

The Criminal Lawyer[®]

published by SALLY RAMAGE[®]

Contents -

The Criminal Lawyer, Issue Number 245, March 2020

1. Dogs, and Breed Specific Legislation in the United Kingdom pp 2-5
2. Criminal Law Updates pp 6-10
3. Covert surveillance pp 10-27
4. Criminal intent or strict liability? pp 27-29
5. Financial crime of currency manipulation pp 30-33
6. *Children's Rights*, Edward Elgar (2019) pp 34-46
7. Legal Notice. p 46

Sally Ramage
Stephen Forster

Diana Johnson

Roderick W. Ramage
Alec Samuels
David E. Tonkinson
David Dabydeen

Charlotte A. Tonkinson
Joanne Clough

Managing Editor
Criminal Law Author and Senior Law Lecturer
Liverpool John Moores University
Solicitor, Legal Writer and Senior Law Lecturer
University of the West of England
Solicitor and Consultant Editor
Barrister-at-Law and regular Legal Writer
Managing Web Designer
Emeritus Professor, Warwick University, and Racial
Equality and Windrush Consultant
Animal Rights Consultant
Solicitor-Advocate, Judge (p/t) and Clinical Law
Manager, Law School, Ulster University

Dogs and Breed Specific Legislation in the United Kingdom

C.A.Tonkinson

Legislation

Berne Convention for the Protection of Literary and Artistic Works 1886; Dogs (Protection of Livestock) Act 1953; Wildlife and Countryside Act 1953; Animals Act 1971; Guard Dogs Act 1975; Dangerous Wild Animals Act 1976; Dangerous Dogs Act 1991.

Introduction to classification of all animals at common law

At common law, animals used to be classified as *wild by nature (ferae naturae)* or *tame by nature (mansuetae naturae)* and this referred to the species in general rather than the individual animal. The owner of a wild animal was strictly liable for any damage it caused. The owner of a tame animal was liable for damage it caused if he knew that it had a vicious tendency abnormal in the species.¹ There were special rules applied to damage done by cattle² and damage done by dogs. These common law classifications were replaced by statutes.

Liability for damage by an owner's animals

The English Animals Act 1971 classified animals as being of a *dangerous* species or of a *non-dangerous* species. A dangerous species is a species of animal not commonly domesticated in the United Kingdom, and of which, when fully grown, they are likely to cause severe damage. English law states that the keeper of an animal of a dangerous species is strictly liable for any damage it causes.³

Dangerous wild animals may require a licence under the Dangerous Wild Animals Act 1976. The Dangerous Dogs Act 1991 had been rushed through Parliament in response to media and public pressure to act on dog control following a string of dog attacks, reported mostly by the *Sun*, the *Mirror*, the *Daily Mail*, the *Echo*, and so on. Under the 1991 Act 'Breed Specific Legislation' (BSL) prohibits the ownership of certain 'types' of dogs; they are referred to as

¹ Known as the *scienter* rule.

² For example, *cattle trespass* tort.

³ The term 'strict liability' is a term in criminal law meaning liability for a crime that is imposed without the necessity of proving *mens rea* with respect to one or more of the elements of the crime. Such crimes are drafted and created to regulate or control daily activities –for public welfare purposes; for revenue purposes; for protecting consumers, etc. The argument most frequently advanced by the courts for imposing strict liability is that it is necessary to do so in the interests of the public. See Ormerod, D. (2017), 15th edn. *Smith and Hogan's Criminal Law*, Oxford: Oxford University Press.

‘types’ of dogs not recognised in the UK. The four types under this legislation are – *Pit Bull Terrier, Japanese Tosa, Dogo Argentino* and *Fila Brasileiro* - dogs traditionally bred for fighting.⁴ Keeping any of these four types of dogs is an offence under the Dangerous Dogs Act 1991⁵. The use of guard dogs is controlled by the Guard Dogs Act 1975. To protect farming livestock is the offence under the Dogs (Protection of Livestock) Act 1953, which is committed by the owner of the dog or the person in charge of the dog if the dog worries livestock on agricultural land and ‘worrying’ includes attacking and chasing cattle, sheep, goats, pigs, horses or poultry. Sheep have extra protection under the Wildlife and Countryside Act which prohibits a dog being at large (not on a lead or close control) in a field or enclosure in which there are sheep. The Wildlife and Countryside Act 1953 permits a farmer whose livestock is being attacked or chased to shoot the dog without any obligation to compensate the owner; neither will said farmer be liable for criminal damage to the dog.

Dog attacks increased

National Health Service figures showed that there has been an increase in dog attacks since the Dangerous Dogs Act 1991 gained Royal Assent and came into force. This shows that this Breed Specific Legislation (BSL) is not working. BSL also causes huge emotional upset to many families. If the police say your dog is a pit-bull because she looks like one then they can kill the dog unless you prove otherwise, which can be very difficult and also expensive. Many dogs that are cross bred can appear to be Pit bull dogs when they are not.



American bulldog cross-breed

Dogs are taken from their families and destroyed without taking into consideration their temperament. A very famous case of BSL going wrong was the case of ‘Lennox’ and the worldwide campaign to have him freed from capture and seizure by Belfast City Council in 2012. The case went on for two years and the dog Lennox was taken from his home of five

⁴ See Ramage, S. (2012) “Breeding dogs for fighting”, *The Criminal Lawyer*, Issue 209, pp 2-3.

⁵ See Ramage, S. (2009) “Dangerous dogs”, *Current Criminal Law*, Volume 2, Issue 2, pp 23-36.

years on 19th May 2010 by a dog warden for Belfast City Council.⁶ Lennox had after never shown any signs of a bad temperament. However, although Lennox, a cross-breed American Bulldog and Labrador, had never showed any signs of aggression, the dog warden decided that Lennox was a pure American bulldog and confiscated the dog from its owner.

When Lennox was a puppy his owners had him neutered, licensed, insured, DNA registered, Pet Safe registered and micro-chipped and Belfast City Council had issued a dog licence for Lennox.

Warrant of Seizure issued by Belfast City Council

On the day Lennox was taken from his family home the Belfast City Council issued his owner with a warrant of seizure which was incorrectly addressed and was for another location and furthermore the Belfast City Council had used the American Dog Breeders Association Incorporated (ADBA) breed standards guide to help identify Lennox as possibly a Pit Bull type. It has now become clear that the Council used this ADBA breed standards guide illegally in breach of international and Berne Convention⁷. Belfast City Council had not been authorised by the ADBA to use the copyrighted breed standards guide in full or derived version or for legal proceedings, and due to Lennox's seizure, the ADBA issued the Belfast City Council with a *Cease & Desist*⁸ letter due to the Council's unauthorised and continued use of ADBA material.

Lennox was destroyed by the authorities

Lennox was killed and the family never saw him again from the day he was taken. Dogs cannot help who their owners are, yet the law unfairly places the onus of responsibility on them, rather than the irresponsible actions of an owner. BSL punishes certain types of dogs for the way they look and fails to consider a dog's individual behaviour when determining whether or not they are dangerous. Within a type there will be a range of behaviour; some will be extremely aggressive and some will be extremely friendly.

⁶ See the Lennox campaign at <http://www.savelennox.co.uk/>.

⁷ The Berne Convention states that all works except photographic and cinematographic shall be copyrighted for at least 50 years after the author's death, but parties are free to provide longer terms, as the European Union did with the 1993 Directive on harmonising the term of copyright protection.

⁸ A cease and desist letter is a document sent to an individual or business to stop purportedly illegal activity and not to restart it. The letter may warn that if the recipient does not discontinue specified conduct, or take certain actions, by deadlines set in the letter, that party may be sued

As a result, BSL unfairly brands a great number of dogs who pose no risk based on their behaviour as 'dangerous' just because of their appearance.

The RSPCA⁹'s advice noted: '*Any dog, regardless of their breed or type can be dangerous... in the wrong hands*'.¹⁰

Commentary

Many dogs taken into care by the RSPCA after being saved from neglect are later killed after the RSPCA are informed by police that they are to be euthanized rather than re-homed, a decision based purely on their physical appearance and not on their temperament. RSPCA staff become distressed because they often form loving bonds with the dogs in their care.

The law needs to be changed so that owners of dogs are prosecuted and held accountable for dangerous dogs and not by Breed Specific Legislation (BSL). It is cruel and does not work.

ENDS+



Dangerous dogs-4 breeds

⁹ The RSPCA is the oldest welfare charity in the United Kingdom and the first to introduce a law to protect animals. The RSPCA work hard to ensure that all animals can live free from pain and suffering, and they campaign continuously in order to raise standards of care, and awareness of issues affecting animals today.

¹⁰ <http://www.rspca.org.uk/getinvolved/campaigns/companion/dogownership/bsl/>

Criminal Law Updates

[1] Unnecessary deaths –unheeded recommended care practice changes

Ms Amy El-Keria, aged 14, died at Priory Hospital, Ticehurst House, in the year 2012. In its most recent inspection, HMI Probation, the Care Quality Commission (CQC) found that Priory Hospital, Ticehurst House, is not safe and that it was utterly shameful that, despite being fined for criminally unsafe practices resulting in a child's death, practices that are dangerous and harmful continue.

Ms Christie Harnett was a patient at West Lane CAMHS¹¹ unit in Middleborough when she died, aged 17. The newspapers found through Freedom of Information Requests, that at least 16 young people have killed themselves in England's Children and Mental Health Services (CAMHS) inpatient centres since 2016.

Despite the government's promises about prioritising and addressing the deaths of children and young people needing Mental Health care, it is deeply concerning to see that such deaths have not only continued but that the number of deaths has increased.

[2] Death after police taser use

The inquest into the death of Mr Marc Cole concluded with the jury at the Coroner's Court holding that Mr Marc Cole's use of cocaine had resulted in his paranoid and erratic behaviour and when police pursued him and Tasered him, he died. It has been noted that at a time when the Home Office has budgeted a large sum of £10,000,000 for the purchase of Tasers for police officers in the UK, the inquest of Mr Marc Cole exposed a disturbing lack of understanding and insufficient training about the dangers of Taser use.

¹¹ Child and Adult Mental Health Services (CAMHS) is used as a term for all services that work with children and young people who have difficulties with their emotional or behavioural wellbeing. Parents, carers and young people can receive direct support through CAMHS.

[3] Elderly man died when he hit by Merseyside Police vehicle

Mr Tony Carroll, aged 70, died after a Merseyside Police vehicle drove into him on Christmas Day 2018. The coroner made a report to prevent future deaths and for the need to raise awareness of emergency response vehicles' ability to exceed the speed limit. It would be very useful to see the CCTV recording of the death of this poor man, as we can never know without the CCTV recording whether he was run over because he dared cross the road, seeing a police vehicle speeding, or whether he was simply clipped by the vehicle, fell and later died. Why was this information not released? No crime can be as serious as to allow the ploughing down of innocent people, due to haste towards a suspected crime, one can argue.

[4] Legal Aid Agency procedures questioned: families forced into silence by inequality of arms?

Civil servants' correspondence came to light on how to defend the Legal Aid Agency's (LAA) position during the Ministry of Justice's 2018 review into Legal Aid for Inquests. There is *conflict of interest*¹² over the department's refusal to grant Legal Aid for representation in cases where State Agencies have been involved in a death.

Failures in Legal Aid processes were starkly exposed at the inquest into the death of Stephen Berry. His family was unable to get through the protracted and painful application process for Legal Aid Funding and so his family was not represented by lawyers, but by friends. Some view this as silencing those at the inquests. The Coroners Court is a court of law, even though it is not a criminal court, and the European Convention on Human Rights (ECHR) does apply to both civil and criminal matters. Therefore one can argue that the "*doctrine of equality of arms*" applies, it being related to the more specific notion of fairness in Article 6 (1) ECHR. A look at Article 6(1) shows that it does not fit within the other guarantees of a fair trial, those being: "reasonable time"; "public trial"; "independent and impartial tribunal". However

¹² The term 'conflict of interest' is defined is classed as a noun and defined in the legal dictionary as "a situation in which a person has a duty to more than one person or organisation, but cannot do justice to the actual or potentially adverse interests of both parties. This includes, for example, (i) when an individual's personal interests or concerns are inconsistent with the best interests of a customer, or (ii) when a public official's personal interests are contrary to his/her loyalty to public business. A lawyer, an accountant, a business adviser or an estate agent cannot represent two parties in the same dispute and must avoid even the appearance of conflict. He/she may not join with a client in business without making full disclosure of his/her potential conflicts; he/she must avoid co-mingling funds with the client funds and must never take a position adverse to the client's.

some cases in the 1960s introduced the principle of “equality of arms” into Strasbourg case law. The relevant cases are *Ofner and Hopfinger v Austria*;¹³ *Pataki and Dunshirn v Austria*;¹⁴ and the case *X v Sweden*¹⁵ -the latter case being the first time that the term ‘equality of arms’ was first introduced in this civil proceeding in 1969. Equality of arms is defined in a broad sense as the requirement that a balance of fairness is maintained between the parties. Equality of arms seeks to ensure that rights to a fair trial are fairly applied. Thus, if one party has the right to be heard, the other side must also be permitted this opportunity. In a similar way, both sides must have equal access to case files; both sides must be permitted to submit arguments and observations; both sides must disclose evidence; and both sides must be allowed to have expert witnesses. Equality of Arms means that: ‘*Everyone who is party to the proceedings shall have an opportunity to present his case under conditions which do not place him at a disadvantage vis-à-vis his opponent.*’¹⁶ We need to remember that the Equality of Arms principle exists as a guarantee within the framework of Article 6(1) ECHR.

[5] Injustice at inquest hearings due to lack of Legal Aid for relatives’ legal representation

Ms Cassandra Hamilton, whose sister was killed in the *Guildford pub bombing* in 1974, said she had considered giving up after Legal Aid refused to pay for her legal representation at her sister’s Inquest and noted that contrary to her being refused Legal Aid, the police and the Ministry of Defence were represented at public expense.

[6] More deaths of inmates in UK prisons

David Dunnings was serving an indeterminate sentence¹⁷ when he was found dead with a ligature around his neck, in his cell, in the early hours of 8 July 2017. The inquest this month in 2020 found that there had been a ‘complete failure by staff to follow processes and inadequate mental health care provisions’. Over the past 12 years, successive governments

¹³ Applications Nos. 524/59 and 617/59, report of 23 Nov.1962, (1963) 6YB 680.

¹⁴ Applications Nos 596/59 and 789/60, report of 28 March 1963, (1963) 6YB 718.

¹⁵ Application no 434/58, (1959) 2YB 354, 370.

¹⁶ *Struppat v Federal Republic of Germany*, Application no.2804/66, (1968) 27 CD 61.

¹⁷ Where a defendant is dangerous, then he may be punished with an “Indeterminate sentence for Public Protection” (IPP) or an extended prison sentence or an ordinary prison sentence, subject to the minimum tariff. See Criminal Justice Act 2003 ss 224-226, 229-230, as amended by Criminal Justice and Immigration Act 2008 c 4 ss 13-18 and s.25 and Schedule 5.

have ignored Corston's recommendations¹⁸ and the sustained pressure from bereaved families and organisations. The latest deaths in HMP Styal, and the deaths and harms across the women's prisons in the UK are the tragic consequences of that inaction.

[7] Deaths after release from prisons

Meetings followed a report on deaths of people following their release from prison, with the Prison and Probation Ombudsman, and Ministry of Justice officials. Recommendations of the report were discussed and visibility and scrutiny of deaths of people after their release from custody.

The inquest into the death of Conner Marshall identified serious failures in the probation services in Wales - including the levels of staffing and heavy caseload and the structures that were in place for managing and supervising a new probation officer.

Luke Blackhurst, age 24, an autistic person, died in his room in supported accommodation run by Young Men's Christian Association (YMCA) in Brighton. He was found more than one day after he died, despite his mother raising concerns with staff and requesting a welfare check, as she was unable to make contact.

[8] Species Justice

There are many who believe in *species justice*. Species justice is a non-human or biocentric discourse that emphasises the importance of non-human rights. It asserts that human beings are not the only creatures with rights, nor are humans superior beings. In other words, there is no hierarchy of existence with human beings at the pinnacle. All living things in existence share an equal status of importance. Beirne and South (2007)¹⁹ argued that to prohibit or disregard non-human creatures as being not of equal standing within the natural environment, denies the value and worth of those species. Electrocution and dismembering a four-legged animal is animal abuse whether you eat it or not or whether you care or not.²⁰ If *rights* are about ensuring health and well-being whilst minimising pain and suffering, then humans are not the only species to experience these. In fact, some animals have been assigned legal rights, such as chimpanzees in Germany. In 2002, Germany became the first European Union

¹⁸ 2007 Corston's Report –review of women with vulnerabilities in the criminal justice system.

¹⁹ Beirne, P. W. and South, N. (Eds) (2007) *Issues of green criminology: Confronting Harms against Environments, Humanity and Other Animals*, Cullompton, UK: Willan.

Member State to integrate animal rights into its constitution and this requires that Germany respect and protects the dignity of animals. See *Welfare for Animals*, 2002.

Covert surveillance compared

Sally Ramage



Abstract

This article's topic was addressed by the author ten years ago. Comparing intercept laws of the United Kingdom and the United States, this author concludes that there appears still to be no regard to legislation in respect of intercept in the United Kingdom, nor freedom of information as to whether proper procedure was complied with, who signed the warrant; the contents thereof, or even whether in some areas of the country warrants are signed en masse by some magistrate and it becomes a matter of simply completing time, and date. The public at large need to know what percentage of criminal convictions has relied on surveillance in large part and whether defence lawyers had access to the actual recording and not a copy of the recording (which would have lost all its metadata). This is a matter of justice. It is inconceivable that we live in a high technology country and we are still denied transparency in oftentimes life-changing matters. It is not good enough and those in the wrong must "put their hands up."

Introduction

Covert surveillance in prisons, hotels, domestic homes, and elsewhere undertaken by police has brought to the fore again the case of *R v Sultan Khan*²¹. The Interception of Communications (Admissibility of Evidence) Bill 2007 did not get far in Parliament at the time. We must not forget this significant case about covert surveillance in case *R v Sultan Khan*. The media has been fed by agencies to such a large extent that the British population live in a permanent climate of fear of terrorism; fear of being defrauded; and so on, that they scarcely know that extent of the wickedness that takes place by those in high positions of trust, not does society know what we must really fear- the billionaire businessmen who ruthlessly and seductively entice the common man

To invest in some investment fraud, whilst they indulge their own families with unimaginable luxuries, eventually leaving the investor facing a dire future or suicidal at the thought of how he lost his life savings.

In the same vein, needing a straight-forward and quick win in the law courts, people in a position of trust breach our trust by playing judge and jury also and fudge DNA results; edit emails to say what is needed to win the case; tamper with evidence including editing interception evidence to win a case which they, usually by “gut feeling” alone, decide the guilt or innocence of those ion the criminal justice system.

All people’s lives everywhere are precious

We the public must know that our criminal justice system is not still bent and that the public purse is not poured down the drain when we know how hard people work for recompense and the taxation wherefrom agencies and man-hours are paid (rather handsomely still), whilst looking for serious crimes in the wrong places.

The facts in *R v Sultan Khan*

Sultan Khan had arrived from Pakistan at Manchester airport on the same flight as his cousin Nawab. When stopped and searched, no drugs were found on Sultan Khan who made no admissions on interview and was released without charge. Later Sultan Khan was in Sheffield, at the home of a man named Bashforth. Police installed a listening device outside of this domestic property and neither Sultan Khan nor Mr Bashforth were aware of its

²¹ *R v Sultan Khan* [1997] AC 558.

presence. The police allegedly made an edited/unedited tape recording of a conversation which alleged that Khan made statements which allegedly amounted to an admission that he was a party to the importation of drugs by Nawab.

How do we know that Nawab had drugs on the aeroplane?

Was Sultan Khan known to police?

Had he already been under 'surveillance'?

To what purpose?

Does *Pakistan* produce *heroin* drug?

Or is *Afghanistan* where most of the poppies are grown from which they manufacture heroin, some of which is legally bought by other countries for medical use?

Was Nawab previously 'known to the police'?

Has there been a 'tip-off' to airport authorities?

How often has heroin been confiscated from incoming travellers at Manchester airport?

Exactly what do the records show about incoming flights from Pakistan to Manchester?

Arrest and Question

After questioning, Nawab allegedly admitted²² importing drugs and was duly charged, placed in custody, allowed a defence lawyer; taken through the court trial procedure, was tried and convicted. The case *R v Sultan Khan* raised issues of whether the evidence of the covert recording, whether edited or not, (because defence lawyers were not able to receive the raw recording and all its metadata had thus been lost), of Nawab *and Bashforth* was admissible in a criminal court and if admissible, whether it should have been excluded by the judge in the exercise of his discretion under common law and/or by section 78, Police and Criminal Evidence Law 1984.²³

²² Defence lawyers are not privy to the original tape recordings at interview but only to the typed alleged police station interview.

²³ Note that this very important section 78 PACE 1984 impacts of many areas of criminal law, namely: Admissions in criminal proceedings; duties of prosecutors; dealing with failures in disclosure; disclosure in heavy fraud and other complex criminal cases; disclosure in the Crown Court; discretion to exclude evidence under section 78 of Police and Criminal Evidence Act 1984; experts and expert reports; fingerprint evidence; hearsay evidence; identification evidence; interviews conducted by FCA investigators; legal professional privilege in criminal law: privilege and inter-jurisdictional issues; legal professional privilege: the crime-fraud exception and its application in criminal proceedings; Magistrates' courts: key stages in a trial; process of disclosure in the Crown Court; RIPA: surveillance; search of a premises on a warrant; search warrants: the information; waiver of legal professional privilege: criminal context; witness statements; competition regime: UK procedure, negotiation and enforcement; competition regime: UK criminal procedure, and negotiation and enforcement.

The evidence

It is not clear:-

- (1) Which persons took hold of the tape recordings first?
- (2) Whether they were presented in court and played whilst the defendant was there-on oath, ready for cross- examination;
- (3) Whether permission was obtained for that tape recording;
- (4) Whether the defence lawyers saw the judge's signature;
- (5) Whether defence lawyer diligently checked that the signature was not a forgery;
- (6) Whether diligently checked to ensure that the signature had been written on the day and time the warrant stated;
- (7) Whether checked where the judge was at that time and date that he signed the warrant;
- (8) Whether checked what was written in the application for a warrant;
- (9) How long the warrant lasted for in case of mistake or irregularity;
- (10) Whether checked what date and time exactly was the conversation allegedly made and taped;
- (11) Whether checked to discover exactly who Mr Bashforth was;
- (12) If *checked whether Sultan Khan was deceived, entrapped, enticed, or otherwise made to travel to Mr Bashforth's domestic premises;*
- (13) If checked whether Mr Bashforth had connections with the police;
- (14) If checked whether Mr Bashforth was bribed to do this thing;
- (15) If checked whether Mr Bashforth was a witness at Nawab's trial;
- (16) If checked whether Mr Bashforth was cross examined;
- (17) If checked whether defence lawyers were given a chance to have expert computer evidence and examination of this admission;
- (18) If checked to see if the covert surveillance tape recording had been edited;
- (19) If checked for voice forgery or forgeries;
- (19) If checked how much of the metadata has been lost, etc.

However, the judge admitted the intercept evidence and Sultan Khan was re-arraigned and pleaded guilty to being knowingly concerned in the fraudulent evasion of the prohibition on the importation of heroin.

Sultan Khan appealed and the Court of Appeal dismissed his appeal

Sultan Khan then took his case to the House of Lords, on the issue of his privacy rights. The police had obtained the evidence against the defendant by fixing a covert listening device at someone else's apartment, and allegedly recorded his conversations there. The defendant appealed, saying that the court should have regard to his rights of privacy as enshrined in articles 6 and 8 of the European Convention on Human Rights (ECHR).

Article 6 ECHR states:

'Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.'

Article 8 ECHR states:

“Article 8.

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

The House of Lords held that there is no right of privacy which is sufficient to justify the exclusion of evidence which had been obtained by electronic bugging of a private house. Sultan Khan then took his case to the European Court.²⁴ The ECtHR held that the deployment of a covert surveillance device in the absence of a statutory regime constituted a violation of Article 8(2) ECHR but that the use of the “evidence” covertly obtained did not constitute a violation of Article 6, the right to a fair trial.

Sultan Khan enjoyed a right of privacy in respect of the taped conversation. There is no such right of privacy in English law, and even if there were, evidence obtained improperly or even unlawfully, remained admissible, subject to *that judge's power to exclude or include it at his discretion*. If the circumstances in which the evidence was obtained amounted to an apparent invasion of rights of privacy under Article 8, then that was accordingly something to which the court must have regard.

Defence lawyers

Sultan Khan’s defence lawyers picked up on the matter of his privacy being breached but they missed completely the matter of the taped conversation and whether it was genuine; whether they called the other party in the recording to court to bear witness and be cross-examined; whether the tape recording was edited and by whom; and whether any genuine corroborating material was on the tape recording to prove its *metadata*, because one can

²⁴ *Sultan Khan v UK* (2001) 31 EHRR 45. Note that this court, formed by European communities act 1972, schedule 1, part II, has no jurisdiction to rule on the interpretation of provision of international law outside Community law. so cannot be appealed to after Brexit. See *Vandeweghe v Berufsgenossenschaft fur Die Chemische Industrie Heidelberg* (No 130/73 [1974 C.M.L.R.449]).

easily fudge a person's voice and cut and paste words together to say something that sounds completely different to what was actually said.

Metadata

Metadata is information about a sound effect beyond the audio and file name itself. In short, it is additional information that "enriches" the sound file.²⁵ If the sound file was interfered with the case should have been quashed and those who interfered with the evidence should have been immediately charged and prosecuted. Law enforcement should never be "a law unto itself" but it should rigorously follow the law to the letter, including their own behaviour. This material should all be secure in police storage and should now be retrievable today to be data mined.²⁶

What drug?

Who determined that an amount of alleged classified illicit drug found on Sultan Khan's relative was indeed heroin? What methodology was used? Was this challenged in court? This is not a fact but an assumed piece of evidence. Evidence is the means employed for the purpose of proving an unknown or disputed Fact. Evidence is either judicial or extra-judicial. Judicial evidence is that which is used on trials or inquiries before courts, judges, commissioners, or referees. Extra-judicial evidence is that which is used to satisfy private persons as to facts requiring proof. Derivative, unoriginal, transmitted, second-hand, or reported evidence is that which is brought from its source through an intermediate channel, as where a witness offers to prove a fact of the existence of which he has been informed by another person, or describes the condition of a thing or the contents of a document not produced; so a copy of a document is derivative evidence and is called hearsay.

The Privacy issue

Currently, privacy is a sweeping concept, encompassing freedom of thought, control over one's body, and solitude in one's home, control over information about oneself, freedom from surveillance, protection of one's reputation, and protection from searches and interrogations. What must be borne in mind when thinking about the meaning of privacy is

²⁵ See Paul Virostek, "An introduction to sound FX Metadata", Creative Field Recording, 2020.

See www.creativefieldrecording.com/. See Mason, S. (2016) *Electronic signatures in law*, London: Institute of Advanced Legal Studies.

²⁶ Data mining is the process of extracting useful knowledge from the huge volumes of data kept in modern computer databases. Sophisticated algorithms and statistical techniques are used to identify significant trends or patterns within complex data and to form predictive models.

that when we protect privacy, we protect against disruptions to certain practices. A privacy invasion interferes with the integrity of certain practices and even destroys or inhibits such practices. “Privacy” is a general term that refers to the practices we want to protect and to the protections against disruptions to these practices. Privacy does not have a universal value that is the same across all contexts. The value of privacy in a particular context depends upon the social importance of the practice of which it is a part. What does it mean when we say that these aspects of life are “private”? This question is very important for making legal and policy decisions. Many recognize the importance of privacy for freedom, democracy, social welfare, individual well-being, and other ends. Many also assert it is worth protecting at significant cost. Society’s commitment to privacy often entails restraining or even sacrificing interests of substantial importance, such as freedom of speech and press, efficient law enforcement and access to information.

The word “privacy”

The use of the word “privacy” constitutes the ways in which we employ the word in everyday life and the things we are referring to when we speak of “privacy.” The word “privacy” is currently used to describe a myriad of different things:- freedom of thought, control over personal information, freedom from surveillance, protection of one’s reputation, protection from invasions into one’s home, the ability to prevent disclosure of facts about oneself, and an almost endless series of other things. However, most people fail to understand how privacy should be valued vis-à-vis other interests, such as free speech, effective law enforcement, and other important values.

As the UK has no privacy law, let us look to the US to see how their law treats privacy. In *Olmstead v United States*²⁷ the Court held that wiretapping was not a violation under the Fourth Amendment because it was not a physical trespass into the home. However, in 1967, the US federal court swept away this view in *Katz v United States*,²⁸ holding that the Fourth Amendment did apply to wiretapping. In *California v Greenwood*, the court held that there is no reasonable expectation of privacy in garbage because it is knowingly exposed to the public. In *Florida v Riley*²⁹ the Court held that the Fourth Amendment did not apply to

²⁷ 277 US 438 (1928).

²⁸ 389 US 347. Although the surveillance in this case may have been so narrowly circumscribed that it could constitutionally have been authorized in advance, it was not in fact conducted pursuant to the warrant procedure which is a constitutional precondition of such electronic surveillance. pp 354-359.

²⁹ 488 US 445 (1989). This was a United States Supreme Court decision which held that police officials do not need a warrant to observe an individual's property from public airspace.

surveillance of a person's property from an aircraft flying in navigable airspace because the surveillance was conducted from a public vantage point.³⁰

The fact that the UK's tape recording in *R v Sultan Khan* was between two persons, can illustrate that privacy cannot be pleaded here since a person other than Khan had rights to the conversation, as illustrated by the US case, *Haynes v Alfred A .Knopf Inc.* The *Knopf* case involved Nicholas Lemann's book about the social and political history of African Americans who migrated from the South to northern cities. The book chronicled the life of Ruby Lee Daniels, who suffered greatly from her former husband Luther Haynes's alcoholism, selfishness, and irresponsible conduct.

US Public Disclosure of Private Acts Tort

Haynes sued the author and the publisher under the "public disclosure of private facts tort", claiming that he had long since turned his life around and that the disclosure of his past destroyed the new life he had worked so hard to construct.

Judge Posner, writing for the panel, concluded that there could be no liability for invasion of privacy because a person does not have a legally protected right to a reputation based on the concealment of the truth and because the book narrated a story not only of legitimate public interest, but of transcendent public interest. Although it did not hinge on the shared nature of the information, this case illustrates that personal information rarely belongs to just one individual; it is often formed in relationships with others. Ruby Daniels's story was deeply interwoven with Haynes's story. Daniels had a right to speak about her own past, to have her story told. This was also her life story, not just Luther Haynes's. As early as 1891, the US court articulated this concept in *Union Pacific Railway Co. v Botsford*.³¹

In holding that a court could not compel a plaintiff in a civil action to submit to a surgical examination, the court declared the sanctity of the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.

Interception of communication

The United States youth have the fewest rights, protections, and services. The Youth Initiative works with youth and local, state, and national partners, as well as federal agencies,

³⁰ Ramage, S. (2007) *Privacy*, New York: iUniverse.

³¹ 141 US 250. The single question presented by this record was whether, in a civil action for an injury to the person, the court, on application of the defendant, and in advance of the trial, may order the plaintiff, without his or her consent, to submit to a surgical examination as to the extent of the injury sued for.

to increase young victims' access to critical services. The Initiative's National Youth Advisory Council and youth-led community change projects work to ensure that young people have a voice on these issues.

This was treated as a breach of privacy. As early as 1886, in *Boyd v United States*³², the US court strictly protected the sanctity of a man's home. The maxim in the US that "*the home is a person's castle*" appeared as early as the year 1499.

Semayne's Case

The first recorded case in which this notion was mentioned was *Semayne's Case*.³³

In the Eighteenth Century, William Blackstone declared that the law has "*so particular and tender a regard to the immunity of a man's house that it stiles it his castle, and will never suffer it to be violated with impunity.*"³⁴

However, today's Information Age often involves exchanging information with third parties, such as phone companies, Internet Service Providers, cable companies, retailers, and so on. Therefore, clinging to the ancient notion of privacy as related in the previous paragraph would mean the practical extinction of privacy in today's world.

A certain degree of accessibility of information

In contrast to the notion of privacy as secrecy, privacy can be understood as an expectation in a certain degree of accessibility of information. Biometric technologies are changing society and the European Commission's Report of February 2007 into the impact of the then new technologies, concluded that the burgeoning information society brings with it the need for us to be able to securely identify ourselves quickly and remotely and therefore we need the inevitable implementation of biometric technologies to increase national security, and as a tool to help prevent fraud.³⁵

UK's idea of the law of privacy

Ill-thought-through and alarmist articles about 'interception of communications' and 'breach of privacy' in the UK show that the UK, in 2007, the time of the Sultan Khan, was lagging behind other countries where "intercepting communications" is concerned.

³² 389 US 347 (1967) Petitioner was convicted under an indictment charging him with transmitting wagering information by telephone across state lines in violation of 18 USC 1084.

³³ 77 Eng. Rep. 194, 195 (K.B. 1604)

³⁴ Blackstone, W. (1769) *Commentaries on the Laws of England*.

³⁵ "Privacy & prejudice: whose ID is it anyway?" *New Scientist*, pg 20, 17 September 2005.

It is to be noted that, in the US at that time, more than three million customers regularly paid for goods and services just by scanning their fingers and punching in a Personal Identification Number (PIN) instead of using a credit or debit card. In Japan, more than two million people in 2007 were using contact-less palm-scanners to withdraw cash from a bank cash-point.

Technology today

Many laptop computers now have built-in finger scanners. There are now biometric front door locks, garage doors and safes, proving that this is not a ‘big brother’ technology but that we are in the information age.

*In U.S. West, Inc. v. Federal Communications Commission*³⁶, a telecommunications carrier challenged the privacy regulations of the Federal Communications Commission (“FCC”), which restricted the use and disclosure of customers’ personal information unless the customers gave their consent.

The court stated that:

“A general level of discomfort from knowing that people can readily access information about us does not necessarily rise to the level of a substantial state interest, for it is not based on an identified harm. Our names, addresses, types of cars we own, and so on are not intimate facts about our existence, certainly not equivalent to our deeply held secrets or carefully guarded diary entries. In cyberspace, most of our relationships are more like business transactions than intimate interpersonal relationships.”

In the public interest

In the UK today, if recordings are secret, they are still inadmissible in civil cases, as per *Chairman and Governors of Amwell School v Dogherty, Employment Appeal Tribunal*.³⁷ It was decided that unauthorized recordings made by a claimant, of the private deliberations of her employer’s disciplinary hearing panel, should not be admitted as evidence in support of her unfair dismissal claim at an employment tribunal, on the grounds of public policy.

Mr Recorder Luba, QC, said that there was an important public interest in parties before disciplinary proceedings complying with the ground rules on which the proceedings were

³⁶ *No. 98-9518, 18TH August 1999*. The dispute in this case involved regulations the FCC promulgated to implement provisions of 47 U.S.C. § 222. Section 222(d) provides three additional exceptions to the privacy requirements.

³⁷ *Times, 5th October 2006*.

based and that no ground rule could be more essential to ensuring a full and frank exchange of views than the understanding that their deliberations would be conducted in private. This is a valid argument that the Member of Parliament can use to state that his privacy had been breached.

The Employment Appeal Tribunal case as stated in the previous paragraph is a far cry from the criminal case *R v Sultan Khan*, a serious criminal case of alleged drug trafficking. The criminal offence of “possession with intent to supply” is determined in the Misuse of Drugs Act 1971, section 5(3) and carries life imprisonment and/or fine in relation to class A drugs. The two situations are incomparable.

Also, the UK Regulation of Investigatory Powers Act (RIPA) 2005 contains far reaching powers on telecommunications interception and a decryption order relationship between less privacy and more security. The UK Terrorism Act 2000 enables the police to carry out surveillance to prevent terrorism.

The United States Patriot Act 2001 (extended)

It is of note that the United States’ Patriot Act 2001 allows:

- *A nationwide search warrant, for electronic evidence (ie wire, oral or electronic communications, or stored in a remote computer service, as described by the Federal wiretap law).
- *Nationwide authorizations are obtainable.
- *Delayed notice of a search warrant is allowed.
- *Government agencies share information.
- *The Patriot Act provides for immunity defences for Internet Service Providers when ISPs comply with surveillance and disclosure orders, enabling the government to intercept communications of “computer trespassers”.
- * Voicemails may be seized via search warrants.
- *There can be sharing of intercepted information between agencies.
- * Voluntary emergency disclosure of the contents of subscriber communications and records by an ISP.
- *Mandatory disclosure pursuant to a court order or warrant.
- * Under the US Foreign Intelligence Surveillance Act, there can be multi-point wiretaps.

Legal Professional Privilege

All criminal justice systems hold the primary objective: to bring guilty persons to justice. Within such systems, however, there are a number of conflicting needs, aims and concerns which may limit the system's ability to achieve its overall goal.

Two particular conflicting interests which exist in the criminal justice systems of both Ireland and England and Wales are the detection, investigation and punishment of crime and criminals on the one hand, and the need to uphold, protect and respect individual rights on the other. These are two legitimate aims of the criminal justice system, yet they conflict and compete for priority therein.

Perhaps the greatest period of apparent conflict between these two aims is the pre-trial period of detention. This is the first time in the criminal process that the individual meets with the power of the state and the legal restriction of his rights by state actors. For police, this is an important time for investigating the offence and obtaining evidence, both real evidence and in the form of statements or confessions. For the individual, it is a time of threat to his personal rights such as his right to liberty and his right to privacy. The doctrine of 'legal professional privilege' makes it illegal to tape record the conversation between a solicitor and his client. The case must be quashed if this occurs.

Lord Chief Justice Taylor of Gosforth in *R v Derby Magistrates Court, ex parte B*³⁸ said:

'Legal professional privilege is... much more than an ordinary rule of evidence, limited in its application to the facts of the particular case. It is a fundamental condition on which the administration of justice as a whole rests.'

In the covert surveillance of a Member of Parliament (MP) and his constituent during a prison visit to the MP's constituent, legal professional privilege did not apply because the MP is not the prisoner's solicitor. However, it can be argued that the MP's visit might have facilitated a very suitable solicitor for the prisoner, after they had discussed the prisoner's situation, indicted in the United States for running a website which allegedly encouraged terrorism.

³⁸ *R v Derby Magistrates Court ex parte B* [1996] AC 487, 507.

In this respect, *Golder v UK*³⁹ is a relevant case as the MP's rights, per Article 8, were violated when actions by prison officers stopped him from instructing a solicitor to sue the authorities. In this regard, it can be argued that the tape recording of Mr Ahmed and his MP was an effort by the police to obtain evidence enough to disrupt measures to stop the extradition to the US.

This surveillance would be illegal if the tape recording was between the prisoner and his representative solicitor, rather than between the prisoner and his solicitor/MP, as was the case. Legal professional privilege is also granted absolutely to documents⁴⁰ between a client and his solicitor, especially when the client is in prison.

It is hypocritical that the UK has abused this privilege as regards solicitor-prisoner client communications⁴¹ when the UK made reservations to the Convention of Mutual Legal Assistance, these being, the reservation of the right to refuse to assist if the person concerned has already been convicted or acquitted of an offence based on the relevant conduct in the United Kingdom or in a third state. The UK reserved, in respect of Article 3⁴² the right not to take evidence or gather other material *in the face of a privilege and absence of compellability*. Legal Professional Privilege documents are classed as privileged whether or not litigation is pending. Communications between a party and his legal advisors are not to be disclosed when they are for the purpose of obtaining legal advice. This same privilege applies to communications between a solicitor employed by a party and the party itself and instructions to counsel.

³⁹ (1975) ECtHR A 18 (1975), I EHRR 524, ECtHR.

⁴⁰ For example, privilege in a document sent by defendants to a financial regulator in the course of investigation has the defence of absolute privilege applying to it. This was the decision in the case *Mahon and another v Rahn and others*. In 1990, the Securities Association was conducting inquiries into a stock broking firm and sought information from the defendant bankers. The bankers provided certain information in the form of a letter to The Securities Association (TSA), copied to the UK Serious Fraud Office (SFO). The SFO unsuccessfully brought criminal charges against the stockbroking firm, who subsequently brought libel proceedings against the bank. It was held that the letter had been published on an occasion of absolute privilege; *Taylor v Serious Fraud Office* considered.

⁴¹ The Times newspaper article stated that conversations between prisoners and their solicitors are being routinely tape recorded in prison.

⁴² Article 3 of the European Convention on Mutual Assistance in Criminal Matters states:

(1) The requested Party shall execute in the manner provided for by its law, any letter rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.

(2) If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request and the requested Party shall comply with the request if the law of its country does not prohibit it.

(3) The requested Party may transmit certified copies or certified Photostat copies of records or documents requested, unless the requesting Party expressly requests the transmission of originals, in which case the requested Party shall make every effort to comply with the request.

An example of this is the case of *R v Manchester Crown Court*⁴³. If substantial harm would be caused by disclosure, disclosure would not be allowed as in the case of *R v Chief Constable of West Midlands Police, ex parte Wiley*.⁴⁴

However, such documents are privileged only when litigation is contemplated or pending. All communications between a party's lawyers and a third party, which came into existence with a view to litigation (even if that litigation has not yet been commenced), are privileged.

Correspondence between solicitor and expert witness

The correspondence between a solicitor and an expert witness who has an advisory capacity, are privileged, as are "expert reports" obtained for this purpose. Such communications between the party itself and a third party, including another expert witness, are also privileged. The general rule is that where the dominant purpose of a document was to obtain assistance for a prospective legal action, the document will be privileged.

Other privileged documents are "*without prejudice*" communications, the purpose of which documents is to enable the parties to negotiate without the risk that their proposals will weigh against them if negotiations fail.

Accordingly, letters offering settlement, or even suggested negotiations, are not to be disclosed, and if the negotiations result in a binding agreement between the parties, then the parties must rely on the documents concerned as evidence of the settlement. However, if the document merely states "*without prejudice*" and it is not about settlement, then it is not privileged, notwithstanding it contains the words "*without prejudice*".

The privilege of "*without prejudice*" documents can be waived but it must be waived by both parties to the negotiations. The principle behind legal professional privilege is the importance of a party of being able to consult its lawyers in confidence and in the knowledge that whatever a party tells his lawyers will not be revealed without its consent.⁴⁵

Legal Professional Privilege can be over-ridden if a document came into existence in pursuance of fraud or crime.⁴⁶ In addition, if a privileged communication is in itself a material fact in proceedings, it will not be privileged.⁴⁷ If privilege is waived by a party, then it is also lost, but the privilege is that of the party and not that of his legal advisor so that privilege can only be waived by the party itself. This is not to be confused with sensitive

⁴³ *R v Manchester Crown Court, ex parte Rogers* [1999] 1 WLR 832, DC

⁴⁴ *R v Chief Constable of West Midlands Police, ex parte Wiley* [1995] 1 AC 274, 281, HL

⁴⁵ *R v Derby Magistrates Court, ex parte B* [1996] AC 487, HL

⁴⁶ *Banque Keyser Ullman SA v Skandia (UK) Insurance Co Ltd* [1986] 1 Lloyd's Report 336, CA

⁴⁷ *Conlon v Conlon Ltd* [1952] 2 All ER 462, CA.

documents. Article 9 of the ECHR deals with sensitive documents which are defined as documents, classified as top secret, secret or confidential in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its member states in the areas of public security, defence and military matters.

The MP, discussed in this article, may have had his emails intercepted in order to discover when he would be attending the prison, his phone calls intercepted, in order to discover contacts he made on behalf of the prisoner. Today, the subject of covert information is still an urgent and divisive issue in the United Kingdom. Admission by the police of widespread “bugging” of *legal privilege conversations between prisoners and their solicitors*- (see⁴⁸ “Jail bugging is routine across UK”).⁴⁹

Member of Parliament -a special professional person

The prisoner, Ahmed was visited by his MP and the conversation was illegally tape-recorded by police. Ahmed was indicted in Connecticut, USA in 2004, for allegedly running several Web sites, including www.Azzam.com/ were those that investigators claimed were used to recruit members for al-Qaida, Chechen rebels and the Taliban in Afghanistan.

Ahmed remained in custody at Long Lartin⁵⁰, Worcestershire, awaiting a decision on whether the European Court of Human Rights will hear an appeal against his extradition to the United States. He faced life in prison if found guilty of the terrorism charges in the United States.

It is important to note that the bugging at that time of the UK’s MP which issue had caused national outrage in the United Kingdom, took place despite the Covert Surveillance Codes of Practice.⁵¹

The bugging apparently had not breached the Codes of Practice for surveillance because a Chief Constable or Commissioner of a police force gave the required authority for that

⁴⁸ See also Press Association, 9.1.2008; “Brown gives the go-ahead for bugging”, *The Independent*, 6.2.2008; “Muslims concerned about bugging UK MP”, *Mathaba News Network*, 10.2.2008. See Editor, “Row deepens over bugged MP”, *CNN.com*, 9.2.2008.

⁴⁹ Former Detective Sgt. Mark Kearney said he was ordered to secretly tape conversations between Labour lawmaker Sadiq Khan and Babar Ahmad, a childhood friend facing extradition to the United States on terrorism charges. Kearney said he came under significant pressure from the Metropolitan Police to put the visit under surveillance, according to a court statement from his lawyers sent to the British Broadcasting Corp.

⁵⁰ The same Long Lartin Prison where Dr Vincent Tabak was held in custody (2011) and where an alleged “chaplain” drew a “confession” from Tabak.

⁵¹ The Codes of Practice are available on-line from the following websites:

“Covert Surveillance Code of Practice” at <http://www.homeoffice.gov.uk/docs3/surveillcodeofpractice.doc>;

“CHIS Code of Practice” at <http://www.homeoffice.gov.uk/docs3/chiscodeofpractice.doc>;

“Interception Code of Practice” at <http://www.homeoffice.gov.uk/docs/ioccp.html>;

“NIM Code of Practice” at http://www.policereform.gov.uk/nim_codeprac.html.

intrusive surveillance, as may the Director General of the Serious Organised Crime Agency,⁵² the Chief Constable and Deputy Chief Constable of the Police Service of Northern Ireland, any Assistant Commissioner of the Metropolitan Police, a designated senior officer of HM Customs and Excise, a Provost Marshal in the Army, Royal Air Force or Royal Navy. Such authorization only lasts for three months but can be renewed and should be reviewed at monthly intervals or whenever there is a material change in the circumstances affecting the validity of the authority. This covert tape recording of one of the United Kingdom's Members of Parliament may have breached the MP's right to privacy, Article 8 Human Rights Act 1998 in that, although this tape recording intended to gather information about the prisoner Ahmed, to listen to what the MP tells his constituent must involve watching the MP in order to observe his movements as he travelled to the prison and to listen to other conversations of his and so might have violated this MP's right to privacy.

Legality of covert surveillance

The principle of legality is satisfied by statute, delegated legislation, common law and European Community law. However, legality is not satisfied by "closing the stable door after the horse has bolted" as occurred recently in the Ahmed prisoner and his MP's police taped conversation because the UK government announced, after the fact, that such tape recordings will become legal. See "Brown gives go ahead for bugging"⁵³, Independent Newspaper, 6th February 2008.

Covert interception in breach of privacy, fair or foul?

Finally, there is one important fact to ponder as regards covert surveillance in English law. Section 78 of Police and Criminal Evidence Act ensures that a court is competent to consider whether or not, in the interest of ensuring a fair trial, evidence obtained by unlawful covert investigation should be adduced. However, this "case by case" consideration process was not intended for a full-scale unofficial policy of systematic police covert surveillance in prisons and domestic buildings and by bugging motor vehicles. Such systematic, unofficial, undocumented, casual policy of covert surveillance of prisoners in prison falls foul of

⁵² Now the National Crime Agency.

⁵³ The article began thus: "Prime Minister Gordon Brown paved the way today for some evidence gained from the bugging of suspects to be used in court - provided detailed safeguards are met. He announced that he plans to go ahead with the move, as long as nine detailed conditions laid out in a review by Whitehall mandarin Sir John Chilcot can be met..." Gordon Brown should have "stuck to the knitting" as they say in Business Administration Masters' University Degrees. He should have stayed with his subject, economics. Instead, he let the covert surveillance genie out of the bottle...

“legality”, as defined above. Covert surveillance in England, Wales or Northern Ireland, in all its aspects, is unfair in all circumstances, unless there is absolute transparency.

Criminal intent or strict liability?

Alec Samuels

The criminal law is of fundamental importance to the citizen, because of the risk to the citizen of loss of reputation, loss of social standing, and potential criminal sanctions such as loss of liberty. Therefore the criminal law should be intelligible, clear, certain, predictable and just. Therefore one would expect that whether an offence requires criminal intent or is one of strict liability without regard to criminal intent would be clear in the definition beyond argument. Unfortunately the law is not clear, the statute does not say into which category the offence falls, and the issue repeatedly comes before the courts, including the Supreme Court and the Privy Council. The latest example is *Nurse v Republic of Trinidad and Tobago* [2019] UKPC 43, [2020] 2 WLR 131, paras 2 and 18-54. It cannot be acceptable that the problem repeatedly comes before the courts in individual cases, and the Supreme Court is repeatedly called upon to give guidance, and indeed an answer in the specific case.

As one would expect, there are a significant number of common law general principles in the criminal law, and principles of statutory interpretation, to be applied.

Subjective criminal intent

The arguments for the requirement of subjective criminal intent run along the following lines: There is a presumption, indeed a strong presumption, that subjective criminal intent is required, unless the statute expressly or necessarily implicitly says to the contrary.

The offending act is manifestly morally blameworthy. The juror and the judge would say that the act was seriously and truly criminal in character.

The statute uses the word “knowingly”, which must mean with subjective criminal intent.

The accused is proved to have actual knowledge of the facts, awareness of the facts, a belief in the criminality of his act, and therefore should be convicted. His plea that he was unaware that his suitcase contained a false bottom hiding unlawful drugs is unconvincing.

It would be seen as unfair and unjust for the accused to be convicted for what he did without any reference to what he knew and what he intended.

The criminal sanctions are potentially severe and therefore subjective criminal intent is surely required, because of the risk to liberty (para 34).

Parliament could not have intended anything less than subjective criminal intent in this situation. Reference to Hansard and the passage of the Bill may be justified where there is ambiguity, but such a complicated procedure is to be deprecated in a busy Crown Court. If there is any doubt as to what the prosecution is required to prove the benefit of any doubt goes to the accused.

The landlord let his house to a tenant, took up references, all seemed normal. However the tenant used the premises for prostitution and drug dealing, and the landlord was prosecuted. He said he had not known what was going on and had no reason for suspicion. Not guilty *Sweet v Parsley* [1970] AC 132.

Strict liability

The prosecution argue that no subjective criminal intent is required, the offence is one of strict liability: The word “knowingly” does not appear in the statute.

The offence is a regulatory offence, one involving public safety or social well-being, which must override the absence of subjective criminal intent. Examples include the collection of tax and the protection of environment from pollution.

Everybody knows that the offence is strict, it is common knowledge.

In business the businessman must be taken to be aware of the risks of abuse or error and must take particular care and diligence and vigilance to prevent the risk occurring. The lorry driver returning from the continent knows of the risk of illegal immigrants hiding in his lorry, and he must simply make sure that it does not happen. He could do more to prevent the abuse. The container importer knows of the risk of drug smuggling and other smuggling and must make sure that there is a proper system for checking documentation and contents, so that smuggling does not happen. It is just too easy for the importer to say that everything looked to be normal and lawful and there was no reason to be suspicious. Ignorance can be easily pleaded; but ignorance of the law and also the proper manner in which to conduct a business is no defence.

A regulatory system often relies heavily upon the accuracy and reliability and honesty of the businessman and his staff, self-certification in customs procedures and similar activity, and therefore it is not unreasonable to expect him to make sure that all the rules and regulations are properly and fully complied with (para 36). The staff and the agents must be carefully selected, trained, supervised.

There must be justice to the accused, but the state is entitled to expect and require conformity and compliance with the regulatory rules, and there may as a consequence be some “luckless victims”. Importers know the risks of smuggling by third parties.

A severe potential criminal sanction may indicate the seriousness with which Parliament takes the matter, and this justifies strict liability and does not require subjective criminal sanction. The public interest on occasion overrides the private interests (paras 34-36).

Furthermore when it comes to sentencing the judge can take all or any mitigating factors into account, in accordance with the Sentencing Guidelines and in the exercise of his judicial discretion.

A classic situation is sexual activity with the under-age girl, under 13. He says that he believed her to be over 13, she said she was over 16; she looked and behaved as though she was over 16, and accordingly consensual sexual activity was lawful. The law says, and it is really ultimately a matter of policy, that the protection of girls under 13 is socially so important that the man must make doubly sure that she is in fact over 13. Her protection is more important than his criminal liability *R v G* [2009] AC 92 and *Nurse* [2019] UKPC 43, para 46. Sexual Offences Act 2003 s 6. If the girl is 13-16 he has the defence of reasonable belief that she was 16 or over.

Solution

It may seem naïve, but the statutory law could quite easily accommodate the problem. The offence creating statute could expressly and explicitly say that the offence requires proof of subjective criminal intent. Or could say that the offence is one of strict liability. A code of the general principles in the criminal law could expressly deal with the problem. There could be statutory guidelines to indicate which side of the line the offence falls. The judge could issue guidelines. Though express statutory provision would be preferable to guidelines.

Financial Crime: Global market manipulation

Diana Johnson⁵⁴

Keywords

China; currency manipulation; demand; exchange rate policies; financial crime; financial crisis; Forex; global money market; Libor; purchasing power; Renminbi ; UK; US.

Introduction

On 13th January 2020, the United States (US) Department of the Treasury formally dropped its designation of China as a ‘currency manipulator’. The timing of the removal of this designation by the US appears to have been a concession to the Chinese government as Chinese officials arrived in the US to sign a trade agreement with US President Donald Trump. This article examines how concerned the United Kingdom (UK) should be about currency manipulation by other nation states. The article will also look at how the UK views financial crime and about the significant impact it has on individuals and the economy.

Financial crime

There is no single internationally-recognised definition of ‘financial crime’. However, the definition of ‘financial crime’ used by Interpol⁵⁵ is a useful starting point.

Interpol states:

*“Financial crime ranges from basic theft or fraud committed by ill-intentioned individuals to large-scale operations masterminded by organized criminals with a foot on every continent.”*⁵⁶

Financial crime, in English law, is not regarded as being as serious or dangerous as crimes such as murder or robbery or terrorism. Yet financial crime carries a high financial cost to the economy of countries affected by it and to individual citizens. For instance, the most recent global financial crisis, the financial crisis of years 2007-8 was associated with several instances of market manipulation including both the London Inter-Bank Offered

⁵⁴ Senior Lecturer at Bristol Law School, University of the West of England. SRA: ID Number 29987.

⁵⁵ Interpol is the International Criminal Police Organisation. It is an inter-governmental organisation with over 194 member countries and it helps police in each country to work together to make the world a safer place.

⁵⁶ See <https://www.interpol.int/en/Crimes/Financial-crime>.

Rate (LIBOR) and the Foreign Exchange Market (FOREX) scandals⁵⁷ which affected thousands of consumers who had mortgages,⁵⁸ personal loans and other financial contracts pegged to these benchmark rates.

Chinese currency manipulation

China was first designated a ‘currency manipulator’ by the Secretary of the US Department of the Treasury, Secretary Mnuchin, on 5th August 2019. China’s official currency is the Renminbi (RNB). The normal method used by countries such as China to manipulate their own currency is for them to sell large amounts of their currency on the financial markets and buy foreign currency, normally US dollars. By doing this, the manipulating country reduces the demand for its own currency, which will weaken it on the financial markets, whilst increasing the demand for the currency it has purchased.

US legislation on trade and fair competition

US legislation, specifically the Omnibus Trade and Competitiveness Act of 1988⁵⁹ requires the Secretary of the Treasury to analyse the exchange rate policies of countries which the US had a trading relationship with. The US Trade Facilitation and Trade Enforcement Act 2015 also calls for the US Secretary of the Treasury to monitor the currency policies of major trading partners and conduct enhanced analysis of and engagement with those partners if they trigger certain objective criteria that provide insight into possibly unfair currency practices. The aim of this ongoing US analysis is to identify countries who manipulate the rate of exchange between their currency and the United States dollar to gain an unfair competitive advantage in international trade. The US argues that by these Acts the US Trade Representative has been able to investigate other countries’ practices and policies and is then able to impose restrictions on the importation of goods from such countries and also restrict entering into binding agreements with them, creating an enforced mechanism which threatens to create compliance with the legal rights of the US. Others view this as protectionist and a potential violation of international law.

⁵⁷ FOREX is a global decentralized or over-the-counter (OTC) market for the trading of currencies. This market determines foreign exchange rates for every currency. It includes all aspects of buying, selling and exchanging currencies at current or determined prices.

⁵⁸ This financial crisis is believed to have originated in the US subprime mortgage market where subprime loans were aimed at high-risk borrowers with typically poor credit histories. See Edmunds, T, Jarrett, T., and Woodhouse, J., “Credit-crunch timeline”, House of Commons Library, 2010.

⁵⁹ Section 3004 of this Act states that the Secretary of the US Treasury must “consider whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing *effective balance of payments adjustments or gaining unfair competitive advantage in international trade.*”

US 2020 Treasury Report

In its January 2020 Report on Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States (Treasury Report), the US Department of the Treasury stated that “*China has made enforceable commitments to refrain from competitive devaluation, while promoting transparency and accountability*”⁶⁰ The fact that the declassification of China as a currency manipulator came in the same month that the US and China signed a trade deal suggests a political motive for the declassification. However, China remains on the US Treasury’s ‘monitoring list’ as it carries out one or more potentially anti-competitive trade practices.

Significance of currency manipulation to the UK

The financial markets of the UK are linked with and affected by fluctuations on the global money markets. China is a trading partner of the UK, so that any manipulation of its currency will directly affect the UK’s economy. The incentive China has for manipulating its currency is to give it a competitive advantage when buying or selling its goods abroad. When the value of a country’s currency is strong, that country will have more purchasing power abroad, but its exports will also be relatively expensive for other countries to purchase, which may reduce the available purchasers of those products. Conversely, when a currency is weaker than normal, which will include when a country has devalued its currency, its exports are relatively cheap for overseas purchasers, which is likely to boost national exports and increase the country’s income.

The US had accused China of manipulating its currency by weakening it over a period of time in order to spur its economic development. The US has a particular interest in the manipulation of China’s currency because it has a direct impact on the amount of products the US is able to sell to China, with any decrease in US sales negatively affecting the US economy. Any Chinese currency devaluation will have a similar impact on UK exports to China which, like those of the US to China, will be reduced, due to their relatively higher cost.

Currency manipulation is a widespread financial crime, with many other countries manipulating their currencies in order to boost their economic outputs. According to the Treasury Report, the US is closely watching nine of its major trading partners, each of whom

⁶⁰ See page 4. See <https://home.treasury.gov/system/files/136/20200113-Jan-2020-FX-Report-FINAL.pdf>

have met two of the three criteria of unfair trading practices applied by the US (which include currency manipulation) and are stated to be on the US' monitoring list. The nine countries being monitored by the US at present are China, Japan, Korea, Germany, Italy, Ireland, Switzerland, Singapore, Malaysia, and Vietnam.⁶¹

The impact of financial crime on the UK

As stated above, due to the global nature of financial markets and the international nature of the UK's trading partners, the UK is exposed to the impact of international countries who engage in currency manipulation. Previous significant instances of financial crimes which affected the US, UK and the rest of the world include market manipulation and banking practices that contributed to the most recent financial crisis in 2007-8, the impact of which lasted for many years. Before then, global financial crises included the US Wall Street Crash of 1929 and the US Savings and Loans (S&L) scandal.

Conclusion

Post-Brexit, the UK is likely to become more exposed to the financial crimes of currency and benchmark rate manipulation as it is set to enter new international trade agreements. International financial crime should not be ignored because the damage caused by the abuse of financial markets may subsequently contribute to future financial crises as well as undermining confidence in a country's financial system, with subsequent wide-reaching, detrimental impact.

ENDS+

⁶¹ "Once on the Monitoring List, an economy will remain there for at least two consecutive Reports to help ensure that any improvement in performance versus the criteria is durable and is not due to temporary factors. As a further measure, this Administration will add and retain on the Monitoring List any major trading partner that accounts for a large and disproportionate share of the overall U.S. trade deficit even if that economy has not met two of the three criteria from the 2015 Act. In this Report, in addition to China, the Monitoring List comprises Japan, Korea, Germany, Italy, Ireland, Singapore, Malaysia, Vietnam, and Switzerland, the latter being added to the Monitoring List in this Report." See page 5, US Treasury Report, Feb.2020.

CHILDREN'S RIGHTS

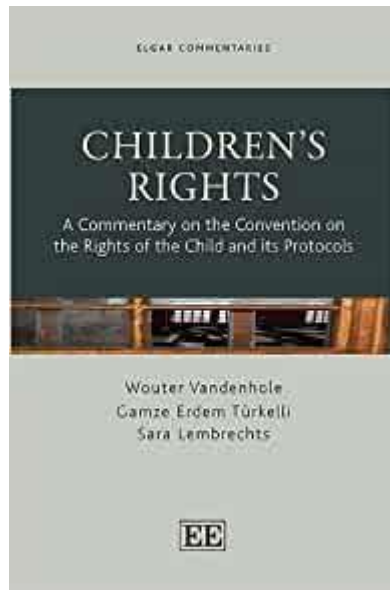
A commentary on the Convention of the Child and its Protocols

Wouter Vandenhole, Gamze Erdem Turkelli, and Sara Lambrechts

Edward Elgar (December 2019)

ISBN 978 1 78643 312 1 (cased)

ISBN 978 1 78643 313 8 (eBook)⁶²



A glorious book such as this book should have been written many years ago, and Edward Elgar Commentaries series is to be highly recommended. CHILDREN'S RIGHTS has been treated as our current statutes are, in respect of explanations: section by section. These explanations are not called annotations but rather commentaries. They follow the United Nations Convention article by article.

There is a Contents list of the 54 Articles of the United Nations Convention on the Rights of the Child and its three optional protocols. This is followed by an extended Table of Contents, which is very useful for going to the particular topic you need when using this Children's Rights commentaries as a reference book. It contains an impressive index, in keeping with the volume of 518 pages of legal writings.

⁶² The eBook version of CHILDREN'S RIGHTS is priced from £22/\$31 from [Google Play](#), [ebooks.com](#) and other eBook vendors, while in print the book can be ordered from the [Edward Elgar Publishing website](#).

In the first part of this book is contained the useful abbreviations table, foreword, and a beautifully and meticulously prepared table of cases, divided into segments including cases from the European Committee of Social Rights, cases from the European Court of Human Rights, cases from the Inter-American Court of Human Rights, the few cases from the International Criminal Court and the United Nations HCR, followed by national caselaw of Belgium, Canada, India, Italy, South Africa, one case from the United Kingdom and two cases from the USA. In this way, it speaks for itself.

Edward Elgar Law Publishers must be praised also for the meticulous arrangement of the Table of Legislation that follows- for its fine presentation and painstaking attention to every detail.

I do like the way that the commentaries flow with such ease of diction. Each Chapter is dedicated to a single Article, with the nice touch of the first page for each article's chapter showing a helpful and precise summary of its contents. I just love it, and with crisp footnotes in each chapter for each article, one feels at home in this book.

The UNCRC has, as its background to the furtherance of protecting children by laying out its aims in this connection, the following agreements which came before the year 1989:

*1986 UN General Assembly Declaration on Social and Legal Protection and Welfare of Children with special reference to Foster Placement and Adoption nationally and internationally.

* 1924 Geneva Declaration of the Rights of the Child, adopted in 1959.

* 1966 International Covenant on Civil and Political Rights, adopted in 1976.

*1966 International Covenant on Economic, Social and Cultural Rights, adopted in 1976.

*1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption nationally and internationally, adopted in 1987.

* 1984 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, aka The Beijing Rules, adopted in 1985.

* 1984 Declaration on the Protection of Women and Children in Emergency and Armed Conflict, adopted in 1984.

The Declaration of the Rights of the Child states urgently that:

“[t]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well

as after birth. Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration, Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries...”

Every country in the world except United States

The 1991 United Nations Convention on the Rights of the Child (UNCRC) has been ratified by every country in the world, except the United States of America. With regard to the United Kingdom (and to every country which has not incorporated the UNCRC into its country's laws, the UNCRC there has no real force, as is the case in the jurisdictions of England, Wales, and Northern Ireland even though the United Kingdom ratified the 1989 United Nations Convention on the Rights of the Child (UNCRC) in 1991. This is because the UK government, from the time it became a Member State of the European Economic Community, until the present time when it finally cuts its legal ties from the European Union, needed only to comply with its own statutes and all European Directive notices to change its laws regarding an issue.

Scotland intends to incorporate the UNCRC into its laws

So, although the UK ratified the UNCRC in 1991, it failed to incorporate the UNCRC into English law and so many of the protections contained within the UNCRC have not been accessible to children and young people in the UK. UK legislation never mentions the UNCRC. However, inspection of UK legislation has found that there are some statutes, in recent years that nod to the UNCRC—such legislation as Children & Young People (Scotland) Act 2014. Scotland, however, even though presently in the United Kingdom, passed legislation in the year 2014, titled, Children & Young People (Scotland) Act as it is entitled to do, and parts of the 2014 Children & Young People (Scotland) Act nods to its compliance with the 1989 UNCRC, although Scotland will have to wait until it is fully independent from the United Kingdom before it can fully and formally and openly incorporate the whole of the UNCRC as such. The 2014 Scots Act was drafted, largely to show its agreement to compliance with the tone, flavour, aims and objectives of UNCRC and this 2014 Scots law includes such new policies as follows:

Public Bodies in Scotland, eg Local Authorities in Scotland and Health Boards and Police Scotland must report, every three years, as to their progress in creating policies within their remit, to improve children's rights in Scotland. The 2014 Act lists the public bodies to which this applies and Scotland's First Minister has since committed to the incorporation of the UNCRC into Scots law before the end of the current Parliamentary session in year 2021. It is noted that the UK did not confirm the 1950 European Convention on Human Rights until there was Royal Assent to the UK Human Rights Act 1998 which was not enforced until the year 2000. With regard to the jurisdiction of Scotland, the Children & Young People (Scotland) Act came into force on 14th March 2014. Scotland's First Minister said:

“In UK domestic courts, the UNCRC is used as an interpretive aid. Our goal is to see things go much further in Scotland, with the incorporation of the UNCRC into law. We've made a small step towards this with the Children and Young People (Scotland) Act. One of the things this Act does is make Scottish Government Ministers to 'keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements. This means that the Scottish Government should always consider whether what they are doing will help promote the rights of children and young people in Scotland. However, even if Ministers recognise a policy could be changed to better support these rights, they do not have to make any changes to it unless they think it is appropriate to do so. To make sure Ministers follow the new duty, they must now submit a report to the Scottish Parliament every three years. This report should talk about what changes and improvements they have made to realising the rights of children and young people over that period, while also setting out what the Ministers plan to do in the next three years.”

The Optional Protocols

It is with the question of compliance here that many countries fail their youth. Children everywhere are exploited, trafficked for sexual purposes, corrupted and distressingly placed in jails which are couched in words that do not relay what happens to children whose punishment through the courts often result in their being imprisoned with adult criminals. Many children placed in “Secure Training Centres” are committing suicide due to the harsh treatment they receive at the hands of their jailors (some examples can be studied in the legal updates in this issue).

In war torn areas, child soldiers are openly trained to use guns. In advanced countries as in the UK, many youths have taken to violence with knives and many others killed in this way.

Children are not achieving; turn to alcohol and drugs at a tender age and the worst of the scenarios are the hundreds of female children raped, exploited and forced into prostitution at such tender ages. Let us hope that this book is a wake-up call to those of us who consider our countries 'civilised, yet ignore the abuse of our children.

Appendix:

1989 Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989; entry into force 2 September 1990, in accordance with Art 49.

Preamble

The States Parties to the present Convention

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom, Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall
2. all take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their

capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;
 - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
 - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
 - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;
 - (b) Provide for appropriate regulation of the hours and conditions of employment;
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

- (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

PART II**Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention. 1/ The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.
10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.
11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.
12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights
 - (a) Within two years of the entry into force of the Convention for the State Party concerned;
 - (b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.
3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to

provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

1/ The General Assembly, in its resolution 50/155 of 21 December 1995, approved the amendment to article 43, paragraph 2, of the Convention on the Rights of the Child, replacing the word "ten" with the word "eighteen". The amendment entered into force on 18 November 2002 when it had been accepted by a two-thirds majority of the States parties (128 out of 191).

Printed and published by SALLY RAMAGE®, Copehale, Copenhall, Stafford, ST18 9BW, UK.



Registered as a Newspaper at the Post Office. SALLY RAMAGE® 2020. All Rights Reserved. No part of this publication may be reproduced in any material form (including photocopying or storing it in any medium by electronic means and whether or not transiently or incidentally to some other use of this publication) without the written permission of the copyright holder except in accordance with the provisions of the Copyright, Design and Patents Act 1988 or under the terms of a licence issued by the Copyright Licensing Agency, Saffron House, 6-10 Kirby Street, London, England EC1N 8TS. Application for the copyright owner's written permission to reproduce any part of this publication should be addressed to the publisher. Warning: the doing of an unauthorised act in relation to a copyright work may result in both a civil claim for damages and criminal prosecution. ISSN 2049-8047.