as we will see, by the – integrated – P's of Provision-Prevention, Protection and Participation.

2.3 Object and purpose of the children's law of nations

Developmental psychology, pedagogics and developmental psychopathology, then, are disciplines which are of important relevance to the international rights of the child. This is captured by the 'slogan' *the best interests of the child*, taken together with the principle of *the evolving capacities of the child*. Depending on context, culture and country, other disciplines are relevant as well, such as women's studies, youth and family studies, criminology, victimology, and other fields of sociology, law, politics, and (social) psychology.⁹

The children's law of nations' ambition, or even object and purpose, is to imbue the legal 'slogan' and conventional principle¹⁰ of *the best interests of the child* (*inter alia* Articles 3 and 18(1) CRC, and 5(b) Women's Convention¹¹), and the

nation (unequal treatment of, for all relevant purposes, equal situations) if children's rights to adequate care for optimal development would not extend to prenatal healthy development (cf. JUNGSCHEGGER, 2001).

⁹ Cf. WILLEMS, 2000c, 15.

¹⁰ Cf. VAN BUEREN, 1995, 45-49.

¹¹ In full: United Nations Convention on the Elimination of All Forms of Discrimina-

conventional principle¹² of *the evolving capacities of the child* (Articles 5 and 14(2) CRC) with psychological and other knowledge, and to bring this knowledge to the public, to caregivers, to communities and to children themselves – thus empowering, through information campaigns and all forms of schooling, training and assistance, children, caregivers and communities (parents, extended family, professionals, volunteers, ‘bystanders’). The children’s law of nations, therefore, intends to contribute to changing and improving laws, policies, priorities and practices for all children, in all countries and in all situations and conditions – inside and outside of the family.

At the heart of this ambition lies the psychological and philosophical conviction that – generally speaking and as far as a child’s constitution enables it – a child whose needs have been met, who has received his or her mother’s arms, breasts, his or her caregivers’ affection, guidance and direction, will have as a central theme in his or her later life a deep desire to give back, to help others, to live a prosocial life. Such a child will fully develop the healthy *appetitus societatis* (to use a Grotian term), the ‘impelling desire for society’ which is part of the human condition.¹³ Whereas a child whose needs have not been met, who had to give before it received, or who hardly ever received, a child who has been misled, abused, exploited, neglected, hurt, damaged, traumatised, tortured, terrorised, manipulated, humiliated, abandoned, forgotten, left on his or her own, or whatever adult and state cruelty or indifference may have been his or her fate, will develop – if he or she does not have an opportunity later in life to rehabilitate and reintegrate him- or herself, i.e. to overcome childhood trauma and developmental damage – a psychological ‘right to destruction.’¹⁴ Be it destruction of self, others or both.¹⁵ To quote one author in this connection, especially focusing on the first three years of life:¹⁶

tion against Women (1979). Core – and revolutionary – Article 5 of the Convention reads as follows: States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

¹² Cf. VAN BUEREN, 1995, 50-51.

¹³ BENDITT, 2002; cf. also WILLEMS, 1999a, *passim* (see index s.v. *appetitus societatis*).

¹⁴ Or rather a ‘right to destructivity,’ i.e. to be destructive; cf. VAN CROMBRUGGE, 2000, 191 (probably from NAGY, cf. DELFOS, 1999, 74; see for more literature, WILLEMS, 1999a, 579 n. 136).

¹⁵ Cf. WILLEMS, 1999a, 468-470 n. 20, 473-480, 572-620; HRDY, 2000, 548-567 (ch. 23); DEKOVIĆ *et al.*, 2001; LOEBER *et al.*, 2001.

¹⁶ BREINER, 2001 (discussing some cruel child rearing practices in (parts of) the Arab world). With regard to (the impact of cruelty on) infant brain development, see DE SCHIPPER, 2002.

‘If a child has a solid base in the first three years of life and the security of a family in which there is love communicated between parents as well as to the child, and no significant abandonment, rejection, threats, or injury, he [or she] will as an adult in a relatively stable way be able to cope with the complexities of human relationships with some measure of success. Even if there is difficulty in that period of time, the most serious problem will be a neurosis without significant somatisation. If, however, in establishing one’s body image, body ego, sexual identity and gender role (tasks of the first three years of life) there is significant trauma, then the child will develop a borderline ego organisation, serious psychosomatic pathology, or various degrees of psychosis.’

The international rights of the child slowly begin to open our eyes to the fact that the ability to conceive a child does not automatically imply the ability to raise a child.¹⁷ Whereas for the former physical conditions and, sometimes, medical technology¹⁸ suffice, for the latter more knowledge, skills, parental awareness, parental child identification,¹⁹ empathy, emotional maturity, emotional, social and financial stability, physical and mental health and all kinds of other abilities and resources are required to meet the international rights of the child than parents by themselves, without full community and state support and empowerment, can offer. The latter is also true, of course, with regard to the abilities and capabilities of non-parental caregivers, whether professionals or non-professionals working with children.

Therefore today, at the dawn of a new century, and hopefully a new era for children, women and mankind, we slowly begin to realise that the core right of all rights of the child is the right of the child to the empowerment of his or her parents, and of professionals and others – teachers, doctors, dentists, nurses, day-care employees, school supervisors, youth workers, volunteers, employers, management and supervisory staff, etc. – in his or her community. For children in poor countries, whose governments lack the means and the knowledge to support and empower caregivers and communities, the core right of all rights of the child is the right of the child to international solidarity and cooperation. Both core rights are violated on a scale which is tragic for all children concerned, their caregivers, communities and societies – and the society of the human race, the *magna humani generis societas* (to use another Grotian term).²⁰

The *Trias pedagogica* is the foundation of all children’s rights to the *maximum extent* of national resources and international cooperation (cf. Articles 2, 4 and

¹⁷ Cf. VELDKAMP, 2001, 74/75.

¹⁸ See for a brief analysis of the haphazard way reproductive technology was introduced in The Netherlands, VAN DIJK, 2001. This was done without any regard for children’s rights to a healthy physical and cognitive development (cf. also DELFOS, 2001b). Let alone their rights to a healthy emotional development and to identity, their right to know their biological origins (cf. WILLEMS, 1999a, 405-407 n. 80; cf. also FREEMAN, 1997c; and BURTT, 2000).

¹⁹ See on child identification, VAN BLAADEREN, 2001.

²⁰ Cf. WILLEMS, 1999a, *passim* (see index *s.v. humana societas*); cf. also CRC preambular para 1 (‘the human family’).

6(2) CRC). In all countries of the world, rich and poor, fundamental changes and improvements have to be made in law, policy and practice to align budgetary, organisational and professional conditions to the international rights of the child.²¹

2.4 The emancipation of the (young) child: empowering caregivers and building communities

The fact that fundamental changes and improvements have to be made, both in law and in policy and practice, to meet the international rights of the child, is especially true with respect to the investments needed to improve the developmental situation for children in the first three years of life. There can be no doubt as to the human and economic wisdom of this, as is evidenced by the conclusion of Van der Gaag:²²

‘Well-executed and well-targeted ECD [Early Child Development] programmes are initiators of HD [Human Development]. They stimulate improvements in education, health, social capital, and equality that have both immediate and long-term benefits for the children participating in the programmes. Investments in ECD programmes are in many ways investments in the future of a nation.’

However, as is stated by UNICEF:²³

‘The time of early childhood should merit the highest-priority attention when responsible governments are making decisions about laws, policies, programmes and money. Yet, tragically both for children and for nations, these are the years that receive the least.’

Why are governments, why are societies, even affluent and inclusivist-democratic ones, why are we, adults, so short-sighted, one may wonder? We start life with a cry but without words, let alone an understanding of the world around us. Young children have no framework, no comprehension, no words to express their pain and misery, no means of verbal protest – like women or adolescents before them²⁴ – to elicit and sustain their emancipation. Therefore, it is so easy for us, adults, societies, governments, not to listen to young children, not to hear them, not to see their suffering and the damage done to them. As Delfos observes:²⁵

‘When they mature we understand completely that they have had problems with what has happened to them in their youth. It is sensible therefore, when we as adults realise that when children in their youth are allowed the opportunity to express themselves, they can be spared a lot of misery when they become adults. How many times is it that adults reflect: *If only someone would have listened to me when I was young.*’

²¹ See for a thorough, well-written analysis of the issues involved, VAN DANTZIG, 2000, essays at: 12-22; 28-39; 40-56; 136-145; 146-156; 194-204.

²² VAN DER GAAG, 2002 (in press).

²³ BELLAMY, 2001, 9. On infant brain development, see also DE SCHIPPER, 2002.

²⁴ Cf. DELFOS, 2001b.

²⁵ DELFOS, 2001a (*i.f.*).

Fundamental changes and improvements in law, policy and practice have to focus precisely on that point: the emancipation of the young child, the developmental and autonomy rights of young children. To this end, it is crucial that we start by informing and empowering young parents, the new generation of parents, all over the world. Empowering communities – within the framework of a process of ‘community building,’ as expounded by Barter in a recent, thought-provoking contribution²⁶ – is part and parcel of this endeavour, of this great challenge lying ahead of us.

The emancipation of the (young) child follows, ‘naturally’ or historically, the process of emancipation of women and of adolescents, but it cannot but be a different process. A process, moreover, which has only just begun. An indication of the emancipation of adolescents, as opposed to the emancipation of young children, may be seen in the fact that, according to Straus,²⁷

‘(...) [p]ublic belief in the necessity of corporal punishment and the percentage of parents who hit teenagers is about half of what it was only 30 years ago. Despite these dramatic changes, the percent[age] of parents who spanked toddlers was about the same in 1995 as it was in 1975.’

This is so in spite of the fact that ‘spanking has been determined to be dangerous to the health and well being of [the] child.’ So that – on the basis of the international rights of the child²⁸ – parents should be warned to ‘not ever, under any circumstances, spank or hit [their] child.’²⁹ Caregivers should be informed, and be taught non-violent and non-abusive means of disciplining their children. They should be empowered through information, advice, counselling and help. This should be embedded in a community building process. The child has a right, not so much to ‘responsible parents,’³⁰ but to ‘responsibilised,’ i.e. to empowered parents. The child has a right to live in a ‘social and international order’ that empowers its members to abolish violent child rearing practices.³¹

²⁶ ‘Community building (...) means embarking upon a journey to solicit the investment and commitment of all stakeholders – families and youth who are disadvantaged and in need of assistance, child protection officials and their agencies, other child serving organisations and their officials, and citizens and their communities – to work together. (...) Community building sounds the call to the reality that the abuse and neglect of children by society have exceeded the abuse and neglect by parents. This represents a fundamental shift in direction in child protection work.’ (BARTER, 2001, 262-263.)

²⁷ STRAUS, 2001, 193.

²⁸ For the views of the Committee on the Rights of the Child, see HODGKIN & NEWELL, 1998, 242-245; cf. also WILLEMS, 1999a, 502-504, 892-894, 950-953; LANSDOWN, 2000, NEWELL, 2000; SAVE THE CHILDREN, 2002.

²⁹ STRAUS, 2001, chapter 12 (‘The benefits of never spanking: new and more definitive evidence’), 193-215, at 211/212. The author proposes to put such a notice on birth certificates (*o.c.*, 211).

³⁰ FREEMAN, 1997b, 166, 184.

³¹ Article 28 Universal Declaration of Human Rights in conjunction with Articles 19

The main contention of the children's law of nations, therefore, is that the emancipation of the (young) child, i.e. empowering children, starts with informing and empowering caregivers. But at the same time, empowering caregivers starts with empowering communities. To quote Barter on empowering communities, or rather on some basic assumptions of community building:³²

'Community building is about caring, respect, acceptance and personal and social power. It is about connecting personal troubles and public issues – the personal is political. (...) Community building is about empowerment. (...) Essential to empowerment, and supported by strengths and feminist thinking, is the "personal is political" framework of analysis. Significant to this framework is embracing a collaborative partnership with all stakeholders – families [children and adolescents, jw], parents [and other family members and caregivers, jw], professionals and citizens. The personal dimension involves identifying one's own perceptions, needs and experiences. (...) For citizens, there will be an awareness of expectations, social problems, community attitudes and the importance of shared responsibility. All stakeholders benefit and become partners in mutual consciousness raising. (...) Of importance is the acceptance and realisation that children are a community responsibility. Their protection must be a collective concern. Community building is a process to develop this collective concern. (...) Community building suggests shifts in thinking that include: (...) developing a continuum of services that is receptive and responsive to current realities affecting children and families at risk; moving beyond just being concerned with children's needs to being concerned with children's rights (...).'

Barter concludes:³³

'We must build communities that (...) have the fortitude to move beyond the rhetoric of children being our greatest resource to taking the necessary steps [for] investing in this resource.'

Empowerment has juridical, psychological and financial or material connotations and consequences: we need new (*c.q.* more specific) rights and duties, that is constitutionalisation and legislation. We need new (*c.q.* higher) budgetary, organisational and professional standards. We need to support caregivers and build communities in both socioeconomic and socioemotional ways. Preventable developmental damage to children, both inside and outside families, and especially transism and transgenerational child abuse and neglect, are but symptoms of a universal lack of empowerment. This lack of empowerment constitutes at the same time a serious violation of international human rights and children's rights.³⁴

and 24(3) CRC (which may be seen as an elaboration of Articles 3, 5, 6, 12 and 25(2) of the Universal Declaration; cf. also Article 24(1) of the International Covenant on Civil and Political Rights and Article 10(3) of the International Covenant on Economic, Social and Cultural Rights).

³² BARTER, 2001, 271-272.

³³ BARTER, 2001, 272.

³⁴ Cf. WILLEMS, 1999a (chapter 13, on state responsibility); WILLEMS, 2000d; WILLEMS, 2001a.

2.5 State obligations: a universal constitutional perspective

The children's law of nations (or international pedagogical law approach) looks at children's rights, caregivers' responsibilities (rights and duties), and states' obligations in the light of constitutional rights. The principal instrument of this analysis is the concept of the *Trias pedagogica*. The *Trias pedagogica*, consisting of children, caregivers (and communities) and the state as interrelated actors, is governed by the fundamental principle of the inherent right of every child to adequate care for a *healthy holistic development*, i.e. to become an optimal person. Holistic³⁵ refers to both physical and psychological (i.e. emotional, social, moral and intellectual) development of the child, taking account of the child's cultural context.

The right of the child to become an optimal person, i.e. to adequate care for a healthy holistic development, has a three-way effect: it accords to children developmental and autonomy rights, it subjects parents and other caregivers to general and specific rights and duties, and it imposes obligations upon states. The primary obligation on the latter is to provide caregivers with all necessary and helpful information and material (financial and/or other) and parental assistance starting from and even before the moment of birth. These and other state obligations to raise both public and parental awareness of the developmental and autonomy rights of children and to empower, by all necessary and helpful means, children, caregivers and communities – also in their relations with other states and as responsible members of the international community – are based on the Convention on the Rights of the Child. The children's law of nations thus puts the Convention on the Rights of the Child in a universal constitutional perspective in which Provision and Participation, rather than Protection and intervention after damage has occurred, are at the core of state obligations.

The children's law of nations sees the Convention on the Rights of the Child, and the interpretative work of its Committee, as a revolutionary departure from the past. It appeals to states (as do the Convention and the Committee) to start adopting child-friendly legislation and policies, to abandon the *laissez faire* approach, and to stop excusing their inaction by appeals to culture and tradition.

³⁵ The term 'holistic' is taken from the first General Comment of the UN Committee on the Rights of the Child (2001), *The aims of education*: 'Article 29(1) is of far-reaching importance. The aims of education presented and agreed upon by all States parties promote, support and protect the core value of the Convention: the human dignity and the equal and inalienable rights innate to every child. These aims, set out in the five sub-paragraphs of Article 29(1) are all linked directly to the realisation of the child's human dignity and rights, taking into account the child's special developmental needs and diverse evolving capacities. The aims are: the *holistic* [italics added] development of the full potential of the child (29(1)(a)), including respect for human rights (29(1)(b)), enhanced sense of identity and affiliation (29(1)(c)), socialisation and interaction with others (29(1)(d)) and with the environment (29(1)(e)). (...)'

The right to privacy³⁶ and the right to respect for family life should, in this view, be transformed into a more 'dignitarian freedom'³⁷: a freedom imbued with the principles of equality and national and international solidarity which positively respects the developmental and autonomy rights of children and thus empowers children, caregivers and communities.³⁸

3. THE INTERNATIONAL RIGHTS OF THE CHILD IN THE TRIAS PEDAGOGICA: AN INTERPRETATIVE FRAMEWORK

In this paragraph I would like to present a socioeducational (i.e. sociopedagogical) interpretative framework for the Convention on the Rights of the Child. By socioeducational I mean that traditional (both civil and socioeconomic) and new, *c.q.* more specific (so-called socioemotional) CRC or CRC based rights come together, in an integrated manner, in a new legal paradigm, a new way of looking at, and thinking about the rights and duties of parents, children and the state as actors, participants, in a constitutional child-parent-state relationship. This is the so-called *Trias pedagogica*, in which both children and parents (or rather all caregivers) are empowered through socioeducational institutions, services and facilities, in democratic organisations and communities promoted and protected by the state.

This amounts to a major paradigm shift in national law (especially constitutional, family and youth law), and in national policies (such as financial, fiscal, economic, educational, child/youth and family policies). A paradigm shift, that is, from Protection (Protection-Prevention) towards Provision (Provision-Prevention) and Participation; or, to be more precise, from uncoordinated prevention and parental support programmes, and incidental interventions in families to protect fortuitously discovered maltreated children, towards a Structural Pro-active Approach to promote civil, socioeconomic and socioemotional rights of parents and children, and to prevent – through provision of socioeducational services and facilities – educational problems, child abuse and neglect, and violence both inside and outside families.

³⁶ See on the (harmful) culture of (negative) privacy, WILLEMS, 2000a, 316-317; see on the ideology of parental rights, or 'parentarchy,' also WILLEMS, 1999a, *passim* (see index). For the United States see GELLES, 2000.

In relation to what I label parentarchy, *c.q.* the culture of privacy, GELLES (2000, 5) remarks: 'Constitutional law, the values and ideology of the American child welfare system, and the very structure of the child welfare system have created a system in which the rights of the parents are much more heavily weighted than those of the children.'

³⁷ Cf. MARY ANN GLENDON (*Rights from Wrongs*), in: STEINER & ALSTON, 2000, 153. GLENDON opposes 'the older, more individualistic and "libertarian" rights tradition of the Anglo-American nations' to 'dignitarian traditions [which] accord an equally high priority to freedom, but it is a freedom grounded in dignity and linked with solidarity.' In my opinion, this should not be identified with communitarianism (cf. FREEMAN, 1997d, 394).

³⁸ Cf. WILLEMS, 2002a, 17-18.

Provision-Prevention and Participation as a new children's rights paradigm means to link, on the one hand, universal and selective preventive strategies³⁹ within a constitutional *Trias pedagogica* of child, caregivers and the state, and to link, on the other hand, traditional civil and socioeconomic rights and new socio-emotional rights, rights which, in rudimentary form, are to be found in the Convention on the Rights of the Child as rights to parental assistance as well as to psychosocial rehabilitation (rights to socioeducational institutions, services and facilities).

Needless to say both the CRC treaty body (the UN Committee on the Rights of the Child) as well as children's rights NGO's: non-governmental organisations such as Defence for Children International (DCI) and, in The Netherlands, two DCI platforms, the Kinderrechtencollectief (Children's Rights Collective)⁴⁰ and especially RAAK (Reflection and Action Group to Prevent and Eliminate Child Abuse and Neglect),⁴¹ can play a major role in bringing about this paradigm shift. It is much hoped that Amnesty International will in the near future also join these efforts – focusing more and more on the socioeducational (socioemotional and socioeconomic) root causes of violence, torture, terrorism, and other grave human rights violations.⁴²

The paradigm shift from Protection-Prevention towards Provision-Prevention and Participation implies that we do not ask any longer, or in the first place: how do we prevent child abuse and neglect, youth (and adult) delinquency, youth (and adult) violence, and youth (and adult) psychopathology?⁴³ But rather: how do we promote secure attachment of infants and toddlers? How do we promote parental empathy and awareness? How do we promote healthy emotional development and social connectedness of children and adolescents? How do we promote socioeducational forms of organisation of parents? How do we promote the social reintegration of parents (and others adults) who, through deplorable childhood experiences, acquired a so-called 'right to destruction'?⁴⁴

This paragraph consists of four parts. First, I will sketch the foundation, pillars and roof of the 'temple'⁴⁵ of interpretation of the Convention on the Rights of the

³⁹ BROWNE *et al.*, 2000, 8; JUNGER-TAS & SLOT, 2001, 266; HERMANN, 2001, 90-94.

⁴⁰ Cf. its *NGO Report on the Implementation of the UN Convention on the Rights of the Child*, 1999. Cf. also WILLEMS, 1999b, 632-633.

⁴¹ Cf. its *Manifest over de aanpak van kindermishandeling en voor een kindvriendelijke samenleving (Manifesto on child abuse policy and a pro-child society)*, RAAK, 2000.

⁴² There are some hopeful signs that Amnesty International is carefully moving in that direction (cf. WILLEMS, 2000e).

⁴³ Cf. for studies dealing with different aspects of this question, but also showing new perspectives, VAN DANTZIG, 2000; SCHULZE, 2000; BAARTMAN, 2000 (*see conclusion at 69 i.f.*); LEVENTHAL, 1996, 2001; HOEFNAGELS, 2001; NEDERLANDSE GEZINSRAAD, 2001; LOEBER, 2001.

⁴⁴ *See supra*, para. 2.3.

⁴⁵ 'Temple' refers to the coincidental form of the outline at the end of this chapter: no

Child. Next, the concept of the *Trias pedagogica* will be (re-)introduced, as well as the *Trias*' main enemy: Transism, the 'right to destruction' triplet brother of Racism and Sexism (Ignorance and Poverty being their parents, or at least their caregivers). In the third part, I will propose a provision which could be adopted in (all) national constitutions. And, in the fourth and final subparagraph, I will conclude this section with a strong plea for Provision (Provision-Prevention) and Participation as a new legal paradigm.

3.1 The Convention on the Rights of the Child as temple of the *Trias pedagogica*: its foundation, pillars and roof

As stated above, for a start I will sketch the foundation, pillars and roof of the 'temple' of socioeducational (or sociopedagogical) interpretation of the Convention on the Rights of the Child (*see* outline at the end of this chapter).

3.1.1 Foundation

The foundation of the temple consists, as far as material provisions are concerned, of Article 2: the Reporting guidelines⁴⁶ principle of non-discrimination (*every child*); Articles 4 and 6(2): socioeducational investments to the *maximum extent* of national resources (Article 6 also being a Reporting guidelines principle); Article 42: the principles and provisions of the Convention on the Rights of the Child must be made widely known (*inform the public, inform parents and children of their rights*); and Article 44(6): make state reports to the CRC treaty body, the Committee on the Rights of the Child, widely available to the public. Part of the temple's foundation are also the formal (procedural or enforcement mechanism) provisions of the Articles 43, 44(1-5) and 45, dealing with the Committee on the Rights of the Child, state reports, and the Committee's powers, among which the power to invite and hear NGO's ('other competent bodies').

3.1.2 Pillars: the three P's

Although the three P's system: Protection rights, Provision rights, Participation rights, seems by now to be accepted and used by almost every author on the Convention on the Rights of the Child,⁴⁷ I would like to suggest a reordering of the three P's, a reordering which includes the P of Prevention and, most importantly, allows for the coherent elaboration and subdivision of the three(-to-four) P rights. This reordering at the same time attunes the three P's system to the proposed SPA model and its integrated IFOI system, upon which I will dwell in a moment.

religious, nostalgic or ideological connotation (such as reference to the Roman Catholic 'temple of the family' or to Capitol Hill 'family values') is intended. A question at the Ghent conference (*see* note 6) urges me to emphasise this.

⁴⁶ For the Reporting guidelines of the Committee on the Rights of the Child, *see* HODGKIN & NEWELL, 1998, 604-618. Cf. also WILLEMS, 1999c, 39-40.

⁴⁷ Cf. VERHELLEN, 2000, 98.

The new (socioeducational or *Trias pedagogica*) three P's system, then, would be: 1. Provision-Prevention; 2. Protection; and 3. Participation. The three(-to-four) P's in this strict order (Provision first!) lead us to SPA: a Structural Pro-active Approach, through an integrated IFOI system (so-called SPA model). IFOI stands for: Inform all parents (both on a group and individual basis, preferably through home visits, starting prenatally); Filter out 'good enough' parents⁴⁸ (information has sufficient effect); Offer help (coaching, guidance, counselling, psychotherapy and rehabilitation) to 'vulnerable'⁴⁹ parents (information alone is not sufficient, for instance since there are one or more serious and obvious so-called 'risk factors'⁵⁰ and not enough protective factors); and if help does not work, Intervene through the courts⁵¹ to protect the rights of the child, i.e. to rehabilitate the child and/or his or her parents, either by imposing help or by guiding the parents when the child is placed in alternative care, preferably a foster home. Rehabilitation of parents may imply *poenae meritum* (to use a third Grotian term)⁵²: deserved, i.e. rehabilitative punishment, in certain cases of child abuse and neglect.

The proposed new (socioeducational or *Trias pedagogica*) three P's system: Provision-Prevention, Protection, Participation, may be subdivided as follows.

P-1, Provision-Prevention (the IFO of IFOI)

The first pillar, socioeducational Provision-Prevention, consists of *inter alia* Article 18(1), first sentence ('emancipation' of men and women through educational pay and parental leave), Article 18(2) (parental assistance), Article 18(3) (working parents and child-care services⁵³), Article 19(2), Article 24(2)(e) and (f), Article 27(1 and 3), and Articles 31 and 39. This pillar stands for empowerment through information (and material help, including allowances for the principal caregiving parent) for all parents, and through help where, and of whatever kind, (as indicated after screening) needed (*Inform, Filter out, Offer help*).

⁴⁸ See on filtering out (or screening): HELLINCKX *et al.*, 2001. See in relation to 'good enough' parenting, the pedagogical diagnostic tool (Pedagogical Variables List) developed by BAKKER, 2001. Cf. also ADSHEAD & BLUGLASS, 2001; REDER & DUNCAN, 2001.

⁴⁹ I.e. less than good enough, lacking sufficient parental awareness *c.q.* parenting capacity: see the literature mentioned in the preceding note.

⁵⁰ Cf. HELLINCKX *et al.*, 2001, 31-32; see also note 81 and note 85.

⁵¹ For criteria to be (developed to be) used by the court to impose help or other child protection measures, cf. BAKKER, 2001, 90-95, 172 *sqq.*; HELLINCKX *et al.*, 2001, 117-118; WILLEMS, 1999a, 307-311 (Heiner & Bartels), and 1038-1062 (Barnett, Manly & Cicchetti); HEYMAN, 2001.

⁵² Cf. WILLEMS, 1999a, *passim* (see index *s.v.* *poenae meritum*).

⁵³ To be interpreted, in my opinion, in such a manner that working parents, in the first months of life the mother, should not be separated from infants under conditions which constitute risk factors for secure attachment and brain development. Cf. HRDY, 2000, 542; KOELEWIJN, 2002; DE SCHIPPER, 2002. HAMMARBERG links this to Article 6 CRC ('development'): see WILLEMS, 1999a, 394 n. 63.

Information on child development includes information and feed-back on parent-child interaction and parents' child identification,⁵⁴ and on the developmental and autonomy rights of the child, as a first step towards the emancipation of the young child.⁵⁵

P-2, Protection: Intervention (the last I of IFOI)

The second pillar, socioeducational Protection, has Article 19(2) *i.f.* as its main building block, although other articles, especially Articles 32-37(a), first sentence (cruel, inhuman or degrading treatment or punishment), and Article 39 are relevant too. This pillar stands for empowerment through legal intervention (*Intervene*): imposed help or foster placement and family guidance, i.e. guidance of parents who are no longer the educators, but who will always be the parents of their child. This implies empowerment of the parents, but first of all of the child: Article 39 (rehabilitation, trauma reparation, social reintegration).

P-3, Participation: 7 forms, 4 child- and 3 parent-related

The third pillar, *Trias pedagogica* Participation, consists of seven building blocks, the lower three of which are parent-related (and sometimes only indirectly related to CRC provisions), and the upper four of which are child-related. These seven building blocks, all of which deal with empowerment and/or rehabilitation, are the following.

1. *Parental participation-1*: pre-, peri- and postnatal groups of parents receiving information on child development and child identification, and exchanging opinions on and experiences with child rearing – to be facilitated by the state on the basis of Article 18(2).

2. *Parental participation-2*: larger organisations of parents to counterbalance state power in the *Trias pedagogica*, and to lobby for ever better socioeducational facilities (Article 18(2)), higher educational allowances (Article 27(3)) for the caregiving parent (Article 18(1), first sentence), and paid parental leave for both parents (also Article 18(1), first sentence); both the (pro-active) freedom of association and the principle of (material) equality ('emancipation' of men and women) may serve as the legal basis for this form of parental participation.

3. *Parental participation-3*: rehabilitation and/or empowerment (through counselling, psychotherapy, educational support, etc.), on an individual (or family) basis, of parents who have to bring up a child in exceptionally difficult conditions (preambular para 11), and/or who have been traumatised in their own childhood or later in life, and have not been able to deal with their (childhood) trauma, i.e. to overcome their (childhood) pain (Article 18(2), Article 19(2)).

⁵⁴ Cf. VAN BLAADEREN, 2001.

⁵⁵ Cf. DELFOS, 2001b (*see supra*, para. 2.4).

4. *Child participation-1*: the right of the child to social – family, community, school – responsibilities, based on the fundamental right of the child to become an optimal person and, more specifically, on Article 29(1)(b-e)⁵⁶; and the right of the child to youth participation, based on (the Reporting guidelines principle of) Article 12(1) (‘express views’) and on Article 31(2) (‘participate in cultural and artistic life’).

5. *Child participation-2*: the right of the child to be heard in (legal) proceedings affecting the child (Article 12(2)).

6. *Child participation-3*: the right of the child to non-violent (‘not injurious to his or her well-being’ – and healthy development) information through non-damaging means (Article 17), which I would specify as: the right to information after a certain age and degree of maturity, and to a certain extent (e.g. not too young, nor too many hours behind TV and computer; no violent videos, no violent computer games, etc., which ‘teach children to kill’⁵⁷).

7. *Child participation-4*: the right of the traumatised child to rehabilitation, recovery, reparation, compensation and social reintegration (preambular para 11 and Article 39).

Needless to say that all these forms of child participation are essential for adults to learn about – and from – children’s own perspectives.⁵⁸

3.1.3 *Roof: the fundamental principle of ‘the right of the child to become an optimal person’*

In my doctoral thesis *Wie zal de Opvoeders Opvoeden (Who will Educate the Educators?)* the fundamental CRC principle of ‘the right of the child to become an optimal person’ is discussed in great detail. The right of the child to become an optimal person (to optimal personality) may be linked, first of all, to the principle

⁵⁶ Specific ‘rights to duties’ are to be found in Article 28(1)(a) CRC (compulsory education), and in Article 31 of the Charter on the Rights and Welfare of the African Child. From a developmental perspective a right to duties (or rather to – family and social – responsibilities) is not an unhealthy notion at all (nor a new one: see Article 29 of the Universal Declaration of Human Rights), although the incorporation in international (i.c. regional) instruments of the commandment ‘honour thy parents’ (Article 29(1) of the African Charter on Human Rights and Peoples’ Rights; Article 31(1) of the Charter on the Rights and Welfare of the African Child) is unacceptable from a children’s rights point of view if, at least, a commandment ‘honour thy children’ (‘the eleventh commandment’) is not incorporated also. (*The Eleventh Commandment: Honour Thy Child* was a song and video played at the 13th International Congress on Child Abuse and Neglect of ISPCAN (International Society for Prevention of Child Abuse and Neglect) in Durban, South Africa, September 3-6, 2000.)

⁵⁷ Cf. GROSSMAN & DEGAETANO, 1999. Cf. also SPIERING, 2002.

⁵⁸ All child participation rights include the (autonomy) rights of the child described or indicated by DELFOS in chapter 3 of this book, as well as in DELFOS, 2001a.

of 'the best interests of the child'⁵⁹ (Articles 3 and 18(1), third sentence), if made operational through socioemotional developmental rights based on our knowledge from developmental psychology and pedagogics about the basic socioemotional needs of children. Other CRC principles and provisions are very relevant as well, however, such as the principle of 'the evolving capacities of the child' (Article 5); the (Reporting guidelines) principle of '(life, survival and) development' (Article 6); and the (Reporting guidelines) principle of 'respect for the views of the child' (Article 12). Next, of course, the core empowerment principle of the right to information⁶⁰ (Article 17), and related civil rights (Articles 13-16), as well as the following provisions: Article 24(1-2): physical and mental health, healthy development, best physical and mental health facilities for child, mother, parents; Article 24(3): no harmful educational practices; Article 27: the right of every child to a standard of living adequate for his or her physical and psychological ('holistic') development; Article 29:⁶¹ school educational goals, first and foremost 'optimal personality' (Article 29(1)(a)), as well as (or including) socioemotional and intellectual development towards 'independent democratic citizenship' (preambular para 7 in conjunction with (Article 17(a) and) Article 29); Article 31: the right to participation in cultural life and leisure activity; and Article 39: the post-traumatic de-empowerment or re-empowerment principle of the right to rehabilitation.

The bottom of the (umbrella, dome or roof) optimum right, *viz.* the right of the child to become at least a minimal person (minimal personality), may be linked to the developmental psychological notion of 'significant harm'⁶² (*c.q.* to developmental psychopathology). In *Wie zal de Opvoeders Opvoeden (Who will Educate the Educators?)*, I argue extensively that the state party to the Convention on the Rights of the Child is under a *maximum extent* obligation-of-conduct to promote the optimal personality, and under a *quasi-obligation-of-result* to guarantee (as far as possible) the minimal personality of every child within its jurisdiction.

The roof of the temple, therefore, consists of Article 3 (one of the four Reporting guidelines principles) and Article 18(1), third sentence, which make 'the best interests of the child' guiding principle both for states and for parents; Article 5, which adds or underlines the dimension of 'the evolving capacities of the child'; and in any case on the above mentioned Articles 6, 12, 17, 24, 27, 29, 31 and 39.

3.1.4 Firm ground

The articles in part III of the Convention on the Rights of the Child, dealing with aspects of formal treaty law, are of course the more or less firm ground (depending among other things on number and content of reservations made by states parties) on which the temple stands. This ground is not firm at all for the United

⁵⁹ Cf. DUIJST, 2001.

⁶⁰ Cf. KOREN, 1996, 17 *if*.

⁶¹ Cf. UN COMMITTEE ON THE RIGHTS OF THE CHILD, 2001 (*see* note 35). Cf. also WILLEMS, 2000c, 25-28.

⁶² On which *see* OUDENHOVEN & WAZIR, 1998, 12. Cf. also FREEMAN, 1997a, 115.

States of America, which signed (in 1995) but has not yet ratified the Convention on the Rights of the Child. And, of course, Somalia, a ‘failed state,’ is fully out of the picture, although its first president in 9 years, elected in August 2000, may change this situation, leaving the United States of America as the only non-member of the pro-*Trias* and anti-transism world alliance which the Convention on the Rights of the Child could, and should, represent.

3.2 *Trias* versus Transism

Turning now to the second part of this paragraph, I would like to (re-)introduce the concept of the *Trias pedagogica* together with the concept of Transism, which I have already labeled the ‘right to destruction’ triplet brother of Racism and Sexism.⁶³

3.2.1 *Trias pedagogica*

The Convention on the Rights of the Child reinforces the common and shared responsibility of states and parents for the upbringing of children. The primary educational responsibility rests with the parents (Article 5, Article 18(1), second and third sentences, Article 27(2)); the secondary educational responsibility rests with the state. The state should enable and empower (Article 18(1), first sentence, Article 18(2) and Article 18(3), Article 19(2), Article 24(2)(e) and (f), Article 27(1) and (3), and Articles 31 and 39) parents to love their children (preambular para 6) and give them direction and guidance in accordance with the evolving capacities of the child (Articles 5 and 14(2)). If it is not possible, for whatever reasons, for parents to love, direct and guide their children, the state should guarantee the child’s right to be loved, directed and guided by adults through alternative, preferably foster care (Articles 3, 19, 20, 24, 39).

These principles are so important and fundamental that they ought to be transformed into constitutional law and to be elaborated and developed in lower national laws. The transformation and implementation of CRC principles and provisions in national (constitutional and other) law is of the utmost importance. After all, human rights thrive through constitutionalisation (transformation in constitutional rights) and implementation in national laws and policies. They wither away if not given high posture and priority in the national legal system. The first step towards counterbalancing adults’ constitutional rights⁶⁴ is to give children’s rights their rightful place in national constitutions. Balancing children’s rights and adults’ rights starts with constitutionalisation.

⁶³ The emancipation of the young child is closely linked to the war against Transism. The war against Transism is closely linked to the war against Ignorance, Poverty, Racism and Sexism (cf. WILLEMS, 2000b, 7-8; 2000d, 1240; 2001, 99). These wars need to be waged in all countries, sharing knowledge and resources (cf. preambular para 13, Articles 4, 17(b), 23(4) in conjunction with 39, 24(4), 28(3) CRC).

⁶⁴ Cf. GELLES, 2000, quoted in note 36.

Trias pedagogica stands, therefore, for the constitutional child-parent-state relationship on the basis of CRC principles and provisions. In paragraph 3.3, I suggest a constitutional provision which intends to do justice to not only the idea of constitutionalisation as such but also, and most importantly so, to the fundamental principle of 'the right of the child to become an optimal person' and the paradigm shift towards Provision-Prevention and Participation which this fundamental principle requires.

3.2.2 *Transism*

Transism, or transgenerational discrimination, stands for transgenerational psycho-traumatisation – or rather the transgenerational transmission of insecure attachment, unresolved trauma and/or psychosocial problems – *in the absence of* Structural Pro-Active policies to break this cycle of abuse, neglect, violence, indifference, lack of empathy, pain and exclusion. *In the absence of* policies of empowerment and community building.

In cases of child abuse and neglect, i.e. in cases where the development of the child, the becoming a person by the child, is seriously threatened, damaged or even ended (and victims thereof number in the tens of thousands each year in The Netherlands alone,⁶⁵ with possibly up to 80 child deaths per annum⁶⁶), the real problem, cynical

⁶⁵ For figures (and studies) on the incidence and prevalence of child abuse in The Netherlands, see WILLEMS, 1999a, 543-572. For a classification, translated from an American study (by Barnett, Manly & Cicchetti), see *ibid.* 1038-1062. With regard to the implementation of this classification in The Netherlands, cf. HEYMAN, 2001. With regard to the promotion of international indicators to measure child maltreatment globally, cf. FORRESTER & HARWIN, 2000.

According to WOLFE (1999, 11-13), '[c]urrent incidence figures indicate that almost 3 million children are harmed or endangered by abuse or neglect each year in the United States, amounting to a total yearly incidence rate of 42 of every 1,000 children [4.2%] (...). (...) Official incidence rates provide a useful comparison of reported rates of child maltreatment over time, but they likely underestimate the actual prevalence of abuse by parents throughout the country (...). Incidence rates describe how many new cases are reported to officials each year, whereas prevalence estimates indicate the number of people in the population who are maltreated prior to 18 years of age (...). (...) [B]ased on telephone interviews with over 3,500 families in the United States, 10.7% of parents, which translates into 107 per 1,000 children, admitted having used some method in the past year to control their child that amounted to a "severe violent act," such as hitting with an object, pushing, or scalding their child (...). (...) Despite their limitations, currently available incidence and prevalence data speak to a substantial problem that, until quite recently, was largely hidden from public or scientific view.'

According to a recent major UK study on the prevalence of child abuse, 'significant minorities' of young people (18-24 years old) 'suffered serious abuse or neglect at home: seven per cent suffered serious physical abuse as children at the hands of parents and carers, including being hit with a fist or implement, beaten up, burned and scalded; six per cent suffered serious physical neglect at home, including being left regularly without food as a young child, not being looked after or taken to the doctor

as this may sound, is not the terrible pain and desolation these children suffer in their youth, their stolen childhood, and not even the pain and desolation which are filed, sometimes not or not fully retrievably, in their memory. The real problem is the pain and desolation which influence, shape, change and damage the development of their brain, and the pain and desolation which become an integral part of their character, leading towards all kinds of psychosomatic complaints, psychological problems, disturbed personality traits or even personality disorders, conduct disorders, socioemotional handicaps, anti-social behaviour (the ‘right to destruction’), suicidality, depressions, impaired relationships, impaired careers, impaired citizenship, impaired parental awareness and impaired parenthood – leading towards a new generation of vulnerable, maladapted, insufficiently socialised people, a new generation of ‘excluded.’ This leads – unless reparation takes place – towards the repetition of socioemotional deprivation, towards the continuation of the cycle of abuse, exclusion and transgenerational discrimination.

Once we understand the discriminatory aspects of transism, it becomes clear, from an international lawyer’s point of view, that the elimination of transism cannot but be a state obligation (cf. Article 26 of the International Covenant on Civil and Political Rights and Article 2 of the CRC).

3.3 The constitutionalisation of the *Trias pedagogica*: a proposed provision

After this brief presentation of the *Trias* and of transism, I would like to propose a provision which could be adopted in all national constitutions, to begin with the constitutions of affluent states, who can afford the investments needed to make the paradigm shift towards Provision-Prevention and Participation (which, after all, will not pay off immediately but only in a period ranging from four

when ill, or being left to fend for themselves because parents were absent or had drug or alcohol problems; five per cent had been placed at risk by being left alone at home overnight or out overnight – whereabouts unknown – at young ages; *six per cent* had suffered multiple attacks on their emotional well being and self-confidence, including living with frequent violence between parents, being “really afraid” of parents, being regularly humiliated, being threatened with being sent away or thrown out, or told that their parents wished them dead or never born; *one per cent* had been sexually abused by a parent and three per cent suffered sexual abuse by another relative, ranging from penetrative or oral sex to taking pornographic photographs of them. In all, *one in four* young people said that there were things that had happened to them during their childhood which they found difficult to talk about. (...) [H]ardly any of the young people had told police, social services, teachers or other professionals.’ (NSPCC, *Child Maltreatment in the United Kingdom*, 2001).

⁶⁶ ‘It is estimated that 300 child deaths per annum in the United Kingdom are caused or contributed to by abuse or neglect’ (CORDESS, 2001). This would amount to 80 child deaths per annum in The Netherlands (16/60 of 300), twice the accepted figure for direct victims (40 per annum). See for the same estimate (80 child deaths per annum), one per 1,000 abused or neglected children (80,000 being the minimum number of abused and neglected children per annum in The Netherlands): WILLEMS, 1999a, 555. To this figure should be added, in my opinion, the number of suicides and fatal lifestyles caused or contributed to by abuse or neglect (cf. WILLEMS, 2001a, 97 n. 13).

years⁶⁷ to at least one generation). By doing so, these states may set the example for other states. After evaluating the changes and improvements made in their legal systems and policies, these states should then assist other states, under the *proviso* on international cooperation in Article 4 of the CRC, in making the same paradigm shift, of course adapted to and within the context of their respective national legal systems and specific socioeconomic circumstances. The proposed constitutional provision reads as follows:⁶⁸

Constitution of State X – Chapter Y, Constitutional Rights – Article Z:

1. Every child in [The Netherlands, Belgium, South Africa, Surinam, Canada, etc.] has the right to have his or her physical and psychological integrity respected and protected, and to receive the affection, direction and guidance of adults, preferably his or her own parents, as well as adequate care for the optimal development of his or her personality, in order to become an independent democratic citizen.
2. To ensure and promote the rights mentioned in the first paragraph, the government will provide for and maintain an integrated system of socioeducational institutions, services and facilities, youth care (including family counselling, psychotherapeutic services and family guidance), foster care, and child protection.
3. Socioeducational services and facilities will include information concerning child development, educational allowances and educational assistance and support for all parents.

3.4 Plea for Provision (Provision-Prevention) and Participation as a new legal paradigm

Of course, constitutional provisions are not merely symbolic rhetoric – or shouldn't be. They imply two things. One, transformation and implementation in national laws and policies. Two, the urgency and importance of doing so – a sense of urgency and importance being inherent to basic values, especially of a rights nature, laid down in national constitutions.⁶⁹ To underline this sense of urgency and importance, I will conclude by making a strong plea for Provision as a new legal paradigm, for a paradigm shift from Protection-Prevention towards Provision-Prevention (universal prevention linked to selective prevention) and Participation (especially psychosocial rehabilitation).

3.4.1 Informing the public, informing parents, informing the child

Knowledge from developmental psychology – about secure attachment, child emotional development, and development of social connectedness (social and moral development); knowledge from pedagogics – about educational goals, 'norms and values,' parenting styles, childrearing practices and skills, child disciplining without violence and verbal abuse or emotional blackmail; knowledge from developmental psychopathology – about the psychosocial consequences of less than 'good enough' parenting, the serious, deep-seated and long-term consequences of child abuse and neglect; knowledge from traumatology – about the

⁶⁷ Cf. KOOIJMAN, 2000.

⁶⁸ Cf. WILLEMS, 2001a, 95; SELKER, 2001.

⁶⁹ Cf. also SELKER, 2001.

‘inner child,’ the hurt child within the parent, and how that inner child influences or even dominates one’s personal relationships and one’s own childrearing practices; knowledge from mental health science – about psychotherapy for children, adults, marital partners; all this essential knowledge – essential from the point of view of the rights of the child, especially the child’s right to become an independent, i.e. individuated person and involved, connected citizen – is *not* made available to the general public. It is not even made available to the new generation of parents, through institutions which provide information and assistance to young parents from the very moment their child is born (or better even: before the child is born). It is available in books and other media, but only for those who are prepared and equipped to look for this information, *c.q.* to take note of it, the ‘happy few.’ This astonishing fact lies at the heart of transism: social exclusion and discrimination caused by ignorance and disempowerment, which lead to the transgenerational transmission of psychosocial problems (‘cycle of abuse’; ‘cycle of violence’).⁷⁰ The very same, however, was true in the past with regard to knowledge about physical and dental health (to a large degree it is still true with regard to mental health⁷¹). Today, scientific knowledge in these areas is made directly available to the general public, through physical and dental health care institutions, education, information campaigns on prevention, etc.

There is no justification to keep the public, and especially young parents, and children themselves, ignorant and disempowered any longer.⁷² On the contrary, we are violating our obligations under general international (human rights) law and the Convention on the Rights of the Child, taken out of the shadows by the children’s law of nations, if we do not start making a change as soon as possible. By violating our international obligations, we are violating the rights of children, caregivers and communities to empowerment. By violating entitlements to empowerment, we are violating the developmental and autonomy rights of children.

3.4.2 *What should we do?*

Basically, what we have to do, is to take the three P’s system of the Convention on the Rights of the Child seriously. This means a paradigm shift from Protection-Prevention to Provision-Prevention and Participation. To freshen up our memories: Provision-Prevention means: information and facilities (material help, allowances, and other) for all parents, and specific forms of empowerment and/or rehabilitation of socioemotionally (and/or socioeconomically) vulnerable parents; Protection means: intervention through legal proceedings in order to impose help or place the child in alternative (preferably foster) care; Participation means: different forms of empowerment and/or rehabilitation of the child and his or her parents. The three(-to-four) P’s in this strict order lead us, as we have seen, to SPA: a Structural Pro-active Approach, through an integrated IFOI system: Inform all; Filter out ‘good enough’ parents; Offer help to all the others;

⁷⁰ WILLEMS, 1999a, chapter 13; BAAS, 2001; GRUSEC, 2001.

⁷¹ Cf. SATCHER, 2000.

⁷² Cf. BAARTMAN, 2000; LEVENTHAL, 2001; WILLEMS, 2001a; DELFOS, 2001a.

and, if help does not work, Intervene through the courts to protect the rights of the child.

3.4.3 'Good enough' knowledge

A paradigm shift from Protection-Prevention to Provision-Prevention and Participation is at the same time a paradigm shift from 'good enough' parenting to 'good enough' knowledge. We know enough – not everything of course, but enough to get started – about human rights, developmental psychology, pedagogics, psychotherapy, etc. In particular we know enough about:⁷³

- the rights of the child, and the *Trias pedagogica*, the constitutional child-care-giver/community-state relationship, to be established as soon as possible, in order to create a new and true century of the child: the century of the emancipation of the young child;
- the importance of the first three years of life for brain development and socio-emotional development, and therefore of Early Child Development programmes;
- goals of education⁷⁴ and child rearing in connection with human rights law;
- developmental psychology and developmental psychopathology;
- the continuum of healthy development, developmental damage and, at the extreme, child abuse and neglect, by parents and by society⁷⁵;
- secure and insecure attachment, emotional development, and development of social connectedness⁷⁶ (healthy socioemotional development, especially development of 'emotional intelligence,'⁷⁷ i.e. of self-knowledge, self-control, self-discipline *c.q.* self-motivation, empathy, and commitment *c.q.* social and/or political involvement and *engagement* – Grotius' *appetitus societatis*);
- the (non-verbal) ways in which (young) children express themselves, and ways for adults to listen to them,⁷⁸ and related aspects of child identification⁷⁹;
- the childhood causes of psychosocial, i.e. psychological and behavioural problems;
- the psychological and sociological (socioemotional and socioeconomic) root causes of frustration, hatred, crime and violence (and related mental disorders);
- the psychopathological consequences of child abuse and neglect;
- definitions, subtypes and severity scales of child abuse and neglect⁸⁰;

⁷³ See on most of the following, WILLEMS, 1999a. On scientific (undisputed) knowledge and the role of researchers, cf. WILLEMS, (2002b and) 2002c.

⁷⁴ See the General Comment of the UN Committee on the Rights of the Child, *The aims of education*, 2001, quoted in note 35.

⁷⁵ Cf. BARTER, 2001, quoted in note 26.

⁷⁶ See on 'connectedness,' RMO ADVIES, 2001, 69.

⁷⁷ See PEVERELLI, 2001, 38. SINGER (2001, 35) points at theories that link free will to willpower (self-discipline/self-motivation), and the latter to attachment and related duties to others.

⁷⁸ See DELFOS, 2001a.

⁷⁹ See VAN BLAADEREN, 2001.

⁸⁰ Cf. WILLEMS, 1999a, 1038-1062 (Barnett, Manly & Cicchetti); HEYMAN, 2001.

- risk factors and protective factors in relation to good quality parenting and good quality parent-child relationships, *c.q.* in relation to psychosocial developmental damage, up to and including child abuse and neglect⁸¹;
- good and bad childrearing practices⁸² and good (*scil.* authoritative) vs. inadequate, damaging or abusive parenting styles⁸³;
- mental health and psychotherapy (the hurt ‘inner child’ and its destructive coping mechanisms and neurotic transactions; transgenerational transmission⁸⁴ in case of non-rehabilitation)⁸⁵;
- psychosocial hygiene and interactive skills (psycho-education and psychohygiene: how to communicate with, how to relate to people, and oneself);
- effective and efficient parental support programmes, to be embedded in a process of ‘community building’;
- effective and efficient therapeutic techniques and interventions and non-stigmatising modes and techniques of parental assistance, etc.

We know enough to begin making the shift from Protection to Provision, i.e. to start thinking about working⁸⁶ on a pre- and perinatal system of parental information and parental support to enhance the quality of parenting for all parents, and to offer additional support (coaching, guidance, counselling, therapy, material help) to parents who lack empathy (parental awareness) and/or have to deal with all kinds of (psychosocial and material) problems – and to protect their babies, by providing alternative care, in cases where parental support for whatever

⁸¹ BAARTMAN, 1996, 230 *if.*, mentions four clusters of risk factors: lack of parental awareness; (untreated) deplorable youth; social isolation; lack of social support. GROENENDAAL & DEKOVIC, 2000, 17 *if.*, mention as main factors: negative perception of child rearing; dissatisfaction with life; marital conflict; low family cohesion. Cf. also the list of negative forces in OUDENHOVEN & WAZIR, 1998, 121. And *see* HELLINCKX *et al.*, 2001, for a child abuse risk screening instrument.

⁸² For ten parenting tasks (good practices), *see* BAKKER, 2001, 89-95 (cf. also note 48). For bad practices: parental overconcern and overprotection (in relation to anorexia *c.q.* eating disorders); authoritarian discipline, lack of parental warmth, and conflictual relations between parent and child (in relation to drug abuse, antisocial behaviour, anxiety and depression); parental threatening behaviours: threats of rejection, abandonment or punishment from parents, *e.g.* threats to stop loving a child if he or she does not behave, fighting between parents, threats to hit a child (in relation to anxiety symptomatology and disorders, and depression), cf. SCHER *et al.*, 2002, 208-209.

⁸³ Cf. BAKKER, 2001, 87-88; WILLEMS, 1999a, 529-534, *passim* (*see* index).

⁸⁴ Cf. GRUSEC, 2001, 220, 228; BACON & RICHARDSON, 2001, 382-383; ADSHEAD & BLUGLASS, 2001, 406.

⁸⁵ As BAARTMAN & DE MEY (2000, 300/301) observe: ‘In risk assessment, demographic and remote variables too often seem to prevail over proximal factors, that is personal characteristics of the parents. From research into determinants of parenting, from research into results of treatment of maltreating parents and from research into the predictive value of risk factors, we have learned that these personal characteristics are more relevant than remote ones.’

⁸⁶ For a concrete plan to do this in The Netherlands, on the basis of available effective methods, *see* HERMANNSS, 2002. This plan is now being considered by the Dutch State Secretary for Youth Policy, M. Vliegthart. (Cf. on this plan also WILLEMS, 2002b.)

reason does not work, or does not work well enough, to protect the rights of the child and guarantee his or her healthy development, the promotion of which is the basic principle and bottom line (*causa finalis*) of the Convention on the Rights of the Child. We need to introduce these forms of parental assistance, and thus make our knowledge available to the general public, in the same manner as earlier generations did when introducing physical and mental health care and dental care: making medical and psychological knowledge available to the public through information and institutions.

The plea in this chapter for Provision-Prevention and Participation, that is for empowerment and rehabilitation through universal prevention linked to selective prevention (or IFOI system), can also be found in a recent WHO appeal:⁸⁷

'The main focus of the Child and Adolescent Health and Development programme of the WHO is for the development of primary prevention strategies for family violence and child abuse and neglect to children under five. The child protection programme links with initiatives in promoting best practice in perinatal care and parent-child attachment, and the integrated management of childhood illnesses (...). [W]e "urge each and every country to enhance or develop a comprehensive system of state funded child protection services, consistent with Article 19 of the Convention on the Rights of the Child, where every family at risk receives some health and social support. Those families at risk should receive targeted services in addition to universal support".'

To this appeal the conclusion by Hermanns on the *state of the art* in national and international prevention, intervention and reparation research may be added:⁸⁸

'On all levels [of universal and selective prevention, screening of risk individuals, early intervention in individual risk situations, and early diagnosis and intervention in situations where the problem has manifested itself for the first time] in national and international literature effective methods are to be found.'

4. TEN PROGRAMMATIC RIGHTS

The children's law of nations stipulates ten programmatic rights of the child, based on multi-(inter-)disciplinary research, and awaiting full political and legal endorsement and implementation. It goes without saying that this will not only be a matter of legal, or rather legal-pedagogical (or pedagogico-legal) research, but also of legal (and pedagogical) activism⁸⁹ – in rich countries⁹⁰ to begin with.

⁸⁷ WHO Regional Office for Europe 2001 (Kevin Browne).

⁸⁸ HERMANN, 2002 (para. 3, 'Zorginhoudelijke uitgangspunten'). Cf. also HERMANN, 2001, 80 (on RAAK), 89-94 (on a continuum of five forms of prevention/intervention), 98-99 and 119 (on empowerment), 116-120 (on four integrated rights of the child). (On the latter, cf. also WILLEMS, 2002b.)

⁸⁹ Cf. the RAAK *Manifesto*, 2000 (see note 41); WILLEMS, 2001b and 2001c; SUIDMAN, 2002. For an example of infants' rights activism – which apparently is more problematic and controversial than animal rights activism –, see STROECKEN, 2000 (proclaiming the 'affective rights of the young child').

According to the children's law of nations, every child has the right to:

1. A family life with affection, guidance and direction in a manner consistent with his or her evolving capacities.
2. Adequate state, community, parental and professional care for a healthy holistic development, to begin with early child development based on secure attachment (i.e. to informed and empowered parents and communities).⁹¹
3. Respect for his or her physical and psychological integrity inside and outside the family (i.e. to grow up without physical or emotional violence).
4. Quality education and information, as well as social responsibilities in family, school and community, in order to become an independent democratic citizen.
5. Freedom from poverty, fear and anti-democratic indoctrination inside and outside the family.
6. Freedom from racism, sexism and transism (ethnic, gender and transgenerational discrimination) inside and outside the family.
7. Freedom to express his or her views, thoughts and feelings inside and outside the family.
8. Best practices in psychosocial problem prevention, family intervention and trauma reparation.
9. A democratically organised *Trias pedagogica* (child-parent-state relationship based on constitutional rights, including the constitutional developmental-and-autonomy rights of the child, and on democratic institutions and parents' and other organisations).
10. International solidarity and cooperation to promote democratic institutions and to abolish poverty, ignorance, violence and violent traditional practices, especially in relation to very young children, inside and outside the family.

Not all of these programmatic rights could be fully introduced and expounded in this chapter. The most important ones, however, for the presentation of the SPA model and its IFOI system (constituting a continuum of provision-prevention, protection and participation⁹²) have been elaborated and put in a conceptual and

⁹⁰ That is, in countries where the institutions and expertise exist to realise a 'continuum of prevention' *c.q.* a 'continuum of care' (see HERMANN, 2001, 89; 2002, para. 3).

⁹¹ IFOI based (empowering) information and (rehabilitative) empowerment should first of all promote secure attachment, and that for two reasons: (1) 'insecure attachment occurs in about 40% of any [normal, non-clinical] sample' (ADSHEAD & BLUGLASS, 2001, 401); (2) as Glaser states (GLASER, 2001, 373/374): 'The role of early attachment security or insecurity is best regarded as a significant protective or risk factor respectively in the development of psychopathology. Internal representations, which are based on procedural (unconscious) memories, are indeed liable to re-editing if caregiving patterns change, but cannot be erased. (...) However, the poor prognosis for young children who have been classified as disorganised [a severe form of insecure attachment, 'which is particularly associated with a history of child abuse and neglect,' *ibid.*, 372] has now been shown in longitudinal studies (...).'

⁹² Cf. note 88 and note 90. Cf. also BACON & RICHARDSON (2001, 390) who argue – in a broader sense but in the same spirit – for 'the provision of a supportive and compan-

interpretative framework, based on the Convention on the Rights of the Child and linked to the Convention's main principles and provisions. These ten rights have to be taken – and studied – together, however, in order to further develop the children's law of nations, i.e. the – indivisible and interconnected – developmental and autonomy rights of the child.

5. CONCLUSION

Children's rights research would often, if not always benefit, it is submitted, if researchers of children's rights issues were to enter their children's rights research rooms in the academic children's rights building by first passing through the Children's Law of Nations Hall. This Hall is dedicated to the principle of the 'inherent' right of every child to Become an Optimal Person, i.e. to adequate state, community (extended family, professionals, volunteers, bystanders) and parental care for a healthy holistic (physical, emotional, social, moral and intellectual) development. By departing from this principle, or at least by taking this principle into account – to a degree depending on the specific nature of his or her research topic –, a researcher may achieve more useful research outcomes. Better results are to be expected since the 'optimal holistic development' principle prompts researchers to adopt a multidisciplinary and multifocused approach. It induces researchers of children's rights – or children's rights related – issues to look at children and children's rights both in a developmental perspective and in the context of the caregivers with whom, and the communities, cultures and societies in which they live. Many years of legal (human rights 'in context'⁹³), psychological and pedagogical research into the developmental damage done to children by caregivers and by society have led the present author to the conclusion that the study of children's rights issues should, as far as possible, be both child development (and especially early child development) and caregivers and community related, directed or oriented. The children's law of nations (or international pedagogical law approach) offers researchers a new paradigm, interdisciplinary terminology and multifocused legal tools which lend themselves to put a rights approach to 'the best interests' and 'the evolving capacities' of the child as conventional principles⁹⁴ into operation. This rights approach thus becomes a developmental-and-autonomy rights approach: the basic philosophy of the children's law of nations is the image of the child as a subject of rights, a subject of – indivisible and interconnected, mutually reinforcing – developmental and autonomy rights. It is already a number of years ago that psychologists let the world know that mankind possesses the knowledge to prevent developmental damage to its children, more specifically those severe forms of developmental damage which we call child abuse and neglect.⁹⁵ The psychologists have done their homework, including a great deal of pioneering work, but lawyers – outside of the field of women's rights – until now have done so to a much less degree, and

ionable context as a secure base for professional and other caregivers.'

⁹³ Cf. STEINER & ALSTON, 2000, v-vii.

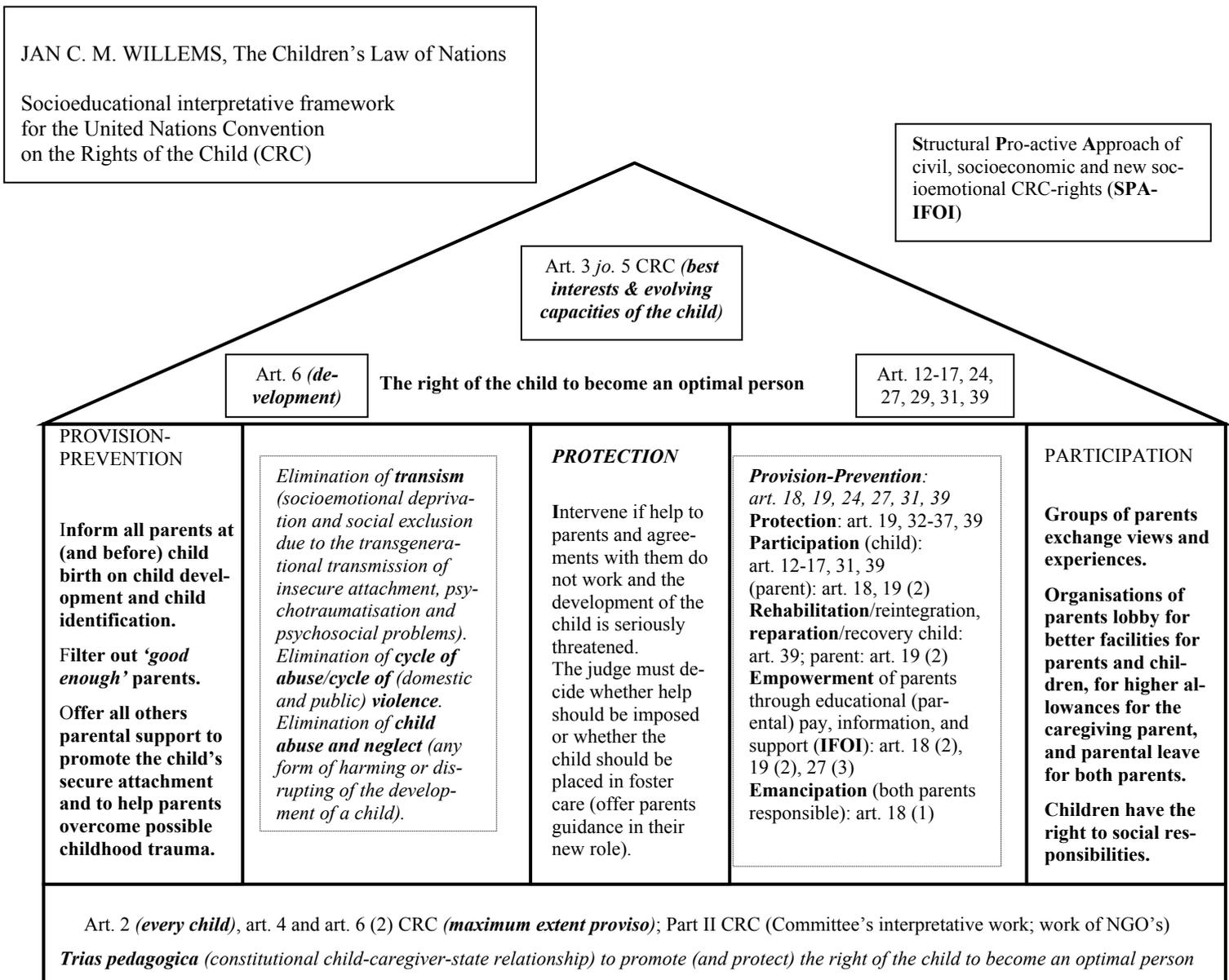
⁹⁴ Cf. VAN BUEREN, 1995, 45-51.

⁹⁵ LEVENTHAL, 1996, 2001.

certainly in much smaller numbers. It is submitted that, in the same manner as women's rights' lawyers have embraced and promulgated the principle of equality, children's rights' lawyers will have to embrace and promulgate the principle of Optimal Development as a fundamental human right of every child in the world – of all children in all cultures and all traditions. Children's rights' lawyers in a way will have to become children's law of nations' lawyers ...

The children's law of nations endeavours to contribute to the promotion and protection of the developmental and autonomy rights of children. It is the first contention of the author of this chapter that this is only possible through a process of emancipation of the (young) child, which, 'naturally' or historically, follows the process of emancipation of women and of adolescents. It is the second contention of the author that this process of emancipation of the (young) child is only possible by informing and empowering the new generation of parents and other caregivers – all over the world. It is the third contention of the author that the empowerment of caregivers, which includes their 'responsibilisation,' starts with the empowerment of communities, both in relation to professionals and others dealing with children, and to community building. These three contentions lead to a specific approach to the international rights of the child. This approach aims to clarify these rights by specifying state obligations under general international (human rights) law and, especially, under the Convention on the Rights of the Child. The international rights of the child thus become entitlements to empowerment of children, caregivers and communities within the framework of a constitutional *Trias pedagogica* (child-caregiver/community-state relationship based on constitutional rights, including the constitutional developmental-and-autonomy rights of the child). The main objectives of this *Trias pedagogica* are the promotion of the right of every child to become an optimal person, and the elimination of Transism (transgenerational discrimination). This approach is underscored by a socioeducational interpretative framework for the Convention on the Rights of the Child which expresses the paradigm shift within the three (to four) P's system in the children's rights literature. This framework reflects the spirit of the Convention, which sees the child as a subject and meaning-maker in his or her own right, and makes the child a subject and actor in a *Trias* – not a *Dyas!* – *pedagogica*. This *Trias pedagogica* includes the very young child, and contributes to his or her emancipation.

If we believe that 'mankind owes to the child the best it has to give' – as the famous preambular phrase of the 1959 UN Declaration of the Rights of the Child stipulates; a stipulation which can now be considered to be a legal obligation of states under the maximum extent *provisio* of Article 4 CRC –, then we have to make the paradigm shift from Protection-Prevention, i.e. intervention after (early) detection of developmental damage, and 'reparation' or 'cure,' towards Provision-Prevention and Participation. Our very first goal, then, is the establishment of a pre- and perinatal integrated IFOI system of parental information and parental support, in order to pass on scientific knowledge to the public, and let children, caregivers and communities benefit from it, all over the world.



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