

Principles of the UN Convention on the Rights of the Child

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ABSTRACT

This study focuses on the principles of the UN Convention on the Rights of the Child, which are regarded as interpretative principles concerning the rest of the Convention's text. This means that states bound by the provisions of the Convention are obliged to consider them when applying legislation concerning specific facts related to the situation of children. The body of the study includes an analysis of the principles of non-discrimination, considering the best interests of the child, the right to survival and development, considering the view of the child, and related to the realisation of the right to be raised in a loving (in principle, own) family. The last principle is not directly contained in the body of the articulated Convention, but can be found in its preamble, which must also be considered as a determinant part of the interpretation of the provisions. The analysis of the individual principles focuses on the elements of their contents, and the development and safeguarding of their implementation by the other rights and obligations of the Convention incumbent on both parents and state parties. The paper concludes with assertions on ways to secure the optimal implementation of these principles.

KEYWORDS

children, Convention on the Rights of the Child, best interests of the child, nondiscrimination, survival and development of the child, view of the child, child's rights

1. Introduction

The United Nations (UN) Convention on the Rights of the Child (hereinafter CRC or the Convention) is one of the most fundamental instruments for protecting children's rights. The CRC was adopted at the United Nations General Assembly in 1989 as the result of 11 years of work on the Convention, which was initiated in 1978 by Poland¹ and was positively received by the international community. This positive attitude was primarily due to the need to regulate the issue of children's rights differently from

1 See: Wedeł-Domaradzka, 2018, pp. 441–452; Hanyś, 2015, pp. 184–195.

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how it had previously been regulated, and differently from how it was practiced in the interwar period,² when the regulation of children's rights was based mainly on soft law standards. The explanatory memorandum of the CRC emphasised the importance of the 1959 Declaration of the Rights of the Child, and indicated a need for consistent measures to protect children's rights.³ This resulted in a document comprising three parts and fifty-four articles.⁴ The Convention's most essential principles are set out in Arts. 2, 3, 6, and 12, and relate respectively to the following:

- the general principle of nondiscrimination against children and how they exercise their rights;
- the obligation to consider the best interests of the child in all actions taken by public or private entities for the benefit of children;
- the right to conditions of life and development appropriate to the child;
- the views of the child, by age and maturity, in all actions taken concerning children.

To date, three Optional Protocols have also been developed for the Convention, as follows: the Optional Protocol to the Convention on the Rights of the Child on sale of children, child prostitution and child pornography;⁵ the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;⁶ the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.⁷ A particular area for improvement of these documents are the numerous reservations⁸ regarding the Convention. What is valuable, however, is that they are being gradually phased out and the standards created by the existence of additional protocols increase the scope of the protection of children's rights.

The Convention is a document developed and used universally and is vital to regional human rights protection systems. These systems, with their own safeguards and protection mechanisms, make intensive use of the provisions of the CRC when adjudicating cases involving violations of children's rights. One of the more prominent

2 Moody, 2015, pp. 16–17.

3 Explanatory Memorandum, 18 January 1978 r. in: Legislative History of the Convention on the Rights of the Child, E/CN.4/1284, pp. 31–32.

4 Convention on the Rights of the Child, New York, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3; depositary notifications C.N.147. 1993.TREATIES - 5 of 15 May 1993 [amendments to Art. 43 (2)]1; C.N.322. 1995.TREATIES-7 of 7 November 1995 [amendment to Art. 43 (2)], (hereinafter CRC).

5 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, New York, 25 May 2000, United Nations, Treaty Series, vol. 2171, p. 227.

6 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, New York, 25 May 2000, United Nations, Treaty Series, vol. 2173, p. 222.

7 Optional Protocol to the Convention on the Rights of the Child on a communications procedure, New York, 19 December 2011, United Nations, Treaty Series, vol. 2983, p. 135.

8 Schulz, 1999, pp. 111 and 132.

Convention provisions used in this jurisprudential practice⁹ are the principles that the Convention provides, particularly the principle of considering the child's best interests. Moreover, the provisions of the Convention have become determinants of many legal solutions at the level of national law.¹⁰

The scope of the CRC has been limited to children, who are defined as every human being below the age of 18 years.¹¹ The age of children is adopted by the Convention as the ultimate limit of protection, but may be modified by the regulations of national legislation, which may presuppose earlier rules regarding the attainment of majority. Importantly, the proposed definition of the child has been controversial from the outset, particularly about the need (or lack thereof) to extend protection to children in the prenatal period.¹² In the end, it was decided not to explicitly specify the initial period of protection, thus allowing individual states to regulate this issue at the national legislation level. However, the issue of age does not affect the perception of children's rights; they are not, according to Korczak, treated as individuals who will become human beings, but as human beings with their rights.¹³

2. Nondiscrimination

The first principle enshrined in the CRC is the principle of nondiscrimination, albeit its definition in the Convention requires further development. For a fuller understanding of the nature of discrimination, we must reference its conceptualisation under the Covenant on Civil and Political Rights, which indicates that discrimination:

‘should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing

9 The European Court of Human Rights referred to this principle, for example, in the following cases: *Nazarenko v. Russia*, application no. 39438/13, judgement of 16 July 2015, §63–68. Available at: <https://hudoc.echr.coe.int/eng?i=001-156084>; *Nunez v. Norway*, application no. 55597/09, judgement of 28 June 2011, §84. Available at: <https://hudoc.echr.coe.int/eng?i=001-105415>; *Nuutinen v. Finland*, application no. 32842/96, judgement of 27 June 2000, § 104; 124-136. Available at: <https://hudoc.echr.coe.int/eng?i=001-58736>; *X v. Latvia*, application no. 27853/09, judgement of 26 November 2013, §95–102. Available at: <https://hudoc.echr.coe.int/eng?i=001-138992>; *Neulinger and Shuruk v. Switzerland*, application no. 41615/07, judgement of 8 January 2009, 2011, §49–52. Available at: <https://hudoc.echr.coe.int/eng?i=001-99817>.

10 Sutherland and Macfarlane, 2016, pp. 7 and 8.

11 Art. 1 of the CRC.

12 Lopatka, Introduction by Adam Lopatka, Chairman/Rapporteur of the Working Group on a draft convention on the rights of the child, E/CN.4/L.1366, w: Legislative History of the Convention on the Rights of the Child, p. xli.

13 Doek, 2007, p. 62.

the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.’¹⁴

Specifically, it is Art. 2 of the CRC that enshrines the principle of nondiscrimination, as follows:

‘1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.’¹⁵

According to this article, states parties to the Convention shall ensure that every child within the jurisdiction of that state enjoys the rights contained in the Convention without discrimination. The principle contained in Art. 2 of the CRC indicates that such discrimination shall not occur based on the child’s or his/her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic, or social origin, property, disability, birth, or other status. Thus, the drafters of the Convention chose to indicate the most common grounds for possible discrimination, but did not provide an exhaustive catalogue to allow for the possible elimination of discrimination that would take place based on another criterion.

The second part of Art. 2 of the CRC also indicates the obligation of the signatory state to provide protection against all forms of discrimination or punishment based on the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members. In analysing these provisions, it is necessary to remember that the Convention does not require that children be always treated identically under all circumstances.¹⁶ The situations of differential treatment of children are perfectly permissible, but are based on the situations envisaged in the CRC. These situations must be ‘consistent with the evolving capacities of the child’¹⁷ and in ‘accordance with the age and maturity of the child’.¹⁸

The Convention also allows for considering children with special needs or status. On this topic, reference is made to children permanently or temporarily deprived of

14 UN Human Rights Committee, CCPR General Comment No. 18: Non-discrimination, 10 November 1989. Available at: <https://www.refworld.org/docid/453883fa8.html> (Accessed: July 29, 2023)

15 Art. 2 of the CRC.

16 Mower, 1997, p. 25.

17 Art. 5 of the CRC.

18 Art. 12 of the CRC.

their family environment, who will be entitled to special protection and assistance from the state,¹⁹ and to children with disabilities, whom the State should take special care of and:

‘shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.’²⁰

Concerning the elements identified as possibly discriminatory in the Convention, Art. 2 firstly refers to the race of the child or of the child’s parents or guardians. The possibility of racial discrimination should be interpreted broadly and should not be limited to race as a biological category; accordingly, the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination can be applied as a subsidiary interpretation.²¹ Art. 1 of the Convention states that racial discrimination means:

‘(...) any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.’

As can be seen, the CRC prohibits discriminatory actions concerning race-related elements – including skin colour (mentioned separately in the CRC) and the notions of “ethnic origin” (mentioned in the enumeration of discriminatory behaviours) and “social origin” – in applying its provisions. As indicated by a United Nations Educational, Scientific and Cultural Organization²² research, one’s racial and ethnic origin may be associated with restricted access to health services in some countries.²³

The second element identified as possibly discriminatory is sex, with the term “sex” again implying a construct tending more toward the biological²⁴ than the social side, the latter for which the term “gender” would be more appropriate. Examples of discriminatory actions based on “sex” could be depriving or limiting educational

19 Art. 20 of the CRC.

20 Art. 23 of the CRC.

21 UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195. Available at: <https://www.refworld.org/docid/3ae6b3940.html> (Accessed: July 30, 2023).

22 United Nations Children’s Fund, Rights denied: The impact of discrimination on children, UNICEF, New York, November 2022, p. 6.

23 Victora et al., 2020, pp. E352–E361.

24 Abramson, 2008, p. 107.

opportunities for one of the sexes (usually girls).²⁵ A third element identified as possibly discriminatory is language. This aspect is closely linked to the already presented “ethnic origin” and citizenship, with language discrimination possibly occurring primarily in educational contexts, such as by limiting or hindering the language teaching of national or ethnic minorities.²⁶

A fourth element identified as possibly discriminatory is religion and religious aspects, with which ethnicity is commonly associated. However, unlike race and sex, these factors are not biologically determined.²⁷ The possibility of religious discrimination covers professing or not professing a particular religion and expressing or not expressing the behavioural characteristics of a given religion. Examples of discrimination situations associated with religion include the school year’s organisation, which is usually subordinated to the dominant religion.²⁸ However, in such cases, as the practice of the regional human rights system²⁹ shows, a child’s interest in the right to education outweighs the beliefs of his/her parents. There is also the issue of discrimination stemming from religious symbols or clothing items and their use thereof. Some people may consider the state’s secular rules in public institutions discriminatory.³⁰ The issue of religious discrimination is linked to the guarantees provided by Art. 14 CRC, according to which state parties shall, first, ‘respect the right of the child to freedom of thought, conscience and religion’ and, second, ‘respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child’.³¹

A fifth element identified as possibly discriminatory is political belief or opinion. Still, the relevance of this discriminatory criterion is marginal, especially in the

25 Shaheed, Special Rapporteur on the right to education, The world is failing 130 million girls denied education: UN experts, 23 January 2023. Available at: <https://www.ohchr.org/en/press-releases/2023/01/world-failing-130-million-girls-denied-education-un-experts> (Accessed: July 30, 2023).

26 Recommendation CM/Rec(2009)4 of the Committee of Ministers to member states on the education of Roma and Travellers in Europe (adopted by the Committee of Ministers on 17 June 2009 at the 1061st meeting of the Ministers’ Deputies).

Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805b0a1c (Accessed: July 30, 2023). Recommendation No R (2000) 4 of the Committee of Ministers to member states on the education of Roma/Gypsy children in Europe adopted by the Committee of Ministers on 3 February 2000, at the 696th meeting of the Ministers’ Deputies).

Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2e91 (Accessed: July 30, 2023).

27 Abramson, 2008, p. 110.

28 Langlaude, 2009, Available at: <https://pureadmin.qub.ac.uk/ws/portalfiles/portal/675491/Briefing+for+CRIN+June+2009++children+and+religious+discrimination.pdf> (Accessed: July 30, 2023).

29 European Court of Human Rights, 27 April 1999, *Martins Casimiro and Cerveira Ferreira v. Luxembourg* (dec.) no. 44888/98.

30 An example may be the French solutions introduced in 2004, which prevented children from wearing clothes or symbols associated with or manifesting a specific religion at school.

31 Art. 14 of the CRC.

context of political opinions. One topic that such element may concern is children on the brink of adulthood, that is, reaching the age at which they can partake in elections. Individual states can determine this age, which varies between 16 and 18 years in Europe, but if the age limit is applied to all children on the same basis and to the same extent in a given country, it cannot be considered discriminatory.

A sixth element identified as possibly discriminatory is property. In this context, it may not be so much a question of the property owned by the child, but rather, and more broadly, of the whole material situation of the child and his/her family. In this respect, discrimination may be related to the availability of certain elements necessary for the life and functioning of a family (e.g. such as housing), which a family, especially one with many children, can rent.

Much space of the CRC is devoted to general topics about the universal child protection system, and a seventh element identified as possibly discriminatory refers to topics pertaining to disability. Importantly, the CRC was the first binding document to explicitly mention disability as a cause of discrimination, with the document also defining people with disabilities as follows: ‘those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others’.³² Accordingly, the document obliges signatory states to ensure that the rights contained in the Convention are respected and guaranteed without discrimination on the grounds of disability³³ in all of its forms (i.e. physical and intellectual).

Now, regarding the Convention on the Rights of Persons with Disabilities,³⁴ it devotes its Art. 7 to children, describing that state parties are to ensure that children with disabilities enjoy all human rights and freedoms on an equal basis with other children, and that their best interests are always a primary consideration. It also posits that states should ensure freedom of expression and consider the views in accordance with the age and maturity of children. As indicated by the Committee on the Rights of Persons with Disabilities General Comment No. 6,³⁵ children with disabilities often experience intersectional discrimination, which stems from being a child and subject to the previously indicated possible forms of disability and related discrimination. It is also the state parties’ obligation to safeguard children’s opportunities to inform, consult, and right to have a say in any decision-making process related to children with disabilities. There is also the need for state parties to engage in the de-institutionalisation of measures associated with opportunities for children with disabilities to live in a family environment (natural or alternative),

32 Art. 1, UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution, adopted by the General Assembly, 24 January 2007, A/RES/61/106. Available at: <https://www.refworld.org/docid/45f973632.html> (Accessed: July 29, 2023).

33 Art. 2 of the CRC.

34 Art. 7 of the Convention on the Rights of Persons with Disabilities.

35 General Comment No. 6 on equality and non-discrimination 26 April 2018, CRPD/C/GC/6. Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination> (Accessed: July 30, 2023).

in the creation of opportunities for children with disabilities to live in such environment, and to more widely consider children's disabilities in state policies.

The issue of disability was also the source for the creation of the Committee on the Rights of the Child's General Comment No. 9,³⁶ which is dedicated to exploring solutions for issues about children with disabilities addressed in the Convention. In addition to improving on the apparent prohibition of discrimination under Art. 2 of the CRC, it elaborates on the provisions of Art. 23 for the protection of the interests of these children. According to the General Comment, it is of utmost importance to ensure the inclusion of children with disabilities in society in such a way as to promote their independence and secure their access to education, training, healthcare services, convalescence, preparation for employment, and recreation. It also emphasises the importance of state support – which should be part of a permanent and consistently implemented state policy instead of incidental policy initiatives – being provided not only to children with disabilities but also to their parents or caregivers.

The eighth and last element identified as possibly discriminatory is birth, and it is rather complex. The prohibition of discrimination in this area is the result of historical and cultural backgrounds related to class or caste, and it is certainly not a criterion related to birth in or out of wedlock, as Art. 2 (2) of the CRC describes.³⁷

3. Best interests of the child

The second principle enshrined in the CRC is the consideration of the child's best interests. It is described in Art. 3 as follows:

1. '1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.'³⁸

36 UN Committee on the Rights of the Child, General Comment No. 9 (2006): The rights of children with disabilities, 27 February 2007, CRC/C/GC/9. Available at: <https://www.refworld.org/docid/461b93f72.html> (Accessed: July 29, 2023).

37 Abramson, 2008, p. 106.

38 Art. 3 of the CRC.

Art. 3 (1) warrants further inspection because it constitutes, as the Committee on the Rights of the Child has pointed out, ‘one of the four general principles of the Convention for interpreting and implementing all the rights of the child’.³⁹ According to the opinion of this same Committee, the “best interests of the child” should be considered along three conceptual dimensions.⁴⁰ First, a substantive law dimension, as the child’s best interests should be assessed and treated as paramount whenever a confluence of the child’s interests and those of other actors is considered. Second, an interpretation of the law dimension, in that when interpreting a provision containing the best interests of the child, the child’s best interests should be regarded as a fundamental principle, and the interpretation that best safeguards those interests must be chosen. Third, a procedural law dimension, as the child’s best interests must be applied (as a procedural rule) in the decision-making process, and considered in the reasons for a decision, concerning the child.

The principle of the “best interests of the child” is also referred to in other respects in the CRC and its additional protocols. Direct references are found in the following: Art. 9 of the CRC, which deals with maintaining contact with both parents, except when this would be contrary to the best interests of the child; Art. 18, which deals with parental responsibilities and the fact that they should take into account the best interests of the child when exercising them; Art. 20, which allows for the child to be deprived of his/her family environment if that is in the best interest of the child, albeit this should be accompanied with appropriate protection and assistance; Art. 21, which tackles with considering the best interests of the child, which are understood as paramount, in adoption procedures; Art. 37 (c), which relates to standards for the deprivation of liberty of the child; Art. 40, para. 2 (b), which provides an appropriate standard for dealing with cases where children have come into conflict with the law. The number of references shown here to the principle of the best interests of the child may explain why it is one of the most studied principles among those present in the CRC.⁴¹

References to the child’s best interests can also be found in the preamble and the provision relating to the protection of victims of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and

39 UN Committee on the Rights of the Child, General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5. Available at: <https://www.refworld.org/docid/4538834f11.html> (Accessed: July 29, 2023), para. 12. UN Committee on the Rights of the Child, General Comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12. Available at: <https://www.refworld.org/docid/4ae562c52.html> (Accessed: July 30, 2023), para. 2.

40 UN Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Art. 3, para. 1), 29 May 2013, CRC/C/GC/14, p. 4. Available at: <https://www.refworld.org/docid/51a84b5e4.html> (Accessed: July 29, 2023).

41 See: Wieruszewski, 2024; Detrick, 1999; Ruggiero, 2022; Freeman, 2007; Tobin, 2019.

child pornography.⁴² A standard of conduct consistent with the child's best interests is also provided for in the preamble and in the provisions of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.⁴³ These are to be guided by the Committee on the Rights of the Child during its proceedings. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict⁴⁴ mentions the principle of the child's best interests only in the preamble, indicating that it should be considered in all actions involving children.

Moreover, the concept of the “best interests of the child” has accompanied documents dedicated to children's rights since the beginning of their creation, with an early example containing related topics being the Geneva Declaration of 1924. This Declaration indicates that the population ‘owes to the Child the best that it has to give’.⁴⁵ Further development took place in the 1959 Declaration of the Rights of the Child,⁴⁶ wherein Principle 7⁴⁷ indicates that the best interests of the child should be the primary concern and guideline for proceeding to safeguard the child's best interests vis-à-vis the child's education, and that it is the parents who should secure its implementation. In the end, it seems that the abovementioned definition of the “best interests of the child” provided in Art. 3 deviates from the original proposal of the concept, mainly owing to the expansion of the catalogue of actors obliged to consider the best interests of the child in their actions, and owing to the focus on making these actors emphasise the person of the child, which is also reflected in the application of Art. 3.⁴⁸

In discussing the principle of the best interests of the child, there is value in identifying the elements that constitute it. The General Comment draws attention to the term “all actions”, which should be understood broadly, not only as “actions” but also as ‘acts, conduct, proposals, services, procedures and other measures’,⁴⁹ and possibly other kinds of action.⁵⁰ Furthermore, an analysis of the contents of Art. 3 brings to the fore the issue that the actions taken are to concern “children”, with the term “children” here referring to the concept of “child” as defined in the CRC (i.e. the actions

42 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

43 Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.

44 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

45 Freeman, 2010, p. 213.

46 Declaration on the Rights of the Child, proclaimed by the General Assembly, resolution 1386 (XIV), A/RES/14/1386, 20 November 1959, available at: <https://www.ohchr.org/en/resources/educators/human-rights-education-training/1-declaration-rights-child-1959> (Accessed: July 29, 2023).

47 The best interests of the child will be the basic concern and guidelines for legal guardians towards the education of a child; both parents have primary responsibility under the Declaration on the Rights of the Child.

48 Chen Wei, 2002, pp. 45–49; Chen Wei, 2008, pp. 51–64.

49 UN Committee on the Rights of the Child, General Comment No. 14 (2013), p. 7.

50 Freeman, 2007, p. 45.

should concern persons under the age of 18). At the same time, M. Freeman suggests a broad approach to understanding the description of “concerning children”, in that it should not only be a question of the child’s specific situation but also of those decisions that will affect children in the future, such as regulations and actions taken on global warming, cloning, or pre-implantation genetic diagnosis.⁵¹ As far as the public or private institutions that are supposed to take action about children’s interests are concerned, their scope should also be as broad as possible (i.e. those that work for and whose actions have an impact on children), and even if Art. 3 does not mention parents, their obligation under Art. 18⁵² should be borne in mind.

Over the years, there have been no decisions to include other elements to the concept of the “best interests of the child”. However, attempts have been made to define additional elements that should be considered, without forgetting the openness and possibility of revision. According to John Eekelaar, the concept of best interests of the child should include the following:

““basic” interests (to physical, emotional and intellectual care); their “developmental” interests (that their potential should be developed so that they enter adulthood as far as possible without disadvantage) and their “autonomy” interests (the freedom to choose a life-style of their own).”⁵³

It remains that the flexible approach (i.e. without a legal definition) may offer a better guarantee to safeguard children’s interests. Possible actions that cannot be considered as in the child’s “best interests” can be deduced from the reports of states and the comments on these reports presented by the Committee on the Rights of The Child.⁵⁴

About how a primary consideration is to be understood, the issue of primary consideration does not mean “the primary consideration”, in that “best interests do not have absolute priority”.⁵⁵ It is still a strong position that the “best interests of the child” refers to needs that must be considered in light of the child’s particular situation, namely his/her dependence, lack of maturity, legal situation, and difficulty in asserting his/her rights.⁵⁶

51 Freeman, 2007, p. 46.

52 UN Committee on the Rights of the Child, General Comment No. 14 (2013), p. 8.

53 Eekelaar, 1992, p. 231.

54 Freeman, 2007, pp. 51–60.

55 Freeman, 2007, p. 61; Detrick, 1999, p. 91.

56 UN Committee on the Rights of the Child, General Comment No. 14 (2013), p. 10.

4. The right to survival and development

Art. 6 of the CRC describes the principles of the right to life⁵⁷ and the right to survival along with adequate living and development conditions. Art. 6 is relatively brief and includes the following indications: ‘1. State Parties recognise that every child has an inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.’⁵⁸ The right to life is a fundamental right of the individual contained in basic human rights instruments, and is a right without which the others contained in the Convention would not exist.⁵⁹ This regulation originated in Principle 2 of the UN Declaration of the Rights of the Child of 1959, which indicates the following:

‘The child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.’⁶⁰

The aspect of the right to life is the only right in the Convention described as “inherent”,⁶¹ indicating that the right to life cannot be derogated from and must be recognised as *jus cogens* in international law.⁶² This is especially important because many legal solutions protect children from the loss of life. Regulations protecting children during armed conflicts or regulations not permitting the death penalty for children, even in legal systems where this penalty has been retained, serve as examples of these legal solutions.⁶³ Concerning armed conflict, humanitarian law,

57 It is a right guaranteed by most human rights documents: Art. 3 of the Universal Declaration of Human Rights, Art. 6 of the International Covenant on Civil and Political Rights, Art. 10 of the International Convention on the Rights of Persons with Disabilities, Art. 2 of the European Convention on Human Rights, Art. 4 of the American Convention on Human Rights, Art. 4 of the African Commission on Human and Peoples’ Rights.

58 Art. 6 of the CRC.

59 Nowak, 2005, p. 1.

60 UN General Assembly, Declaration on the Rights of the Child, 1959.

61 Nowak, 2005, p. 17.

62 Nowak, 2005, p. 18.

63 Art. 37 of the CRC lit., and Art. 6 para. 5 of the UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171. Available at: <https://www.refworld.org/docid/3ae6b3aa0.html> (Accessed: July 29, 2023).

at least in principle, explicitly protects civilians,⁶⁴ but describes it permissible to kill combatants. Therefore, to ensure the complete protection of children, involving them in activities related to armed conflict should be considered unacceptable.⁶⁵

Furthermore, considering the analysis of the right to life in the context of Art. 1 of the CRC, the point in time at which this right is protected depends on the legal system of the concerned state. It is also in this context that states have made reservations about the Convention and made interpretative declarations.⁶⁶ States agreed that the solution adopted, on the one hand, does not exclude the possibility of introducing regulations permitting abortion; on the other hand, it does not prevent the adoption of legislative solutions protecting the life of the child from the moment of conception or a particular stage of development. During work on the text of the Convention, states were also careful not to return to the previously established rule of not defining the initial period of protection. This could be seen, for example, in the context of the debate on combining the right to life with the right to survival.⁶⁷

Art. 6 para. 1 of the CRC obligates states to act on children in particularly vulnerable situations, including children with disabilities, any form of sickness, victims of violence, at risk of becoming victims of “honour killings”, victims of female genital mutilation, or children from groups at risk of exclusion (e.g. those economically disadvantaged, or from groups not tolerated by the local community, such as those with albinism and/or children resulting from rape during armed conflict). The actions associated with these vulnerable situations should trigger an immediate state response and widely organised initiatives towards prevention, inclusion, and support awareness campaigns.⁶⁸ A separate group in Europe that is now being increasingly identified as being at risk of life-threatening and lower standards of survival and

64 Art. 27 of the International Committee of the Red Cross, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287. Available at: <https://www.refworld.org/docid/3ae6b36d2.html>; Art. 51 of the International Committee of the Red Cross, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3. Available at: <https://www.refworld.org/docid/3ae6b36b4.html> (Accessed: July 29, 2023).

65 Art. 38 of the CRC, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000, (mainly Art. 2). Art. 8 para. 2 lit. e no. VII of the UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6. Available at: <https://www.refworld.org/docid/3ae6b3a84.html> (Accessed: July 29, 2023), although in this case a limit of 15 years is indicated, with states encouraged to raise it.

66 Nowak, 2005, pp. 27–28.

67 Alston, 1990, p. 164.

68 Suggestions contained, inter alia, in the UN Committee on the Rights of the Child, General Comment No. 4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child, 1 July 2003, CRC/GC/2003/4. Available at: <https://www.refworld.org/docid/4538834f0.html> (Accessed: July 29, 2023).

development are also child migrants.⁶⁹ In the case of a large influx of migrants, the risk to children is rooted in their lack of registration and lack of “visibility” in the legal system.⁷⁰

Concerning survival and development, this right should be considered a natural consequence of the previously created standards of protection of the child’s rights. The guidelines contained in Art. 6 para. 2 of the CRC are quite general, allowing states to adapt its fulfilment to their economic possibilities, development level, culture, and traditions. However, a minimum standard is required, for which Art. 27 of the CRC can provide guidance, as it indicates the need for states to provide ‘a standard of living adequate for the child’s physical, mental, spiritual, moral and social development’, and the ‘need to provide material assistance and support programmes, particularly about nutrition, clothing and housing’. Under the provisions of Art. 27, the child’s parents or guardians also have the responsibility for their survival and development and are obliged to secure, albeit within their final capacity, the living conditions necessary for their children’s development.

In the CRC, in addition to Art. 6, the right to life and the right to survival and development are also developed within other provisions that protect the child’s rights.⁷¹ For instance, the contents contained in Art. 6 are referred to in the following articles of the CRC: Art. 5, which obliges states to respect the rights and responsibilities of parents and guardians to secure, according to their will, the best development of the child; Art. 18, which refers to the responsibility of parents for the upbringing and development of the child; Art. 23 (3), which emphasises the need for the integration, support, and development of the child with disabilities; Art. 24 which deals with the right to health and standards of treatment; Art. 26, which deals with social security; Art. 27 which deals with a standard of living adequate for the child’s physical, mental, spiritual, moral, and social development; Arts. 28 and 29, which address the right to education and provide for the most comprehensive and possible development of personality, talents, and mental and physical abilities; Art. 31, which guarantees children the right to rest and leisure, as well as such play and recreation as is appropriate to their age; Art. 39, which provides for all assistance and social rehabilitation of children who have been victims of torture or any other form of cruel, inhuman, or degrading treatment or punishment, and of armed conflicts.

69 Paras. 76–77, UN Committee on the Rights of the Child, General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, 6 December 2016, CRC/C/GC/20. Available at: <https://www.refworld.org/docid/589dad3d4.html> (Accessed: July 29, 2023).

70 See: Wedeł-Domaradzka, 2022.

71 Schmahl, 2021, p. 127.

5. The view of the child

The principle of the child's right to be heard is outlined in Art. 12 of the CRC, as follows:

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

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

The provisions under this article are unique in the context of human rights regulation. This is because, on the one hand, we must bear in mind that children have relatively little autonomy and are dependent on their parents or guardians in most situations; on the other hand, we must consider that the entire CRC is an expression of their subjectivity regulated by law.⁷² From the regulations contained in Art. 12, para. 1, it follows that it is the state's responsibility to ensure that a child who is capable of forming his/her own views can express those views freely. This guarantee is unique compared to other rights because we are dealing with a child, who does not yet have full adult autonomy, but at the same time is the subject of rights. Importantly, Art. 12 of the CRC gives way for the interpretation that it is more related to the "participation" of the child, through the exchange of information and dialogue, in decisions that affect him/her.⁷³

Securing freedom of expression for a child regarding his/her views requires that appropriate conditions be created to enable him/her to do so, such that these views can be considered to having been formed and expressed freely. Among the basic requirements that must be met by the state to ensure the implementation of this right, it is indicated that all processes in which a child is heard and participate must be transparent and informative, voluntary, respectful, relevant, child-friendly, inclusive, supported by training, safe, sensitive to risk, and accountable.⁷⁴ It is also important to stress that the expression of a child's views is a right, not an obligation, implying that a child's wish and decision to not express his/her views should be respected, and thus that the child should not be coerced into expressing them even if he/she is known to have them. Moreover, it is necessary to provide an appropriate and safe place and manner for the child to express his/her views, and ensure that the

72 UN Committee on the Rights of the Child, General Comment No. 12 (2009), p. 5.

73 UN Committee on the Rights of the Child, General Comment No. 12 (2009), p. 5.

74 UN Committee on the Rights of the Child, General Comment No. 12 (2009), pp. 29–31.

child is only asked to express own views on difficult or even traumatic matters to the necessary extent.⁷⁵

A child's right to express own views extends to all matters that affect the child, albeit the scope of these matters is not indicated in the CRC, which seems appropriate, as it may be evolutionary; for example, at the time of drafting the CRC legislation, the issues of assisted procreation were frequently brought up while the right to know one's identity (in the context of ancestry) was somewhat incidentally discussed, whereas nowadays the latter is more frequently discussed, and thus the child will have the right to express opinions on the matter.

As is clear from General Comment No. 12, how views are expressed may be arbitrary and should be appropriate to the age and maturity of the child,⁷⁶ but such expression should not be limited by any age censorship.⁷⁷ Instead, the assessment of how well a child can form his/her own opinions should be based on the ability to form opinions in a way that is "reasonable and independent".⁷⁸ Therefore, questions about age and maturity can be assessed when listening to the child/children group express own views. Of course, it is easier to assess a child's age and maturity when the group to which the child belongs is a component of a permanent structure, such as a family, a class of schoolchildren, or inhabitants of a particular neighbourhood.⁷⁹ An example is the requirement for observing, in the adoption proceedings of young children, the child's reaction to contact with prospective adoptive parents. Attention should also be paid to the need to provide appropriate conditions for children in vulnerable situations to express their views. It is also pointed out that the child should be allowed to formulate his or her views from an early age, but in an age-appropriate way of communication that will not necessarily be verbal. The child must have complete knowledge and understanding of the topic on which he or she would be expected to express oneself or own views. It is also critical to provide children who may have difficulty expressing their views with an appropriate means of communication, and to facilitate the expression of views by minority, indigenous, and migrant children. Reference is also made to the need to protect the child from the consequences of a lack of prudence in exercising the right to express own views. This may be the case when very young children express themselves or when statements are made by child victims of crime, sexual abuse, violence, and/or other forms of maltreatment.⁸⁰

The second paragraph of Art. 12 clarifies the right to express own views in the context of speaking out during judicial and administrative proceedings concerning

75 Schmahl, 2021, pp. 201–202.

76 UN Committee on the Rights of the Child, General Comment No. 12 (2009), p. 9.

77 *Y.B. and N.S. v. Belgium*, application no. 12/2017, UN Committee on the Rights of the Child, 27 September 2018. Available at: <https://www.refworld.org/cases,CRC,5c5ab7494.html> (Accessed: July 29, 2023), pt. 8.7.

78 UN Committee on the Rights of the Child, General Comment No. 12 (2009), p. 13.

79 UN Committee on the Rights of the Child, General Comment No. 12 (2009), p. 7.

80 UN Committee on the Rights of the Child, General Comment No. 12 (2009), pp. 9–10.

the child. The approach to being heard in proceedings should be understood broadly and includes, for example:

‘separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, healthcare, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflict and other emergencies.⁸¹ [...] decisions about children’s education, health, environment, living conditions, or protection.’⁸²

The realisation of the right guaranteed in this part of the CRC also requires the conduct of proceedings in such a way that enables children to understand their views. The child can present his or her views directly or even through a representative or relevant authority, with the state’s internal rules determining the procedures and rules of representation. Still, these procedures and rules should include regulations on for whom representation is to be established, in what situations, and by whom, and these regulations must be guided by the child’s best interests. Examples include rules limiting the representation of a parent or legal representative in situations where the decisions of judicial and administrative authorities concern matters involving a conflict of interest between the child and the parent(s) or legal representative. It is also essential to ensure that those involved in proceedings covering children have appropriate standards of preparation; for example, having clear standards for interviewing children and qualified staff engaged in the preparation and conduct of the interviews. Those representing children in migration procedures should also receive appropriate training, particularly in language. The right to be heard and to have the support of parents or legal representatives as part of the hearing is also ensured in an individual complaint procedure before the CRC Committee.⁸³

The requirements related to the child’s view are also linked to other provisions of the CRC. First, the regulation in Art. 13 alludes to guaranteeing children’s freedom of expression. Second, Art. 23 para. 1 contains the obligation of states to ensure the active participation in society of children with disabilities, which includes aspects of the right to express one’s views. Third, Art. 31 contains a guarantee to ensure the child’s right to leisure and free time and to participate freely in cultural and artistic life.

The last provision pertaining to freedom of expression is the regulation dedicated to criminal proceedings, mainly covering information on the charges against the child and the guarantee that the child can, alone or with a representative, prepare and present a defence.

81 UN Committee on the Rights of the Child, General Comment No. 12 (2009), p.11.

82 UN Committee on the Rights of the Child, General Comment No. 12 (2009), p.11.

83 Art. 5, UN Human Rights Council, Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

6. Right to be raised in a loving (in principle own) family

The right to be raised in a loving family environment can be regarded to be pervasive in the CRC and to constitute its “spirit”. Although this principle is not expressed in the articulated part of the Convention, it is included in the preamble. The status of the CRC preamble is no different from that of the preambles of other international agreements and, therefore, has no direct effect. However, preambles have an important interpretative role vis-à-vis the other provisions contained in the article.⁸⁴

Specifically, the preamble makes two references to the importance of the family environment. First, the family is described as the basic unit of society, the natural environment in which a child should be raised, and as a source of protection and well-being. Thus, it is necessary to provide the family with adequate support and protection, as only as a result of such support will the family be able to perform its duties fully. Second, it is emphasised that children can fully and harmoniously develop their personality in the family environment, and that the latter should guarantee that children live in a family atmosphere characterised by happiness, love, and understanding.

The provisions of the preamble are referred to in several regulations of the body of the articulated Convention. The first of these references can already be found in Art. 3 of the CRC on the principle of the best interests of the child; its para. 2 indicates that states acting in the best interests of the child shall simultaneously consider the rights and duties of the child’s parents, legal guardians, or other persons responsible for the child, as well as describes that parents are the first in place and are particularly important to the child’s life. In addition, a child’s enjoyment of the rights contained in the CRC⁸⁵ has been made conditional on state parties’ respect for parents’ responsibilities, rights, and duties, in that parents are those responsible for their child, for ensuring the development of the child’s capacities, and for providing advice on exercising the rights granted by the provisions of the Convention. This approach also applies to the rights to freedom of thought, conscience, and religion.⁸⁶

The child also has the right to have his/her family relationships⁸⁷ respected, to grow up in a family environment, and to assurances of non-separation from own parents – except in situations where such separation is required in light of the child’s best interests. Where such parent–child separation affects both or one of the parents, it is the state’s responsibility to ensure personal and direct contact, and these contacts must also be guaranteed when the child and parent(s) resides in different states.⁸⁸ Safeguarding high standards of family relations also prevents arbitrary or

84 Art. 31 of the 1969 Vienna Convention on the Law of Treaties.

85 Art. 5 of the CRC.

86 Art. of the 14 CRC.

87 Art. of the 8 CRC.

88 Art. of the 10 CRC.

unlawful interference in family life.⁸⁹ The right to be raised in a loving family is also safeguarded by a regulation stating that states recognise the principle that parents ‘have common responsibilities for the upbringing and development of the child’,⁹⁰ and are entitled to appropriate assistance from the state. However, states hold the right to intervene if a child experiences physical or psychological violence, harm or neglect, maltreatment, exploitation, or sexual abuse.⁹¹

A part of the Convention’s provisions also safeguards the child’s rights in an adoption situation.⁹² Adoption is a unique situation for a child, as he/she is moving from one family environment (the natural family) in which he/she does not have his/her rights adequately secured to another environment where he/she can have own rights adequately addressed. In this respect, and owing to the existence of various tragic experiences associated with child adoption, the state must ensure that the new family environment is appropriately chosen. Thus, appropriate institutional measures must be in place to secure adequate adoptive parent selection procedures and the consent of all involved stakeholders, including, as far as possible, that of the child. This regulation is part of the preamble’s demand that the child grows up in an ‘atmosphere of happiness, love, and understanding’. Furthermore, these regulations supporting the adequacy of the child’s family environment are also applicable to refugee children,⁹³ who must receive, along with their accompanying families, appropriate support.

Support should also be provided for children with disabilities. In particular, these children must be provided with access to all relevant aspects of everyday life, which may in turn require the state to support the child’s family environment in terms of securing access to education, training, healthcare services, rehabilitation services, preparation for employment, and recreational opportunities.⁹⁴ Children should be provided with high standards of healthcare, and considering that children are heavily dependent on their mother’s situation during pre- and post-birth situations, mothers should also be supported with appropriate healthcare.⁹⁵ There is also a general call in the Convention for the state to support parents in their duty to provide their children with living conditions necessary for their development. State actions should include providing material assistance and developing assistance programmes, particularly concerning food, clothing, and housing. The conditions must also be provided for the fulfilment of the obligation to contribute to the child’s maintenance by the parents, both when the parents are in one country and when one or both reside abroad.⁹⁶

89 Art. of the 16 CRC.

90 Art. of the 18 CRC.

91 Art. 19 of the CRC.

92 Art. 21 of the CRC.

93 Art. 22 of the CRC.

94 Art. 23 of the CRC.

95 Art. 24 of the CRC.

96 Art. 27 of the CRC.

7. Conclusions

The CRC, as the most widely ratified international agreement in the world, has significantly shaped the standards for respecting, safeguarding, realising, and regulating children's rights at the national level. An essential element of these activities is the interpretative principles of the Convention, which are discussed above and serve to indicate the most important elements – from the perspective of the implementation of the rights of the child – and provide clear guidelines to ensure the highest standard of implementation of the rights of the child contained in the CRC. As M. Nowak points out:

‘serves the purpose of highlighting to States the fundamental values underlying the Convention, of ensuring a common philosophical approach to the broad spectrum of areas addressed by the Convention, and of defining decisive criteria to assess the progress made in the implementation of a children's rights approach.’⁹⁷

Like other international agreements, the Convention requires state parties to amend their own legal systems to safeguard the realisation of children's rights as much as possible. Actions taken within national systems include national plans and policies, the implementation of which is intended to raise the standards for realising children's rights. As a rule, these are “soft” instruments, but this does not mean that they cannot result in legislative changes or, just as importantly, practical changes (e.g. whether in parental behaviour or the actions of state bodies). It is also the task of the state to collect data and prepare statistics covering activities related to the observation of children's rights, the violations of these rights, and the consequences of such violations. It should also be remembered that states must secure adequate budgetary resources to realise children's rights, which is especially important for families in difficult situations and for children who are permanently or temporarily deprived of their family environment and require institutional care.

The verification of these state activities is carried out by the states through reports on the implementation of the Convention, which include in their structure (i.e. both in the initial and periodic reports⁹⁸) precise references of such implementation.

97 Nowak, 2005, p. 17.

98 Committee on the Rights of the Child General Guidelines regarding the form and the content of the initial reports to be submitted by the States Parties under Art. 44 paragraph 1 (a) of the Convention, 30 October 1991, CRC/C/5. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G91/181/71/IMG/G9118171.pdf> (Accessed: July 29, 2023). OpenElement, Committee on the Rights of the Child Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under Art. 44, para. 1 (b) of the Convention on the Rights of the Child, CRC/C/58/Rev. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/040/49/PDF/G1504049.pdf?OpenElement> (Accessed: July 29, 2023).

In addition, the CRC Committee regularly issues General Comments that deal with specific spheres of protection (or the principles themselves) and are intended to help states bring their domestic law in line with Convention standards, while securing evident respect for the traditions, cultures, and legal orders of the states. The verification activities also include the mechanism initiated by the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure,⁹⁹ which allows the submission of notifications of violations to the Convention. This mechanism fits into the general principles of the complaint mechanisms known in the UN system and shares its advantages and disadvantages. Regarding advantages, it is open to anyone who suffers a violation in any of the states that ratified the Optional Protocol, guaranteeing individual access to international justice, provided that domestic remedies have been exhausted. The existence of the Protocol is also a guarantee of the strengthening of the protective framework for children's rights, allowing for international scrutiny of what takes place in national systems and, more broadly, for the objectives of the CRC. The image dimension of the ratification of the Optional Protocol is also significant, as accession to the Protocol indicates that the concerned state wishes to be transparent about respecting children's rights.

Regarding the disadvantages of the existence of the control system envisaged by the Third Optional Protocol, there is the complexity of the availability of the control measures provided. This is because its availability requires going through national protection systems and significant knowledge of the international system, including of one of the official languages of the Committee's work. It has also been noted that the efficiency of these procedures is weaker than that of regional systems. In addition, while the Optional Protocol allows addressing individual or interstate communications, it does not include a system for enforcement, and once an issue is identified, the Committee merely transmits its recommendations to the state for the elimination of the violations and/or for redress. Additionally, as is often the case in international systems, there are concerns about using this mechanism and its conduct for political purposes, which are only sometimes consistent with ensuring respect for children's rights. There is also the situation that not all states uncritically accept the interference of international bodies, especially when they create a universal standard that does not consider national specificities.

For the time being, the Optional Protocol is an act enjoying fewer ratifications than the CRC.¹⁰⁰ The CRC Committee has so far had the opportunity to consider almost 100 cases under this procedure, of which it has been able to reach substantive decisions in almost half of them. In some cases, the Committee also referred to the principles laid down in the CRC, with the vast majority of cases containing references

99 UN Human Rights Council, Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.

100 As of 27 July 2024, there are 52 ratifications.

to Art. 3 of the CRC,¹⁰¹ but there are also some cases covering violations of a wider range of rights contained in the Convention.¹⁰² However, given its transparency and importance in popularising standards, efforts should be made to bind more countries to this Protocol.

101 For example: *I.A.M. v. Denmark*, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 3/2016, on 25 January 2018, CRC/C/77/D/3/2016; *S.B. v. Luxembourg*, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 138/2021 on 8 May 2023, CRC/C/93/D/138/2021; *B.J. and P.J. v. Czech Republic*, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 139/2021 on 15 May 2023, CRC/C/93/D/139/2021.

102 For example, *J.A.B. v. Spain*, Views adopted by the Committee under Art. 10 of the Optional Protocol, concerning communication No. 22/2017 on 31 May 2019, CRC/C/81/D/22/2017; *Z.S. and A.S. v. Switzerland*, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 74/2019 on 10 February 2022, CRC/C/89/D/74/2019; *Camila v. Peru*, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 136/2021 on 15 May 2023, CRC/C/93/D/136/2021.

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