CHRONICLE CHRONIQUE CRÓNICA

Contents

Editorial — Avril Calder

Electronic Chronicle
This is the first solely electronic publication of the Chronicle and I'm confident that it will reach the majority of our members. However, I'm aware that, despite great efforts over the last few months, some members will not have received it simply because we do not have a current email address. So please help with further distribution to members in your country. If you can provide email addresses for members please contact both our Secretary General, Nesrin Lusta, and me. Our email addresses are on page 27.We also need to be informed of any change in your email address.

Belfast August 2006
This edition covers aspects of the World Congress and of the General Assembly (the four yearly meeting of members). The Belfast Declaration, the principles developed at the Congress, are published in full. The voices of our outgoing President, Dr McCarney, and our new President, Renate Winter, give you the current position of our Association and hopes for the next four years.

Future Publications
I hope that the Chronicle will:

- Continue to publish substantive articles/papers with legal or social importance or interest in the field of youth and family justice
- Include short newsworthy items of particular interest in our field. I already have the agreement of a small number of 'correspondents' willing to send me such items and welcome contributions from you all
- Announce information relating to forthcoming conferences of interest to our members as well as publishing accounts of them
- Announce achievements of our members.

None of this will be possible without your help so please send me your contributions. I should be grateful if you would submit your articles in more than one of our three official languages. It would be particularly helpful for me to be able to read longer articles in English so that I can make editorial decisions, before translation costs have to be met. Guidance on the submission of articles is included on the back page of this issue and on www.judgesandmagistrates.org

Finally, may I say that it is an honour to follow in Dr McCarney's footsteps as the Editor in Chief of the Chronicle and I will do my best to serve you as well as he has done.

President's address **Renate Winter**

Learning from the examples set by my distinguished predecessors

This is the first time I have had the honour and pleasure of writing for the Chronicle as President of our Association. It is difficult to follow in the footsteps of Dr McCarney—Willie—who showed outstanding management not only as President, but also as editor-in-chief of this publication, a role he filled over 15 years, collecting, writing and editing articles. It is with great regret that we respect his decision to hand over the job to "new people, having new ideas".

First of all, let me report the outcome of the General Assembly during the XVII World Congress of the IAYFJM in Belfast.

Willie informed the members present, in his capacity as outgoing president, of all the achievements and problems encountered during the last four years. Michel Lachat, our long-term treasurer, explained the accounts for the last time, steadfast in his decision not to stand for election another time. Corinne Dettmeyer, the Secretary General, in presenting her minutes, concentrated on events and correspondence since the last General Assembly.

Due to the poor financial situation of the Association, two issues were discussed and put to the vote:

- an increase in the annual subscription and
- the possibility of distributing the Chronicle in electronic version only.

After long and lively discussion both were agreed.

Betül Onursal from Turkey, one of our most faithful members, who has initiated and achieved so much for the rights of children in her home country and who has recently been trying to organise a wonderful opportunity for the Executive Committee to meet in Istanbul, became an Honorary Member. Former President **Lucien Beaulieu** (Canada), who I will mention later, **Alyrio Cavallieri** (Brazil) who so effectively assisted our Association and **Shao Wenhong** (China) who represented her country so successfully over many years, also became Honorary Members.

The last issue on the agenda was the vote for the new members of the Executive Committee. The proposals, sent three months before the meeting to all members, were accepted unanimously.

At the end of Willie's address the members showed how much they valued his devoted commitment to our Association by giving him a standing ovation. We are fortunate indeed that he promised to support and advise the new Executive Committee, a promise that gives us confidence to take over and carry on.

My election as the first female president gives me great joy and pride. All over the world women are acting in the field of juvenile justice and family law with great success together with their male colleagues. Why, therefore, should they not participate in the field of decision-making and administration of organisations dealing with children and their needs?

Over the years I have had the privilege of learning a lot from the examples set by my distinguished predecessors.

Our Honorary President, **Horst Schüler-Springorum**, became a mentor and a model for me, not only because of his involvement in the development of very important international instruments of juvenile justice

and child protection but also as a researcher, who unflinchingly stood up for his conviction that punishment is no tool for bringing children in conflict with the law back to society, whatever political pressures there may be to the contrary.

André Dunant insisted on the importance of close collaboration with other professionals working with children, especially social workers. I remember him saying that a juvenile judge without the support of a social worker would be like a fish out of water. It was through him that we broadened membership of the Association to include representatives of the associated professions

Jean Zermatten was key in implementing the international instruments so important for our work. Moreover, he created a whole new institute, the International Institute of Child Rights in Sion/Switzerland, which was born out of the International Institute Kurt Boesch and the IAYFJM. It is very active in many countries, promoting the training of professionals in our field.

Lucien Beaulieu emphasized the importance of an understanding of the common law system and an appreciation of the value of different legal approaches in addressing the problems of children and their families. He also championed the setting up of special committees to carry forward the mandate of the Association concerning research into the causes of criminal behaviour or maladjustment of youth, to combat their effects and to seek permanent prevention and rehabilitation programmes.

Finally, **Willie McCarney** most recently took great care of the administration of our Association, adjusting it to computer technology, putting systems in order and keeping affiliated national associations together. He spent time in many, many countries in the interests of the IAYFJM, reaching out to countries, national associations, and new members.

I think it is now the time to speak about my immediate predecessor in greater detail. I searched the Internet to find out about some spectacular events that might have happened on his birthday, the 31.08.1938 and found some quite interesting information—the 31st August is the name day of Saint Ingbert, the Christian patron of travelling. It seems very prophetic for Willie's travel activities, doesn't it?

Willie, has been a Lay Magistrate in Northern Ireland for the past 32 years. He sits in the Youth Court dealing with young offenders aged 10 to 18 and in the Family Proceedings Court dealing with children in need of care and protection aged 0 to 18. He is a Justice of the Peace for the City of Belfast. He is a past Chairman of the Northern Ireland Lay Magistrates' Association (NILMA) and of the British Juvenile and Family Courts Society (now renamed ChildrenLaw UK). He joined the International Association of Youth and Family Judges and Magistrates in 1982 and was co-opted onto the Executive Committee at a meeting in London in 1991. He was elected Vice President in 1998 and President in 2002.

Willie is a psychologist who taught for 13 years in Secondary Schools in Northern Ireland where he concentrated on working with disaffected, underachieving, boys aged 11-18 years old. He then moved to St Mary's College, a Department of the Queens University of Belfast, which concentrates on teacher training. He lectured there for 21 years. His task was to show future teachers how informal teaching methods could help disaffected young people, preventing them from dropping out of school and keep them from getting on the wrong side of the law.

Since 1998 during his extensive travels Willie has participated in many judicial training programmes and in association with UN organizations, has prepared training manuals on human rights and juvenile justice.

I started to count the list of his publications and stopped after 100… To cut a long story short, I just have to thank Willie for having guided the Association through sometimes troubled waters, for representing our Association all over the world as well as for his extraordinary work as editor-in-chief of the Chronicle, establishing it as a highly respected journal.

There was only one difficulty I had with him, namely the difficulty to ever find a gift for him when invited, as he didn't seem to need anything.

Dear Willie, having learned about the Irish tradition of composing Limericks, let me try to write one for you! I apologise for the quality!

There was a well-known denier
Who was no great consumer either
But harbouring friends
To the greatest extends
Was one of his fav'rite desires

Dear Willie, thank you and please stay as you are!

Having thought about my predecessors' contribution to our Association, I had difficulties thinking what my contribution might be. As my background is with international organizations, the contribution I might be able to provide is the strengthening of:

- collaboration with international organisations such as UN, UNICEF, UNIFAM, ILO, UNHCR in order to spread information on matters pertaining to children in conflict with the law and with children and families in difficult situations
- links between IGOs and NGOs working in our field and
- links with judges and magistrates. Worldwide, the independence of judges dealing with children and adolescents is far from certain and we all face or could face similar difficulties in fulfilling our work.

In carrying the Association forward over the next four years, the Executive Committee will have to deal with a number of issues. I was therefore very happy to find friends from several corners of the world willing to work with me. Allow me to present them to you:

- our Vice-President is **Judge Oscar d'Amours** from Canada, specialist in national and international adoption and a devoted family judge.
- our Secretary-General is **Judge Nesrin Lushta** from Kosovo, specialist in juvenile justice, national and international penal law.
- our Deputy-Secretary General is **Judge Mohamed Habib Cherif** from Tunisia, currently the General Coordinator of Human Rights in the Ministry of Justice and Human Rights of Tunisia.
- our Treasurer is **Avril Calder** from England, a Magistrate presiding in both the Youth and Family Courts in London and past Chairman of Children Law UK.

I myself, President of the Association, am from Austria, a former Juvenile Judge and currently Justice in the Appeal Chamber of the Special Court of Sierra Leone, Africa.

As you see, we have a truly international Executive to serve us.

In thinking about our immediate priorities I have three suggestions which build on the work of our previous Presidents:

- continue to develop a regional structure with ambassadors for each region;
- reinforce the Special Committees; and
- develop further the use of up-to-date communication and technology.

Regions

It is most important for the members of the Association to stay in close contact during the four year period between our international congresses and to have information distributed regularly to them on ongoing problems, good practices and regional fora. Such contact will strengthen the impact of the IAYFJM and help us to stand together against outside interference in our judicial work. I propose, therefore to introduce Ambassadors who will be colleagues willing to work closely with colleagues from their own region to keep our Association regularly informed about achievements and problems encountered.

I have started to look for volunteer Ambassadors. So far I have:

- **Corinne Dettmeyer** from Holland for Northern Europe;
- **Hervé Hamon** from France for Central Europe and
- **Joseph Moyersoen** from Italy for Southern Europe

For the Southeast of Europe, i.e. the new members of the European Union, I hope soon to find a representative. Talks are under way to find a representative for the Maghreb region and West Africa, but for East and South Africa I have still to find colleagues willing to take on the job. Colleagues from Latin America are already busy finding representatives, as well as colleagues from Canada for the northern part of the Americas. I do hope to be able to reach out to Asia, Australia and New Zealand for assistance in this matter, as well as to get in contact with the juvenile justice organisation of the US.

In addition, the IAYFJM will get a stronger voice in drafting and supporting decisions in national and international contexts through our representatives to the UN and the

Council of Europe. If this approach proves successful, our next General Assembly might amend our Statutes, thus giving the ambassadors official status in the Association.

Special Committees

Another issue to be addressed urgently is the revival of our Special Committees. Much needs to be done in the immediate future because juvenile justice and the protection of children and adolescents doesn't seem to be at the forefront of the interests of many State Parties, even when the State has ratified the Convention on the Rights of the Child. Preliminary discussions with Jean Trépanier of Canada have confirmed the necessity for work in this area and I hope to be able to convince our Children's Rights Committee to restart work very soon.

Research centres, observatories (institutes) and governments addressed by the UN Committee on the Rights of the Child very often seek assistance from experts in juvenile justice and child protection. The members of our Association would be able to provide such assistance if invited. To channel such requests and to inform about their outcome would need the use of modern technology.

The Special Committee on Statutes should look at the impact of new technology on the way we run the Association. It might, for instance, be important for the president or vice-president to take a decision rapidly which presently is not possible without a Council meeting. It could be of the utmost importance to get the views of the Council members as quickly as possible for urgent issues. Email deliberation could be a tool for reaching common decisions rapidly if the Statutes were suitably revised.

Another possibility—to keep information up to date and consistent—would be a monthly briefing of all our members on events going on in the different regions of the world via the Internet. To establish such an electronic overview would need the input of our members via email to the Secretary General, who would collate it and disseminate it.

Chronicle

Our Treasurer, Avril Calder, has also become Editor-in-Chief of the Chronicle. She needs help in collecting articles, translation of articles and for proof reading. I know that Avril is receiving valuable help from the Editorial board and would be grateful for more volunteers to spread the load.

Avril also needs further assistance with disseminating the Chronicle via email because we still do not have the email addresses of all members and we know that some members in some countries don't have such addresses. So please contact her if you are able to help.

World Congress 2010

We look forward to the 80th anniversary of our Association which will be celebrated at our next World Congress. André Dunant, who has a lot of information on the IAYFJM has kindly agreed to write our history. He is ready to prepare a first draft but asks for assistance from members who have details about important events.

Dear friends, I do hope that my vision and the aims I would like to reach during my presidency do not seem to be too unrealistic. I would greatly welcome the assistance of all friends and colleagues to achieve as much as possible in the interests of our Association.

Address to the General Assembly — Dr Willie McCarney

Belfast 2006

Dear Colleagues
It is usual at this time for the outgoing President to review the past four years and to highlight his achievements. I would like to take a more considered look at our situation. I believe that much has been achieved in the past four years particularly in raising the profile of the IAYFJM and making it better known on the international scene. However neither of the two key objectives I set myself in 2002 have been achieved, namely to

a) Secure a permanent office and
b) Secure a permanent funding stream.

We have been reminding you repeatedly over the past six or seven years of the need to do something to stop the haemorrhaging of our resources. We launched a number of initiatives including asking every member to recruit at least one other member; asking members to consider making a donation to the Association; asking members to consider sponsoring members from developing nations. None of these had much impact. Rather than berate our members for their lack of enthusiasm we might simply ask ourselves "Why?" Perhaps the answer lies in how relevant members perceive the Association to be to their work. It seems clear to me that the Association matters only to the extent that it can make a useful contribution to solving the problems facing our members in their daily work. If we lose sight of that point, the Association will have little or no relevance to our members in the twenty-first century. Our resources will continue to dwindle away, our membership will fall and our influence on the international stage will diminish.

So, what are the main challenges facing the Association and do we have an action plan for addressing them?

In my view the challenges remain to increase our membership, to secure a permanent funding stream, to secure secretarial support and to find a solution to the spiralling cost of the Chronicle. If we are to meet these challenges we must make the Association more relevant to our members.

At the Congress in Paris in 1911 which gave birth to the Association delegates agreed that, in practising their vocation, the exercise of jurisdiction over minors, juvenile court magistrates sometimes feel the need to establish that, in other parts of the world, there are others who are fighting the same battle, armed with the same ideals. Delegates saw the need to strengthen the bond between themselves so that, by the exchange of ideas and experience, they could together attempt to find solutions to common problems.

These aims are just as relevant today as they were in 1911. Indeed, if one word encapsulates all the changes the world is living through at the beginning of the 21st Century it is globalisation. Few people think of the legal community in this context but globalisation is impacting on decisions taken in courtrooms around the world.

Similar issues confront courts everywhere. These issues include the commercial and sexual exploitation of children, trafficking, child labour, child soldiers, domestic violence, inter-country adoption, inter-country abduction, AIDs, child-headed households, children in prison. These issues are not confined to one country or group of countries. They are international problems and know no boundaries.

Judges in almost every country increasingly look to foreign law in interpreting their national law and in solving new problems. The instant communication of political and legal debates on the world-wide-web renders the law of different nations increasingly accessible to those on the other side of the globe. Technological advances have resulted in previously undreamed of methods of communication that can provide an unmatched ability to advance the rule of law. It is possible to discuss almost any legal topic in worldwide terms.

At the same time globalisation has not impacted greatly on the majority of judges. Many would argue that few judges get

involved in cases which have an international dimension. The most pressing problems facing the majority of judges in the great majority of countries are on a more mundane level - decreasing the court backlog, developing the ability to process cases promptly, instituting alternative dispute resolution processes, and maintaining or establishing the independence of the judiciary. Perhaps our failure has been in not recognising this.

What we require is a twin track approach. We need to make our Association stronger and more effective at the national level. And we need to get our National Associations working together on global issues, all pulling their weight and each having their say.

Our first priority must be to renew the Association, because without a strong Association the other challenges will be harder to meet. This will require the effort and willingness of each individual member and of each national association. It also implies a willingness to work with the other non-governmental organisations, UN agencies like UNICEF, and the UNODC, the Council of Europe and multilateral institutions.

It is important that the core strengths of the IAYFJM be identified. These derive not from power but from the values it represents. Those strengths must be built on by insisting on the importance of the rule of law, reforming the Executive and Council so that it will enjoy unquestioned legitimacy and expanding the Organization's relationship with civil society.

The success of the International Association depends on our national associations adopting the right policies. At the same time, the International Association, too, has a vital part to play. It is vital to form new partnerships. We must make the most of new technology by setting up a communications network to facilitate the sharing of ideas, provide access to up-to-date information on the latest legal developments and advice on how to make the most of the resources we have. If the IAYFJM is to survive and thrive, our members, individual and national, must have a solid foundation in shared values and institutional practices.

But, perhaps the most immediate and most pressing problem is to find a solution to the spiralling costs of the Chronicle. We initiated a debate which has now been running for almost three years. Two years ago the General Committee met in Paris to learn that the response to the questionnaire we distributed was inconclusive. Only a small percentage of members responded to the questionnaire. The opinions of those who did were divided. Some argued that we must continue to print hard copies of the Chronicle, as this was the public face of the Association. Others argued that switching to electronic distribution would cut the costs of the Chronicle by more than two thirds – stopping the haemorrhaging of our resources immediately. The delegates meeting in Paris agreed on one thing – a decision would have to be taken at today's General Assembly.

The day has come. You have heard from our Treasurer that our reserves have almost gone. We will inevitably go into the red before we get to the next General Assembly unless we take steps today to prevent that. We have two key decisions to take – a decision on the Chronicle and a decision on an increase of the membership fee.

Switching to electronic distribution of the Chronicle will save us the cost of printing and of postage. This would have saved us almost £2,000 on the current edition. The yearly savings would be about £4,000. So you can see that we are talking about a substantial saving. As the person responsible for building up the Chronicle over the past 16 years to what it is today, my heart says to keep printing hard copies. However we must face hard facts – our current financial situation says we must switch to electronic distribution for the foreseeable future. I urge you to vote accordingly.

Our membership fee has not been increased for about twenty years. This is a crazy situation. Is it any wonder our resources are dwindling away? Considering that we hold our General Assembly only once every four years, we should have a clause in our constitution to say that the membership fee will rise with inflation. The membership fee was also a question dealt with in our questionnaire and again the result was inconclusive. The argument was equally balanced between those who argued that an increase was essential and those who argued that an increase would make it impossible for colleagues in developing nations to join.

Those in favour of an increase are divided between those who want a large increase to make up some of the ground lost over the past 20 years and those who argue for a modest increase. Again I think that our financial situation dictates that we must vote at least for a modest increase and I urge you to vote accordingly.

It has been a great privilege for me to serve you as President for the past four years. I hope that I have made a positive contribution to our Association. I thank you for your support during that time. I leave you now in the capable hands of Renate Winter who brings a wealth of international experience to the post. Rather unusually, she has an entirely new team, none of whom have served on the Executive before. But it is a very talented team with each member having a lifetime of experience behind them. They will serve you well. They will not be on their own – we are all behind them because, at the end of the day, we are all one team. We offer all of them our wholehearted support.

Voices of Authority — Ivonne Allen—Argentina

In September 2005 Argentina sanctioned national law number 26.061 consistent with the CRC, which was ratified in 1994, thus enshrining in law integral protection for children.

This means that there must be provision of suitable and diverse institutions and the law must be taken into account in the formulation and practice of social policies and in the administration of justice.

The legislation change represents a 'tsunami´ in the face of a strongly rooted previous model and demands a change of mentality. This does not necessarily mean to discard the previous: *not all the old is bad, neither all the new is good*. If we do not recover and listen to aspects of our past, it will be difficult for us to build our future.

We still hear the words of Belfast 2006:

> *we are voices of authority, but justice alone cannot change behaviour, it requires engagement by parents and the community.*

This statement, obvious for many, characterizes the power of the justice system in general, as well as recognising the necessity for the judiciary to consider participation by society—in programme areas, by parents and by the community in general.

It has been a long step from acceptance of the CRC. We must be patient in advancing the implementation of our new law in the light of the CRC, remembering past experience, drawing on collective wisdom, and accepting diversity without forgetting that we *are* voices of authority.

Professor (UNLaM)
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The Belfast Declaration 2006 World Congress

The International Association of Youth and Family Judges and Magistrates held its XVII World Congress in Belfast, Northern Ireland from 27 August – 1 September 2006. In our efforts "to put the pieces together again" we focused on the Convention on the Rights of the Child and its optional protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict as our most important and guiding international human rights instrument.

In the context of the implementation of the CRC, its optional protocols and other relevant international human rights standards the participants in the XVII World Congress of the IAYFJM would like to highlight the following statements which reflect the key issues emerging from the deliberations and discussions during this Congress:

(1) Ratification and implementation

a. It is very important that all States ratify the CRC and its optional protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict. For combating and eliminating child labour it is equally important that all States ratify ILO Convention 138 on the minimum age for admission to employment and ILO Convention 182 on the immediate actions for the elimination of the worst forms of child labour.

b. Each country should have a national strategy for the implementation and protection of the rights of children which is in full compliance with the CRC and other relevant international Human Rights standards, which is properly resourced, effectively led and is monitored by an independent and adequately mandated and resourced body such as the office of a children's commissioner. An important part of such a national policy has to be the systematic and ongoing training of all professionals working with or for children such as social workers, psychologists, lawyers, police officers, prosecutors and judges.

(2) Article 12: The right to be heard

In consultation with children and young people article 12 of the CRC should be incorporated into the domestic law of all state parties with particular regard to all legal, administrative and policy decisions impacting on children. All decision makers should be resourced and trained in how to give full effect to article 12 on the right of the child to be heard.

(3) Non-discrimination

The right to non–discrimination (article 2 CRC) should be fully implemented and in that regard special attention should be paid to vulnerable groups of children and to discrimination against girls. For example specific measures should be taken to prevent child and forced marriages.

(4) Alternative care/permanency planning

a. The child in alternative care should where possible return to her/his birth family and we therefore emphasise the need to provide the birth family with support, counselling and other services to facilitate this return.

b. When this return is not feasible, we emphasise the importance of a prompt and individual assessment of the needs and circumstances of the child(ren) –including the possibility to maintain contact with the birth family - in order to ascertain from a range of options the best placement to give commitment, stability and continuity of care to that child.

c. Throughout this process the rights and the best interests of the child and the views of the child and adults receiving services should be taken into account.

(5) Violence against children

a. Children have the right to be protected from all forms of violence on an equal footing with adults. Due to their vulnerability children must be protected from all forms of violence in all settings stipulated by the UNSG study on violence including within the family, the school, institutions and the community, including within the workplace.

b. The outcome of the UNSG study on violence against children should be fully supported and all measures must be taken to insure the implementation of its recommendations.

(6) Domestic Violence
Measures to combat and prevent domestic violence must be taken; recognising international and regional human rights standards, children and non-abusive parents and guardians must be given support in a culturally sensitive manner.

(7) Children without parental care
Children without Parental Care(CWPC) are the holders of rights and are entitled to enjoy all the rights stipulated in the Convention on the Rights of the Child without any discrimination. All necessary measures must be taken to insure the implementation of these rights. To that effect States should support the adoption of minimum standards and UN guidelines for the protection of the rights of CWPC as recommended by the Committee on the Rights of the Child. States in partnership with the civil society are invited to examine the existing systems of alternative care including customary systems to ensure its conformity with the Convention and to build on its positive aspects with a view to providing the child(ren) with a family environment and to ensure that institutionalisation is the last resort and for the shortest duration.

(8) Child Abduction/Intercountry Adoption
In order to further strengthen the international protection of the rights of the child all States should ratify the Hague Conventions on Child Abduction (1980), Inter-country Adoption (1993) and on International Child Protection (1996).

(9) Children with parents in prison
If a decision is taken to send a parent to prison, a well developed care plan must be put in place prior to incarceration, involving the convicted parent, her/his child(ren) and significant others. The care plan must ensure protection of the child(ren) and should provide for continued contact between the child(ren) and the parent. In the light of the best interest of the child, States should consider the introduction of the rule that pregnant women and mothers with children under the age of one year should not be incarcerated. In this regard it is also recommended that steps be taken to develop protocols for the police and others involved in criminal justice on how parents, in particular mothers, with dependent/young children should be treated within the criminal justice system in order to ensure that the rights and needs of the child(ren) of these parents are well taken care off.

(10) Health Care
All children and young people shall have the right to access early identification and assessment of his or her overall health needs (mental, physical and developmental) based on an approach which is timely, holistic, integrated and multidisciplinary, tailored to the needs and the best interests of the individual child and his or her particular circumstances.

A child infected or affected by HIV / Aids must enjoy all the rights enshrined in the CRC, in particular in respect of education, healthcare and social services. All organisations and individuals working for / with children infected or affected by HIV / Aids should comply with the recommendations of the Committee on the Rights of the Child in its general comment no 4 (2003) on HIV / Aids and the rights of the child.

SPECIAL PROTECTION

(11) Children and armed conflict
Children must be protected from the evils of armed conflicts. Using or targeting children in armed conflicts must be criminalized in accordance with international humanitarian law, including the Convention on the Rights of the Child & its optional protocols. Perpetrators who use children as soldiers, as shields or as targets of military operations must be treated as committing war crimes (crimes against humanity) and must be brought to justice. In addition, special attention should be given to children born to girls victimised in armed conflicts.

(12) Refugee and asylum-seeking children
It is urgent that all States (while taking into account general comment number 6 of the Committee on the Rights of the Child regarding the treatment of unaccompanied and separated children outside of their country of origin):

a. Define a common policy in order to address the problems of unaccompanied minors, including the causes for their leaving their country of origin;

b. Investigate the personal and family situation of the child with a view either to returning or taking care of the child in the country of arrival;

c. Create a protective legal status during the investigation and guarantee its continuation if return is impossible.

(13) Trafficking of Children
As regards trafficking of children for economic and / or sexual purposes:

a. Harmonisation of legislation is needed to combat all forms of trafficking;

b. Child trafficking should always be prosecuted as a "crime against humanity";

c. National and international policy must condemn all forms of trafficking;

d. The granting of residence permits must favour the victims of trafficking;

e. The creation of investigation and co-ordination networks specialised in the problems of trafficking and sexual exploitation of children is needed, including the possibility of appointing special liaison officers to promote effective coordination;

f. Apply the principle of extra territoriality, without the requirement of double criminality, to ensure effective prosecution;

g. Preventive information campaigns in the victims countries of origin on the rights of the child and on the dangers of trafficking must be carried out;

h. Special attention must be given to vulnerable groups of children including street children and unaccompanied asylum seekers.

(14) Child witnesses and victims of crimes
In accordance with the UN guidelines on justice matters related to child victims and witnesses of crime, child witnesses should be supported throughout the court process to ensure that they feel safe, are heard in court and are able to give evidence effectively. This support should be provided by an independent agency ensuring that:

a. Children should be well informed throughout the process;

b. Children should be dealt with in a non–abusive atmosphere;

c. Children should be cross-examined by trained individuals with child specific expertise;

d. The court process should be taken forward without delay.

(15) Street Children
Priority must be given to the situation of marginalized and invisible street children with adequate public information and sufficient human and economic resources. In this regard special attention should be given to the implementation of the right of every street child to education, adequate health care, housing/shelter and protection and to maximum efforts to reunite them with their birth families unless that is not in their best interest.

(16) Diversion and restorative justice
Recognizing the largely transitory nature of youth offending and the particular vulnerability of children who come into contact with the criminal justice system, States should adopt, after consultation with children and young people, in compliance with the CRC and other international agreed standards including the Beijing Rules, the Havana Rules, the Riyadh Guidelines, UN guidelines on child victims and witnesses of crime, a holistic youth justice system which prioritises and properly resources:

a. Alternative diversion measures for children who come into contact with the criminal justice system;

b. An interdisciplinary approach which also fully involves children, the family and community;

c. A restorative justice system which should include a meaningful partial transfer of power to communities, victims, offenders and their families to produce a restorative response to offending.

(17) Detention
a. Remands in detention (including pre-trial detentions) should be used only in exceptional cases and in such exceptional cases should be supervised. Alternative measures should be developed and used, such as measures allowing for the youth to

remain in his or her family or, if necessary in family type placements. Conditions might be imposed on the guardians of these youths to ensure that proper control be exercised.

b. Judicial delays should be reduced to a minimum. Particular attention should be given to reduce court delays in cases where young people are remanded in custody, pending their trial.

c. Minors should be detained only in special centres separate from any adult prison. These centres should provide youths with education programmes during their detention. Girls who are detained should be under the care of female staff.

d. Some form of external control should be exerted over the use of pre-trial detention and the way it is applied.

(18) Drug Courts

The International World Congress sees the difficulties and problems associated with drug dependent or substance and alcohol misusing parents as a fundamental and increasing problem. The Congress would wish to see the development of a more comprehensive, holistic, inter-agency process focused upon child protection and the development of treatment and rehabilitation services in order to keep parents and children together or to bring about the safe reunification of children with their families. The Family Drug Treatment Courts are an example of good practice in this area.

Inter-country Adoption in South Africa — Ann Skelton—advocate

In November 2005 the Centre for Child Law at the University of Pretoria in South Africa was requested by the High Court to enter as *amicus curiae* in a matter in which an American couple were seeking sole custody and guardianship over a South African baby girl. Their intention was to take her out of the country and to finalise adoption proceedings in the United States. The judge was concerned about this and asked the Centre to file an *amicus* brief in order to set out the legal issues and to make recommendations.

The Centre compiled the brief and handed it to the Judge. The Brief summarised the current law and procedure with regard to inter-country adoptions. The conclusion was that inter-country adoptions should be granted by the children's court, and that an application for guardianship with a view to adoption is a circumvention of the law. The Judge handed down a written judgment marked "reportable" in April 2006. The Applicants in this case (the prospective adoptive parents) have successfully applied for leave to appeal to the South African Supreme Court.

The voice of the child

Jean Zermatten

Introduction

The revolution brought about by the United Nations Convention on the Rights of the Child (CRC) has provoked some resistance among a certain number of adults—judiciary, in particular. This resistance is to do with the new status given to the child by 'participation'; that is the idea that children are not only small beings who are friendly and charming, but that they are also complete people in their own right. From this it follows that they have both existing well-known rights (to benefits and protection) but also new ones, including that of expressing their own point of view on matters that affect them. Moreover, their opinion should have value and weight and not just be seen as idle words, an exercise or something to ease the conscience.

Here is the greatest stumbling block to the acceptance of the Convention and its full implementation. For we are running up against the traditional idea that children are mute [2] and that if they have views to express, it should be done through their elders (parents, school teachers, lawyers, guardians, social workers).

What is more, it is hard for people to accept that children should have an additional right, to take an active part in public life, and that they might influence politics, possibly creating a lobby or even a party. In most countries, this aspect of participation is at an embryonic stage, though there are some noteworthy initiatives (mentioned below).

The CRC does not use the term participation. Article 12 gives children the right to express their views and to see their opinion taken into account in any decision that affects them. Article 12 should not be read on its own. It goes beyond the simple function of recording the child's words and is linked to *freedom of expression* (article 13), *freedom of opinion* (article 14), *freedom of association* (article 15), *freedom of information* (article 17) and *respect for private life* (article 16).

This then is the CRC's most spectacular innovation. It introduces the idea that, in line with their development (article 5, concept of evolving capacity [3]) and in line with the discernment of which they are capable, children should be able to participate in the life of their family, school or training centre and in the life of the community in general. No longer just passive individuals to be taken care of, they become active partners in shaping their own lives.

Article 12 is a general principle of the Convention and applies to all the other rights in the CRC. But it also constitutes a subjective right—that of being listened to, either as an individual person in a given situation (eg in legal proceedings) or as a collective group (children) within any project, programme or issue.

1. The voice of the child in proceedings

a) Concept

The obligation that article 12 imposes on States—to listen to children on all issues that affect them—bestows a reciprocal right upon the child—the right to be heard, subject to conditions of age and maturity.

If we go back to the mechanisms of the CRC, the child's opinion is one of the elements to be taken into account when establishing his or her best interests. Listening to children and practical discussion of the solutions envisaged for them are two elements of their interests. There is therefore a link between children's interests and their being heard.

The obligation placed on the State rests on the recognition of the child's right to express their opinion. This right is fundamental and

no-one can exercise it on their behalf. It is attached to the child's own person. There is no doubt that the child can demand to exercise this right and that the state must put in place the means for their words to be recorded.

The other side of this right is the opportunity given to the child to refuse to exercise it.

b) Application

Should children be listened to in all cases? Article 12 talks of judicial or administrative proceedings. This is a very general concept covering all interventions made in respect of children. Is there an obligation to parents? Article 12 prevents interference in the parental sphere (family decisions). Yet it seems to us that the principle should also apply in family problems or conflicts as a means of arriving at the best decision.

c) Conditions

1) the child's voice should be recorded only if the question under discussion is connected to the child's interest.

2) The child must be capable of discernment. What is required is not that the child has an understanding of all the ins and outs of the matter that concerns him or her, but that they should be capable of forming their own opinion on the subject.

3) What is the minimum age at which the child should be heard? The CRC does not say and national practices differ. For example, the *Federal Tribunal of Switzerland* [4] has recently decided that a judge may hear a child in a divorce case from the age of 6 upwards.

4) Children must be able to express themselves freely. 'Freely' indicates that the child should be expressing their own opinion and not that of somebody else, not acting under pressure, under influence or in a position where their views are completely changed from those they held originally.

'Freely' also concerns the way the child's opinion is recorded**.** The CRC does not specify in detail how administrative or judicial proceedings are to be managed. It is clear that States should offer a framework that takes into account the individual situation of each child and puts them at ease—the child must feel secure. The European Court of Human Rights has deemed it excessive to require that the child be heard in all cases, leaving the decision to the judge. It also concluded that any child involved in proceedings brought by one of the parents should be heard in appropriate surroundings.[5]

The question also arises of the number of times that the child should be questioned. We know, from experience, that examining children is a very difficult exercise. The risks of secondary victimisation of children who are already victims have been widely publicised. The CRC leaves the responsibility for regulating this to national provisions.

d) Who should record the voice of the child?

Who should hear the children? On this question, article12 mentions:

- a direct hearing by the judicial or administrative authority (eg by the judge or the head of the school) or
- a hearing by an intermediary (on behalf of the appropriate authority)

In my experience, it is always preferable to listen to the child directly whenever possible. The opinion that a judge can form is different when there has been direct contact, compared with what is possible if there are only indirect accounts from an intermediary or written reports, even if these are very full. The great difficulty here is the training of people who are called upon to hear and take decisions.

e) What value should be put on the voice of the child?

It is difficult to give an absolutely definitive answer. Every child is a special case and the value of their opinion depends on their age, maturity and development, the influences that they will inevitably be subjected to, their independence/dependence in relation to the people around them, their capacity to express abstract ideas or form value judgements and the confidence they place in the adult who listens to them. It is clear that in any conflict of a family nature, in any criminal process where a child's evidence is essential, even where their voice may point to their guilt, or in any administrative procedure where they are the subject of the decision (expulsion from school or other disciplinary proceedings, decisions relating to asylum etc.) the situation is not a neutral one and conflicts of interest arise.

What appears to be the key element is the maturity of the child, that is to say their capacity to express themselves in a manner that is reasonable, sincere and objective in difficult and delicate situations.

f) The impact of the child's voice

If the judge or the authority brought in to make a decision does hear the child, article 12 does not indicate what the impact of this opinion should be, except to say that the child's words must be taken into account. The impact will vary depending on the elements referred to above: age and degree of maturity of the child, the nature of the case etc. And in fact the judge is not bound by the child's voice. He can attach importance to it or not, in relation to all the facts of the case that he is in the process of conducting. The voice of the child is thus one of the elements in the case but not the sole element in reaching a decision.

g) The word of the child: the way forward

I suggest that there are four phases that need development:

- first : the information the child has and why he or she is being listened to;
- second: the recording of the child's views, in the conditions described above;
- third: the decision phase that is solely the responsibility of adults; and
- fourth: the implementation of the decision, with information given to the child on what effect their words have had (this phase is often overlooked).

The impact of children's participation in all of this process can only be beneficial, since this will make them active partners in the decisions and also reinforce their capacity to communicate with adults (the bond between the generations) and to understand the mechanisms of social life. It should also promote their ability to stand up for themselves, since they are being encouraged to speak, and strengthen their resolve. So it is a step towards better protection, also preparing them for the exercise of their rights and possibly fostering a greater degree of resilience. Participation is a necessary component of children exercising their rights.

h) Does the child always speak the truth?

This is a vast debate where psychologists, psychiatrists and jurists each have their own point of view. Based on the experience I have had in court, I would say that the view that 'the child always speaks the truth' is as false as the one that proclaims 'the child always lies'.

i) The role of the adult (judge, magistrate, imtermediary)

It is therefore clear that the adult's responsibilities are further engaged every time a child is brought along to give an opinion, to testify or to express a view on a decision which concerns them. One role of the adult is to decide whether the child is telling the truth or lying.

The adult has another very important responsibility. What is he or she going to do about the child's word, not only in coming to a decision but, following on from the child's deposition, the adult has to decide what (if any) help should be given.

Finally, once the decision has been made, the child should be informed of the nature of the decision and of the part that their words have played in the process and particularly the extent to which their arguments have been taken into account and why.

2. The voice of the child in the community

a. Participation

Can we give further substance to article 12 of the CRC and really talk of the child's participation in public or political life?

It is not possible to talk of political rights granted to children through voting or participating in an election, let alone presenting themselves for election. In most countries the voting age is 18 years, though certain countries plan to lower this to 16. So in what way can children take part in public life?

A reading of article 12 in isolation does not lead directly to the conclusion that the child should have a right to participate in public life. However, we must read article 12 alongside article 13, which provides for freedom of expression and for children to give their opinions on 'ideas of all kinds'. Furthermore, the right to express an opinion is linked to the recognition that the child has the right to quality information from diverse sources (article 17). We should also consider article

12 in conjunction with article 15, which allows children to form associations and so to play a role which goes way beyond the sphere of the judicial or administrative authorities.

If further argument were needed, one could refer to the General Comments of the Committee on the Rights of the Child no. 5—General Measures for the Implementation of the Convention [6].

Consequently, a broad reading of article 12 answers the question on the child's participation in the public life. The State should listen to children (as a group) at the time of embarking on a project that concerns them. If we draw a parallel with the best interests of the child, we note that article 3 refers to the obligation of legislative bodies to take into account the interests of the child when framing laws. One of the ways of taking account of this interest is precisely by giving children a voice.

b) Organisation [7]

The best known form of children's participation is the Parliament of Young People. The aims of institutions of this kind are clearly to prepare children for the future exercise of their political rights, to improve their understanding of the political system of their country, region or town and to develop their competence in the management of public affairs—in brief to become responsible citizens of the future.

Other organisations exist, such as associations or clubs for young people. Also, in the school setting, more advanced forms of participation have developed with the involvement of pupils in institutions such as 'class councils', organisations for running school institutions or in the compiling of Charters for school establishments and pupil associations.

Are there examples where children have been consulted about laws which concern them (on education, health, environment, public safety)? We must admit that there is little to record at present. Children are sometimes represented (or heard directly) but rarely or not at all by legislators.

There is a place for children in public life, but for the moment it is limited. Children should be given the chance of expressing their views to a greater extent and favourable conditions must be created to this end.

3. Conclusion

Established 16 years ago, the CRC should be well-known and enforced. The best interest of the child and their right to be heard are requirements that bind all those whose mission it is to decide a child's future via proceedings. But in our opinion this principle should extend to private life (within the family) and also to public life (for example, in school and even in politics). The child should be seen not only as a person to be educated, cared for, loved and protected, but also as one who should be treated as a worthy partner with something to say that is of interest to us—a person equal in dignity and rights to other people.

That is our responsibility as adults.

Footnotes:

1. Summary version of the lecture given in Belfast at the AIMJF conference (August 2006)
2. infans= one who does not speak
3. Landsdown, G. The evolving capacity of the child. Innocenti Center, Firenze, 2004
4. ATF 131 III 553
5. ACEDH S c./Germany, 08.08.2003
6. General measures of implementation for the Convention on the Rights of the Child (article 4,42 and 44, para.6), 03/10/2003. CRC/GC/2003/5, para.12
7. It is interesting to consult the UNICEF 2003 document, The situation of children in the world, The participation of children.

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Asking the hard questions **Judge Andrew Becroft**

Children and young people in conflict with the law

A country's civilisation and social maturity can be determined by the way it deals with children who break the law.

Introduction[1]

Children who offend pose a peculiar challenge to every criminal justice system. Children may commit "adult" crimes but their immaturity and lack of understanding mean that they cannot be dealt with as "small adults". They are different for a number of reasons. Firstly, childhood is typified by risk-taking and impulsive behaviour. To some extent this is a necessary part of maturation but unfortunately it manifests itself in unwise and reckless acts that may bring a child to the attention of the authorities. Secondly, children do not have the same developmental level of cognitive or psychological maturity as adults.[2] They are more vulnerable to provocation, duress or threatening behaviour and are particularly influenced by peer approval and fear of rejection.[3] Thirdly, offending by young people is often symptomatic of care and protection issues to which a purely justice response is destructive and unjust. Attempting to unravel and deal with justice and welfare issues within a traditional, adversarial Court setting is very difficult.

These factors interpret child offending as a consequence of vulnerability, immaturity and "disadvantage", but public perceptions are more likely to perceive child offenders as threatening or dangerous "yobs" and favour a "get tough" approach to child crime. It is this "curious ambivalence" that gives rise to many of the difficult questions surrounding child and youth justice. To what extent should the criminal justice system take account of, and respond to, welfare needs and how should accountability be achieved? Solutions for these difficult children are elusive. Nevertheless, a principled and proportionate approach is vital because a test of a country's civilisation and social maturity can be determined by the way it deals with children who break the law.

[1] Paper produced by His Honour Judge A J Becroft, Principal Youth Court Judge of New Zealand and written by Rhonda Thompson (BBS, LLB(Hons)), Research Counsel to the Principal Youth Court Judge. This paper draws heavily on three previous papers by Judge A J Becroft: 1.*Trial and Treatment of Youth Offenders: Human Rights at the Coalface of Youth Justice*, Commonwealth Law Conference, London, September, 2005; 2. *A Report Card on How Our Legal Systems Deal with the Inter-Relationship Between Child Protection and Youth* Crime, AIJA Youth Justice Child Protection Conference, Hobart, Tasmania, April 2006; 3. *Time to Teach the Old Dog New Tricks: What the Adult Courts Can Learn About Sentencing and Imprisonment from the Youth Court,* Prison Fellowship "Beyond Retribution – Advancing the Law and Order Debate" Conference, Upper Hutt, New Zealand, May 2006.

[2] Steinberg & Scott (2003) quoted in Dr Ian Lambie (2006) *The Negative Impacts on Juvenile Offenders Incarcerated in Adult Prisons,* paper in draft at time of going to press.

[3] Moffitt (1993) *Adolescent-Limited and Life-Course Persistent Antisocial Behaviour: A Developmental Taxonomy*, Psychological Review 100(4): 674-701.

In enquiring into the correct response to young people we should beware of a supposed "golden age", now past, when children did not push boundaries and come into conflict with their elders. In 1884 a New Zealand newspaper reported:

> "There are a number of children running about the streets of Dunedin … without the control of parents. If the government does not take them in hand … they will become … members of a criminal class."[4]

Children have always posed a challenge to their communities.

Certainly every generation has its particular challenges in dealing with children, and particularly with those who break the law. Research in New Zealand, and most of the Western world indicates that all children break the law at least once between the ages of 10 and 18. Despite this, few come to the attention of the law enforcement authorities and fewer still, about 2%, require formal intervention. And the vast majority of child offenders do not pose a long-term threat to the public. Around 80% are "Desisters"[5] – those that commit at least one crime, but usually start offending after 13 years and stop or age out of offending by age 24 to 28 years.[6] It is, in fact, the 5% to 15% of child offenders described as "Persisters"[7] who are the real challenge for the justice system. These young people tend to come from deprived and abusive backgrounds, start offending before the age of 14 and are likely to become career criminals.

Rather than succumb to simplistic public pressure to "get tough", child and youth justice systems must take as their foundation the principles that uphold the rights of children and young people and develop systems that are qualitatively different to their adult criminal justice counterparts. The 1989 United Nations Convention on the Rights of the Child ("CRC") is the starting point for such a principled approach and the foundation upon which a delicate balance between trial and treatment can be achieved.

"Children", "Young People" and "Juveniles"

It is important to define "child" for the purposes of this paper. The CRC defines a "child" as:[8]

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

In this paper the term "children" refers to all people under the age of 18.

However, no use is made of the word "juvenile" as in the writer's view this invariably has negative connotations. For example, people talk about juvenile offenders, juvenile courts and juvenile penitentiaries but seldom speak of juvenile soccer teams, juvenile violinists and juvenile scholarships. Juvenile is not a word used in relation to young people except where they are involved with the criminal justice system and thus it is a stigmatising term."[9] Young people find the word deeply offensive.

Key principles for dealing with child offenders

This paper seeks to introduce issues and principles of universal importance about dealing with children in conflict with the law – albeit from a New Zealand perspective. It is not fundamentally about the New Zealand youth justice system that deals with child offenders (10 to 13 year olds inclusive) and young people (14 to 16 year olds inclusive). The intent of this paper is to raise principles and issues of universal importance that should challenge all countries in the way they deal with children who offend.

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4 Otago Daily Times, New Zealand, 1884.

5 Moffitt T E, *Adolescence-Limited and Life-Course Persistent Antisocial Behaviour: A Developmental Taxonomy,* n 4.

6 Moffitt T E (1996) *Adolescence-Limited and Life-Course Persistent Offending: A Complementary Pair of Developmental Theories,* quoted in K L McLaren, *Tough is Not Enough – Getting Smart about Youth Crime,* 16, available at http://www.myd.govt.nz/Publications/Justice/toughisnotenough-gettingsmartabout.aspx, (last accessed 7 August 2006).

7 Moffitt T E (1996) *Adolescence-Limited and Life-Course Persistent Offending: A Complementary Pair of Developmental Theories,* n 7, 16.

8 United Nations Convention on the Rights of the Child, Art. 1.

9 Mike Doolan, former Chief Social Worker at the New Zealand Child, Youth and Family Service quoted in E Watts *A History of Youth Justice in New Zealand,* January 2003 available on the New Zealand Youth Court website at <www.justice.govt.nz/youth>.

A principled approach to children in conflict with the law

Youth justice can all too easily become a societal and political football. Most people consider themselves "armchair experts" on the issues – perhaps because everyone was young once and many are parents. Youth justice is also a victim of fashion in that the pendulum swings from "get tough" to "welfare" approaches over time – often in response to a particular crime being highlighted in the media. Shocking crimes by children may lead to calls for the legal system to get tough on young offenders and knee-jerk responses are likely to be inevitable.

However, it is imperative that a principled approach be taken to guard against the excesses of a populist approach. Key international conventions on youth justice contain a number of principles that are vital for a measured and dispassionate response to child offending.

The CRC sets out key principles on the maintenance of the rights of children and young people. The CRC, together with the Beijing Rules, the Riyadh Guidelines and the UN Rules for the Protection of Juveniles Deprived of their Liberty give the rights of children and young people, at least in theory, a central place in international law.

Asking the hard questions

The following is a consideration of some of the key questions that it is suggested challenge all jurisdictions in their dealings with children in conflict with the law. It is vital that every youth justice system regularly asks these questions and assesses its performance against them.

These questions are posed on the following assumptions:

- That every country should have its own separate, specialist legislation for children who break the law.
- There should always be a separate criminal children's court, either as a stand-alone court or as a criminal division of a multi-jurisdictional children's court.
- Legislation and Courts will have specialist protections for young people such as additional safeguards when being interviewed by police, restrictions on police arrest powers and name suppression in Court (either absolute or qualified).
- Every jurisdiction should have trained specialists who deal with children in conflict with the law at every stage of the process. In particular, there should be specialist law enforcement agents who deal with young people, specialist social workers, specialist child advocates or lawyers and specialist judges.

The key questions are:

1. At what age should children be held criminally responsible for their actions?

A survey of various countries reveals a wide disparity in the ages of criminal responsibility. For example, in Portugal the age is 16 years but in England the age is 10 years. Cultural and historical perspectives may indicate a different age is appropriate in different states but nevertheless, the age should be based on studies of children's maturation processes and relative levels of capacity, including their levels of responsibility, impulsivity, decision making and understanding of consequences as well as capacity for "rehabilitation".[10] Studies of human development conclude that the mind develops after the body and that physical/sexual, cognitive, behavioural, emotional and identity mature at different times.[11]

A leading principle in CRC is that States should set a minimum age below which children are presumed not to have the capacity to infringe the penal law.[12] No specific age is mentioned but the UN Committee on the Rights of the Child has criticised jurisdictions in which the minimum age is 12 years or below.[13]

2. What is the proper treatment of child offenders with care and protection issues?

Most serious child offenders, in one way or another, bring with them past and/or present care and protection deficits. International

[10] Monaghan, Hibbert & Moore, *Children in Trouble: Time for a Change* (Barnados, Essex, United Kingdom, 2003).

[11] Dr John Newman, *Development of, Communicating with and Understanding Young People,* Aspects taken from a Presentation at the Centre for Youth Health, New Zealand, July 2005.

[12] United Nations Convention on the Rights of the Child, Art. 40.3(a).

[13] JUSTICE 1996, *Children and Homicide – Appropriate procedures for juveniles in murder and manslaughter cases,* London quoted in G Urbas, *The Age of Criminal Responsibility,* Trends and Issues in Crime and Criminal Justice, No. 181, Australian Institute of Criminology, November 2000, 2.

research confirms a causal connection between maltreatment of children and child offending.[14] Such children present a difficult challenge to the criminal justice system. On the one hand their backgrounds of abuse and environmental dysfunction, categorise them as vulnerable victims in need of help. On the other, their offending demands accountability.

This raises the following fundamental questions. We can never ask these questions enough.

1. When and on what basis, should offences committed by children be seen primarily as a result of care and protection failures (requiring resolution in the Family or Care Courts)? Further, when and on what basis should offences be dealt with as intentional breaches of the criminal law by autonomous, responsible individuals requiring resolution in the criminal courts?
2. At the stage when the law does require that child offenders are dealt with in the criminal Court, to what extent should any underlying care and protection issues that may have contributed to their offending be addressed in the criminal Court rather than the Care or Family Courts?

General Comments

Historically, justice systems treated child offenders as "small adults" and applied a classical punitive approach to juvenile crime. Throughout the early years of the twentieth century there was a move to a positivist "welfare approach" in many countries which dealt with child offending as symptomatic of welfare or care and protection issues.[15] The emphasis was on treatment and rehabilitation instead of punishment and accountability. This movement was, in time, criticised for causing too many and inappropriate arrests of young people for minor offences. In time, the pendulum swung back to a "justice approach" in many jurisdictions—this approach assumed that actions of child offenders were matters of free choice and focused on accountability.

3. Should all children be charged and brought before a court?

Art 40.3(b) of the CRC states that whenever appropriate and desirable, alternatives to judicial proceedings should be found, though not at the expense of the child's human rights and appropriate legal safeguards. This principle shelters children from formal criminal justice processes in recognition of their immaturity and the likelihood that rehabilitative approaches will be particularly effective for those of tender years. Also, contact with the formal criminal justice system can be detrimental. Contact with the formal juvenile justice system has been shown to have a reasonable likelihood of increasing the level of criminal activity in early adulthood.[16] Such negative effects on children are more likely for those who come from impoverished backgrounds or those who are black.[17] This throws doubt on the suggestion that formal prosecution is the effective way to hold children accountable for their crimes.

Child Offenders—what works and what doesn't

*(i) What **Doesn't** Work for Child Offenders*

Research shows that responses to youth offending that are focused solely on deterrence, supervision and punishment are often ineffective.[18] There will be times when, in the interests of protecting the community, punitive responses and prison will be necessary. The point is that these responses do not work in the sense of reducing re-offending and may in fact make the situation worse. Treatment is a vital component of most youth offending responses. Many approaches, such as intensive supervision and drug testing, only effect change in the young person's behaviour if they are coupled with a rehabilitative element.[19] This is probably because punishment and deterrence do not address factors that put young people at risk of offending, or teach

[14] Anna Stewart, Susan Dennison and Elissa Waterson, *"Pathways from Child Maltreatment to Juvenile Offending,* Paper No 241, Australian Institute of Criminology, October 2002.

[15] Emily Watt. *A History of Youth Justice in New Zealand*, n 11.

[16] Bernberg, Jon Gunnar and Marvin D Krohn (2003) *Labelling, Life Chances, and Adult Crime: The Direct and Indirect Effects of Official Intervention in Adolescence on Crime in Early Adulthood.* Criminology, 41(4), 1287-1318; *Criminological Highlights*, August 2004, Vol. 6 No. 5, Item 3.

[17] Bernberg, Jon Gunnar and Marvin D Krohn (2003) *Labelling, Life Chances, and Adult Crime: The Direct and Indirect Effects of Official Intervention in Adolescence on Crime in Early Adulthood*, n 51.

[18] This section is based on K McLaren, *Youth Offending Teams: What Works to Reduce Offending by Young People, e-flash 18* (Ministry of Justice, Wellington, New Zealand, 2005) and K L McLaren, *Youth Offending Teams: What Doesn't Work to Reduce Offending by Young People, e-flash 19* (Ministry of Justice, Wellington, New Zealand, 2005).

[19] K McLaren, *Youth Offending Teams: What Works to Reduce Offending by Young People, e-flash 18*, n 154, 2.

them new skills to succeed in conventional life. Having a "fear of punishment" has not been found to have any relationship to offending and, in fact, some research shows that young people who believe they will be caught and punished severely actually commit more crime.[20] For this reason programmes designed to scare young people "straight", including prison and morgue visits are usually ineffective.

Programmes that intervene in children and young people's lives must deal with as many of the identified needs as comprehensively as possible – an intervention that targets one area of need is unlikely to achieve any long term change. Further, that intervention must target the problems or strengths related to the actual offending.[21] Programmes that build fitness or increase self-esteem are useful but are unlikely to have any impact on recidivism. Effective services must also set out with clearly defined goals, co-ordinate well with other service providers and use a variety of techniques and approaches.

Effective staff are a key determinant of the usefulness of programmes addressing youth offending. Staff who can relate to young people, who model good behaviour and who ensure that the programme actually runs as it was intended can ensure that an intervention is effective – as long as the intervention is of the type identified under the "what works" section in the first place. Research has shown that programmes run by adults are more effective than those run by young people.

While boot camps are a perennial favourite with politicians, these interventions featuring military-style discipline, hard physical work and rigorous exercise may result in improved fitness and respect for staff, but numerous studies have shown that they have little effect in reducing offending.

Of itself, a curfew is usually ineffective in reducing crime but when combined with parental rules, affection and positive attention by parents, a curfew can be a useful intervention. Restitution is another intervention that must be combined with other services such as probation, supervision, family/parent counselling and academic enhancement in order to have an impact.

Long periods of incarceration have been found to be ineffective in reducing offending but the New Zealand experience shows that when prisons provide treatment through effective programmes, an impact on offending can be achieved. Intensive supervision involves staff spending large amounts of time with clients and being very strict about rule breaking but it has not been found to be effective unless it is used alongside rehabilitative services.

*(ii) What **does** work for youth offenders*

Where possible, programmes should specifically target risk factors and, ideally, all needs and problems should be addressed by one intervention so that young people and families do not need to travel to several locations and can avoid issues with various services not providing a co-ordinated approach. Research shows that accessibility is an important factor in a young person completing a programme.

Effective programmes provide services which:

- teach young people how to manage their emotions, particularly anger, and how to manage impulsiveness.
- teach effective violence prevention skills, for young people and parents.
- treat substance abuse using effective techniques.
- teach relapse prevention skills.
- teach parenting skills such as reasonable rules and discipline, the importance of knowing where children are and what they are doing; affection and acceptance.
- provide practical support for families with financial matters, particularly making sure they are not living in poverty.
- increase social skills among young people, and get them involved in positive activities where they can make law-abiding friends.
- improve attitudes to school, attendance and academic performance.
- help families cope positively with poor neighbourhoods or move to less risky neighbourhoods.

The most effective interventions target young people who have a longer and more serious offending history and who are more likely to

[20] K McLaren, *Youth Offending Teams: What Doesn't Work to Reduce Offending by Young People, e-flash 19,* n 154, 4.

[21] An exception to this is work skills which have been shown to effect long-term change as long as the young person finds employment.

offend again rather than youth who have committed few and/or petty crimes. Effective interventions also build in multiple components (e.g. education, work skills and substance abuse), address multiple needs and strengths (such as anger management, thinking skills and making law-abiding friends) and work in multiple environments. The more characteristics of effective practice a programme incorporates, the more impact it has on offending. Lastly, programmes that work across several areas of a young person's life – such as family, peer group and school – are more likely to be effective than those that work in only one area.

Research highlights the importance of teaching young people the necessary skills to reduce violence, such as anger management. It is also vital to protect programme quality ensuring that the actual content of the programmes does not change over time through budget cuts or the ideas of new staff. Effective programmes rely on staff with excellent people skills who are trained to use the actual programme and who are given clear guidelines as to how the programme should be run.

For non-residential programmes, involvement with the young person for six months, with contact as often as once a day, is optimal. The same time frame appears effective with live-in programmes, but here continuous treatment is most effective – that is, having treatment incorporated into every aspect of the day-to-day regime. Long periods of residential treatment do not appear effective, in part because of the harmful impact of living alongside other criminally inclined youth.

What use should be made of Prison and Youth Detention Centres?

Prison is necessary for community safety and protection. It is the ultimate sanction and needs to be available for the most serious offenders. However, while effective for community protection, prison is generally ineffective in meeting young people's needs and should always be a last resort and subject to real restrictions.

Conclusion

Heinous but isolated crimes understandably bring calls to "get tough" on child offenders but knee-jerk responses are inappropriate and potentially dangerous. They take no account of the peculiar needs and potential for rehabilitation found within this difficult group.

With an appropriate form of accountability - which may include diversion or charging - and interventions that meet a young person's needs, the vast majority of young people can be encouraged to put their offending behind them and become responsible contributing adults.

Our treatment of young people must be based on fundamental principles such as those found in the CRC. It is never easy to answer the "hard questions" in relation to child/youth justice but, at the very least, a principled system should exhibit two key features.

Firstly, children should be dealt with in a distinct youth justice system that is qualitatively different from its adult criminal justice counterpart. This distinct system should uphold the rights of children by seeking to adhere to the principles found in international instruments.

Secondly, youth justice professionals should remain cognisant of relevant research into child offending and psychology and tailor their systems to accommodate the specific needs of children.

There is a place for a punitive response and the safety of the public must be paramount.

The role of general deterrence can never be underestimated. Nevertheless, child offenders should be dealt with in a principled manner.

Children in conflict with the law stand at a crossroads – they are either tomorrow's law-abiding citizens or tomorrow's serious offenders. In many cases, which road they take is determined by the youth justice system.

His Honour Judge Andrew Becroft is the Principal Youth Court Judge for New Zealand

This is an edited version of an excellent paper presented by Judge Becroft at the World Congress in Belfast—rated by delegates the best of the week. The paper runs to some 54 pages and my editing does not do justice to it. My purpose is to give you a flavour of what was said and to encourage you to download a copy from the Congress website and read it in detail. You will find it well worth the effort. Willie McCarney

I am grateful to Dr McCarney for his kind permission to republish this edited version of Judge Becroft's Congress paper from the Northern Ireland Lay Magistrate which Dr McCarney edits—Avril Calder

Juvenile Justice in Europe **Joseph Moyersoen—Italy**

Report of the Taranto Round Table

The XXV Annual National Congress of the Italian Association of Youth and Family Magistrates (AIMMF) was held in Taranto from 26-28 October 2006. During the Congress, a Round Table was organised, involving magistrates from six European Countries: Austria, Belgium, France, Italy, Spain and Switzerland.

The aim of the Round Table was to compare the various legal systems of juvenile justice. The comparison allowed us not only to broaden our knowledge and learn about the structure and operation of the different systems in relation to adoption, civil and criminal matters, but—by reading between the lines—we were able to identify legislative and methodological trends in juvenile justice in these continental European countries.

The exercise turned out to be useful and effective. The administration of juvenile justice is the only measure of protection where the UN Committee on the Rights of the Child has adopted specific recommendations in relation to the European National Countries' Report on implementation of the CRC—covering each of the 27 Member States and the two candidate countries (Turkey and Croatia)*.

It became apparent that European legal systems are already in a second or even third phase of reform of rights and procedures, compared to the systems of national justice that were in force immediately before and after the Second World War. For example, in Austria reform of juvenile civil and criminal justice occurred in 2003, in Belgium reform of the juvenile criminal justice system came into effect on 23 October 2006, in Spain in 2006, in Switzerland it came into effect on 1 January 2007.

The Round Table identified several areas of similarity:

- in Italy and Belgium the scope of judges in civil, criminal and adoption matters;
- the involvement of assessors (lay judges) in Austria, France and Italy in criminal cases;
- the use of measures of rehabilitation (such as probation)—in some countries only during the period of the sentence (France or Spain), but in Italy also during the criminal proceedings themselves;
- the powers of juvenile judges in Austria, Belgium and Switzerland who sit alone;
- the procedure for adoption is completely delegated to another legal and/or administrative authority in France, Spain, Austria and Switzerland.

But also found some aspects of considerable difference:

- the exclusive decision-making power in criminal matters of judges in Spain;
- the presence of assessors in Italy in all matters—civil, criminal and adoption;

*Study by the Secretariat of the European Network of Research Institutes on Childhood, ChildONEurope: www.childoneurope.org

- the age of criminal responsibility, which differs widely between countries (from Belgium's 18 years down to 10 years in Switzerland—and 7 years of age before the recent reform);

Finally, the Round Table prompted several observations and questions:

- the debate about whether certain matters (particularly civil ones) should be dealt with inside or outside a court setting is already under way in several EU countries;
- moves are taking place towards systems with more of the characteristics of restorative justice;
- the question whether it is preferable for one judge to be assigned to follow a young person through the course of his or her life; or whether different judges should be involved at various stages, depending on the particular civil or criminal issues that arise for that particular young person;
- how far it is possible to combine participation of the victim with a rehabilitation programme for the young offender;
- everyone at the Round Table perceived a need for a structured approach to the updating and training of juvenile judges and magistrates and associated lawyers and administrators. This issue is being tackled only in certain countries (for example in Belgium).

We hope that the comparison begun by the Taranto Round Table will be the start of a much fuller consideration in future.

Joseph Moyersoen is a judge, jurist and Coordinator of the Office of ChildONEurope

2006 Judicial Excellence Award — Report from the Philippines

Congratulations to our member **Judge NIMFA C. VILCHES** of Manila who is the winner of the 2006 *Chief Justice Jose Abad Santos Award for Outstanding Regional Trial Court Judge in Metropolitan Manila*. The award ceremony was held on September 19, 2006 at the Manila Supreme Court. On the same day Judge Vilches was appointed by the Supreme Court of the Philippines as the new Assistant Court Administrator (ACA), responsible for the supervision and administration of the lower courts and their personnel.

Judge Vilches combines her judicial functions with academic work and activism. She undertakes research, lectures and trains judges at the Philippine Judicial Academy (PhilJA).. She held the Chief Justice Ramon Avancena Chair in Civil Law for 2003-2006 and chaired the Task-Force on Justice for Children within the Office of the President of the Philippines. At present she is a significant member of the technical working group in Congress drafting a juvenile justice bill to improve the conditions of children in conflict with the law. In her free time, she coordinates inter-agency efforts for the betterment of Filipino children and families and helps with the supervision of the Manila Youth Reception Center. Judge Vilches also helps train other court officers for UNICEF-Manila in partnership with the judiciary and government agencies.

Judge Vilches is also active on the international scene. In 2002 she was a member of the Philippine Delegation to the UN General Assembly Special Session for Children and has taken part in many international conferences and forums on issues such as child trafficking and family court mediation. The programme CASA/GAL that she initiated in 1999 to advocate and promote the best interests of children and families in court was voted by UNICEF as one of the ten best initiatives for East Asia and the Pacific. In recognition of her contribution to advancing children's and women's rights, she will be featured by the British Council in their project: *Women of the World: Making a Difference.*

Veillard-Cybulski Prize 2006 — 2006 World Congress

The purpose of the Veillard-Cybulski Prize is to reward pieces of work which bring an innovative contribution to improving methods for dealing with children, adolescents and their families in difficulty.

The prize is awarded every 4 years on the occasion of the quadrennial Congress of the International Association of Youth and Family Judges and Magistrates (IAY&FJM). The winner receives a prize of CHF 10,000 (ten thousand Swiss francs).

Unanimously, the three jury members, Atilio Alvarez, Geert Cappelaere and Jean Trépanier, recommend that the prize should be bestowed on **Judge Dieudonné Eyike-Vieux** for his book "The Minor and Cameroon Criminal Law. A Socio-Judicial study"**.**

Extracts from the jury's report

"This is an excellent study, the primary aim of which is to present the state of criminal law applicable to minors in Cameroon. The task was accomplished in a remarkable way, explaining in a very well-organized and systematic manner the contents of the legislation itself, while at the same time calling on a wealth of jurisprudence to illustrate the interpretations derived from it by the courts and in practice. The author succeeds in combining and integrating the rules inherited from the colonial past with facts peculiar to Cameroon society. The work does not limit itself solely to the legal aspects.

"The author presents a set of data and varied information, particularly on delinquency and various other problems which young people face, as well as reflections and suggestions regarding routes of intervention which could be taken. We must add that the way in which a number of cases are brought up in the context of using jurisprudence gives an idea of both what the reality of judicial intervention can be in a country like Cameroon and the conditions in which many young people and their families live, as well as the difficulties they are faced with.

"Thus the book contains elements which are almost ethnographic. In this way, through its varied and multi-disciplinary dimensions, Mr. Eyike-Vieux' work may bring judicial practitioners to go beyond the area of law and integrate other perspectives not usually presented by legal research. Here is one way in which the work brings an innovative contribution to the judicial treatment of minors.

"Mr. Eyike-Vieux' book makes a contribution which is no doubt unique for Cameroon, but which can also serve as an example for other countries, in particular – but not exclusively – in Africa. It is valuable to understand the essence of the rule of law, in both its legal and jurisprudential aspects.

"Explaining the rule of law in a thorough, accessible and well-publicized piece of work constitutes, for various countries, an innovative contribution likely to improve the methods of treating children in the courts. The members of the jury would like Mr. Eyike-Vieux' initiative to be known as widely as possible both inside and outside Cameroon, and imitated by others. They hope that the attribution of the Veillard-Cybulski prize can play a role for this purpose, likewise a translation of the book into English".

Dieudonné Eyike-Vieux is President of the Court of 1st Instance in Ngaoundéré in Cameroon. For years he has taken an active interest in juvenile justice, his main area of commitment. He is a member of several NGOs, and has taught, written and lectured.

In addition, the jury proposes an honourable mention for **Guy Cave** for his work entitled**: "**Are Children 'the Seeds of Peace'?— exploring the intersection of children's rights, development assistance and peace-building".

"In promoting the approach of *peace building* and *peace consolidation* and linking it to the rights of children whose *empowerment* he wants to favour, the author sends an urgent call for placing children at the heart of political, military and social deliberations, and not as the objects of intervention, but as protagonists. The extent of this concern is justified by the fact that children are often – if not always – the first victims of conflicts."

"The idea of founding peace-making on the rights of the child—and in particular on their *empowerment*—is according to all evidence an innovatory one".

"The publication (in its entirety or in a modified form) of this work would contribute to widening debate on the interesting questions it raises. It will be beneficial to push for more reflection on these questions in order to permit the proposed approach to bear as much fruit as possible on the ground".

Guy Cave is a British national who currently works in Yangon, Myanmar. He is a highly qualified social worker, with considerable experience of working in institutions and with NGOs, in particular in the area of the Rights of the Child. He has also had a year's experience in Colombia.

During its General Assembly on 22 August 2006, the Veillard-Cybulski Fund Association followed the jury's recommendations.

For the Veillard-Cybulski Association Fund, André Dunant, President. Sion, 22 August 2006

Treasurer's column — Avril Calder

At the General Assembly in Belfast on August 31st 2006 members decided to increase the membership fee from GBP 15 to GBP 20. It was GBP 15 for over twenty years and the expense of producing the much loved Chronicle increased substantially in that time stretching our resources.

It has also been difficult and expensive for members to send their subscriptions to the Treasurer and for the Treasurer to collect them not least because of the high and disproportionate charges made by the international banking system.

The Executive Committee has decided, therefore, to introduce an **extra** method of paying, enabling you to pay online with a debit or credit card through a **'PayPal'** facility on our website at www.judgesandmagistrates.org. To use it you simply log on to the website and then

- click on the 'Application and Subscription' button
- complete the membership form and press submit
- you will be redirected to a brief information page. Read the details and press subscribe
- complete the details to open a PayPal account—this is free
- pay your subscription online. This is a secure connection and PayPal is a respected world wide company.

PayPal will charge you for this service in the same way as the international banking system would charge you, but at GBP1 the charge for an individual year's subscription is modest. It will be necessary for you to pay this charge at the same time as paying your subscription. This will make a total of GBP21 for you to pay. GBP1 will be taken immediately by PayPal and, as Treasurer, I will transfer the GBP20 to our bank account. There is a charge for the transfer too, but, at present, the view of the Executive is that the Association will pay it. It is the Executive's hope that you will find this method both convenient and simple as well as cost effective.

Other ways of paying

Of course, if you wish to pay:

- directly into our bank account this is possible, but less convenient and more expensive for you. If you would like to pay in this way, please let me know and I will forward details of our new bank account in London to you.
- If you wish to pay using a sterling cheque please make it payable to the International Association of Youth and Family Judges and Magistrates and send it to me at my address (see page 28).

Finally, I am also sending out by separate email the request for your 2007 subscriptions—both to individuals and national associations. Some of you have already paid for 2007 so I ask you to forgive your inclusion in the general email. Others paid in the second half of 2006 mainly at the Congress in August and I ask you to forgive me for returning to you so soon. But in future it would be a big help to me to streamline the procedure and approach everyone early in each New Year.

If you should have any questions about the new arrangements, please do not hesitate to contact me on ac.iayfjm@btinternet.com

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Council
The following members were elected to serve the Association for 2006-2010:

President - Renate Winter (Austria)
Vice-president - Oscar d'Amours (Canada)
Secretary General - Nesrin Lushta (Kosovo)
Deputy Secretary General - Mohamed Habib Cherif (Tunisia)
Treasurer - Avril Calder (England)
Alejandro Molina (Argentina)
Monica Vasquez Larsson (Argentina)
Juan Carlos Fugaretta (Argentina)
Christian Maes (Belgium)
Antonio A. G. Souza (Brazil)
Guaraci de Campos Vianna (Brazil)
Yang Chengtao (China)
Daniel Pical (France)
Frieder Dünkel (Germany)
Sophie Ballestrem (Germany)
David Carruthers (New-Zealand)
D.S. Ncapayi (South Africa)
Michel Lachat (Switzerland)
Feridun YENISEY (Turkey)
Len Edwards (USA)
The immediate Past President is an ex-officio member of the Council and acts in an advisory capacity without voting rights.

Honorary Members elected at the 2006 World Congress :
Alyrio Cavallieri (Brazil)
Lucien Beaulieu (Canada)
Shao Wenhong (China)
Aysen Betül Onursal (Turkey)

Note:
Some council members have been forced to resign since the General Assembly due to a change of role, increased work pressures etc. The list below gives the names of those who have resigned together with the names of those who have been co-opted by the Executive Committee to replace them until the next General Assembly.

Resignations: Monica Vasquez Larsson, Sophie Ballestrem, Michel Lachat and Dixon Ncapayi. I thank them sincerely for their long and committed service on the Council.
Co-options: Corinne Dettmeyer (Netherlands); Petra Guder (Germany), Hervé Hamon (France) and Joseph Moyersoen (Italy) whom I warmly welcome. **Renate Winter**

Chronicle Chronique Crónica — Voice of the Association

The Chronicle is the voice of the Association. It is published bi-annually in the three official languages of the Association — English, French and Spanish. The aim of the Editorial Board has been to develop the Chronicle into a forum of debate amongst those concerned with child and family issues, in the area of civil law concerning children and families, throughout the world

The Chronicle is a great source of learning, informing us of how others deal with problems which are similar to our own, and is invaluable for the dissemination of information received from contributions world wide.

With the support of all members of the Association, a network of contributors from around the world who provide us with articles on a regular basis is being built up. Members are aware of research being undertaken in their own country into issues concerning children and families. Some are involved in the preparation of new legislation while others have contacts with colleagues in Universities who are willing to contribute articles.

A resource of articles has been built up for publication in forthcoming issues. Articles are not published in chronological order or in order of receipt. Priority tends to be given to articles arising from major IAYFJM conferences or seminars; an effort is made to present articles which give insights into how systems in various countries throughout the world deal with child and family issues; some issues of the Chronicle focus on particular themes so that articles dealing with that theme get priority; finally, articles which are longer than the recommended length and/or require extensive editing may be left to one side until an appropriate slot is found for them

Contributions from all readers are welcome. Articles for publication must be submitted in English, French or Spanish. The Editorial Board undertakes to have articles translated into all three languages — it would obviously be a great help if contributors could supply translations. Articles should, preferably, be 1500 - 2000 words in length. 'Items of Interest', including news items, should be up to 500 words in length. Comments on those articles already published are also welcome. Articles and comments should be sent directly to the Editor-in-Chief. However, if this is not convenient, articles may be sent to any member of the editorial board at the addresses listed below.

Articles for the Chronicle should be sent directly to:

Avril Calder, Editor-in-Chief,
e-mail : acchroniclelayfjm@btinternet.com

Copies in our three working languages (English, French and Spanish) would be appreciated. Alternatively, articles may be directed to any member of the Editorial Panel. Names and email addresses are given below

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