# Table of Contents

Abstract and Samenvatting (Summary in Dutch) vii

Table of Contents xi

Preface xiv

Acknowledgements xix

Chapter 1  Shifting Perspectives on Children, Shifting Rights and Criminal Responsibility in Juvenile Justice 1
  Rights and Right-Holders, Competence, and Competing Constructions of Childhood 2
  Welfare Approach and the Postponement of Criminal Responsibility 7
  Criminal Responsibility and the Justice Approach 17
  Conclusion 32

  International Juvenile Justice Standards 41
  Juvenile Justice Standards’ Mediation of Welfare-Justice Tensions 56
    The Evolving Capacities of the Child 61
    Evolving Capacities, Responsibility, and Criminal Responsibility 67
  Conclusion 79

Chapter 3  MACRs and States’ Obligations under Regional and International Law Instruments 85
  International Covenant on Civil and Political Rights 85
  International Covenant on Economic, Social and Cultural Rights 88
  American Convention on Human Rights 90
  Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts 92
  Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 100
  United Nations Standard Minimum Rules for the Administration of Juvenile Justice 102
  Convention on the Rights of the Child 107
Chapter 4  Historical Influences on MACRs

Roman Law, European Law, and European Colonial Law 145
Islamic Law 153
Table 4.1: Selected Islamic School Age Ranges (in years) for Individual Determinations of Puberty 156
Soviet Law 168
Customary, Traditional, and Religious Law Systems 172
Conclusion 178

Chapter 5  Current MACRs Worldwide and Modern Trends 181

Making Sense of MACRs: Methodological Considerations 181
Current MACRs Worldwide 187
Table 5.1: Summary of Worldwide MACR Provisions by Country 187
Figure 5.1: Current MACR Distribution Worldwide 202
Modern Trends and Major Influences 205
Table 5.2: MACR Trends Since 1989 207
The MACR as a General Principle of International Law 234
Conclusion 238

Chapter 6  Practical Implications and Challenges of MACR Implementation 243

No Proof of Age or Reliable Age Estimates 244
Problematic Responses to Children Younger than MACRs 259
No Effective Response to Children Younger than MACRs 269
Undermining of Doli Incapax and Similar Presumptions 282
Instrumental Use of Young Children by Adults for Criminal Activities 290
Limited Applicability and Implementation of Relevant Laws 294
National Amnesties for Children’s Delinquent Acts 297
Conclusion 299

Chapter 7  Making MACRs Work for Children’s Rights 303

Defining a More Meaningful MACR 304
MACR Provisions: Establishment, Implementation, and Monitoring 306
A Question of Age? 307
Age Means Little without Implementation and Monitoring 310
Annexes

Annex 3: MACR Provisions and Statutory Sources: Countries Influenced by Soviet Law 391

Index 405