

# The 1989 Convention on the Rights of the Child (CRC)

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## ABSTRACT

The *1989 Convention on the Rights of the Child* (hereinafter referred to as CRC) is the most widely ratified human rights treaty in the world. Declaring the rights of children on a universal level filled the gap of child protection within the framework of international human rights treaties. The CRC not only established the specialised protection of children but also shifted the approach towards children from being objects of protection to subject of rights. The CRC is the catalogue of children's rights incorporating the full range of human rights, i.e. civil, political, economic, social and cultural rights of children. The CRC was adopted by the UN General Assembly on 20 November 1989 and entered into force in September 1990.

## KEYWORDS

Declaration of the Rights of the Child, United Nations, 1989 Convention on the Rights of the Child, children's rights, Committee on the Rights of the Child

## 1. History of the Declaration of the Rights of the Child

### 1.1. Cornerstones leading to the Convention on the Rights of the Child

For a long time in history the vulnerability of children was not recognised by law. Children were considered as objects who were placed in a hierarchical setting in their family, where – for a long time – the sole right holder was the father. It was at the end of the nineteenth century and the beginning of the twentieth century when the so-called child rights movements started to push lawmakers both on a national and international level to adopt laws which recognise the special nature of childhood and address the special needs of children. This process was accompanied by the unfolding psychological research<sup>1</sup> on human behaviour. As our understanding of the complexities of childhood grew, so did the need to address these issues through legal means. Apart from the development of psychology, the end of the nineteenth and

1 Wilhelm Wundt (1832–1920) founded the first laboratory dedicated exclusively to psychological research at the University of Leipzig in 1879. In Europe, this date is considered the beginning of modern psychological science.

Márta Benyusz (2026) 'The 1989 Convention on the Rights of the Child (CRC)' in Kovács, P., Béres, N. (eds.) *The Universal Protection Of Human Rights*. Miskolc–Budapest: Central European Academic Publishing, pp. 401–429. [https://doi.org/10.71009/2026.pknb.uphr\\_11](https://doi.org/10.71009/2026.pknb.uphr_11)

the beginning of the twentieth century humanity faced tragic events that prompted lawmakers to officially recognise human rights.

Firstly, the laws adopted in favour of children reacted to the horrifying reality of the industrial revolutions in the nineteenth century and introduced the first ban on child labour in parallel with compulsory education, and the generally available schooling for children on national levels. Nevertheless, these laws did not expressly aim to declare the rights of children in general, but instead, were a step forward in the recognition of childhood as being an important, yet extremely sensitive issue and an imprinting period of a human's life. This approach was also supplemented by the recognition of children being "at risk". These children were those who presented a "threat" to the social order, such as orphans, abandoned or neglected children, children from marginalised social classes, street children, and working or delinquent children; later, the category broadened.<sup>2</sup> Eventually, most Western States became concerned with all children within their boundaries, irrespective of their social origin or individual condition.<sup>3</sup>

The first document declaring children's rights in general was the *Declaration of the Rights of the Child*, widely known as the *Declaration of Geneva* (hereinafter referred to as the *Geneva Declaration*), adopted by the League of Nations in 1924. It also symbolised that the cause of children went beyond national borders and turned into a "universal conscience".<sup>4</sup> The text of the Geneva Declaration was drafted by Eglantyne Jebb, who was also founder of Save the Children Fund in 1919. The founding of the Save the Children Fund and the necessity to draft a declaration on children's rights was driven by the heart-breaking situation children were in after the First World War. The Geneva Declaration covered 17 principles: children were asserted as persons with rights; ownership of children by parents, state, or society was denied. The Declaration announced the participatory right of children in making decisions that affect them, being thus a precursor of the right of the child to express views (as later formulated in Article 12 of the CRC).<sup>5</sup> The Geneva Declaration was a legally binding document; however, it lost its binding nature at the moment of the dissolution of the League of Nations.<sup>6</sup>

As the roles of the League of Nations were taken over by the United Nations, in 1946, the Social Commission mandated the secretariat of the United Nations to examine the question of whether to reaffirm the Declaration of Geneva or adapt it, creating a United Nations Charter on the Rights of the Child.<sup>7</sup> The stakeholders involved decided to use the Geneva Declaration as a basis for the United Nations Children's Charter but

2 Moody, 2015, p. 3.

3 Ibid.

4 Moody, 2015, p. 4.

5 Hrabar, 2024, pp. 23–38.

6 The League of Nations was formally disbanded on April 19, 1946, and its powers and functions were transferred to the United Nations, which had been established on October 24, 1945.

7 Moody, 2015, p. 7.

they agreed to draft a new document. The *United Nations Declaration of the Rights of the Child* was definitively adopted in 1959, but it never became legally binding.

Both the Geneva Declaration and the UN Declaration of the Rights of the Child were a step forward towards the universal protection of children's rights. Nevertheless, these documents considered children to be objects of protection and not subjects of their right. Recognising children as rights holders was a step forward.

### ***1.2. History of the UN Convention on the Rights of the Child***

The year 1979 was proclaimed to be the *International Year of the Child* to follow up the Declaration of the Right of the Child, adopted 20 years earlier. It was a year celebrated throughout the world and was a pinnacle of an international effort to promote the needs and rights of children and to provide an unprecedented level of services and support for the children of the poor.<sup>8</sup> It was also an important year in terms of the universal declaration of the rights of the child, as subjects of these rights. The occasion of the upcoming International Year of the Child was seized by Poland, who as the initiator of the Convention on the Rights of the Child, presented the draft of the Convention to the Human Rights Council on February 7th, 1978.<sup>9</sup> The draft text of the CRC was written by Professor Tadeusz Smyczynski, a Polish family law professor, who aimed to create a document that was child and family-centred to the highest extent. The Polish touch is noticeable also in terms of the concept of the child being behind the CRC, as it is linked to a Polish pediatrician Janusz Korczak, whose view of a child was incorporated into the CRC. After the presentation of the draft of the CRC, a Working Group was set up by the Commission on Human Rights and accordingly, the ten-year-long drafting process started. The Working Group met once a year officially and went through the draft systematically, striving to reach an agreement. The drafting process – as commonly the case in the drafting of international agreements – was shaped through complex negotiations, ideological divides, and the need to reconcile diverse legal, cultural, and political traditions. Children were, are and will be the hope of nations, regions and the whole humanity, therefore the global consensus and the values on which this consensus is reached bear high importance.

One of the most fundamental debates concerned the scope and character of the rights to be enshrined in the CRC.<sup>10</sup> Early discussions revealed divergent views about whether children should be granted only economic, social, and cultural rights, or whether civil and political rights should also be included. Some delegations, particularly from the then socialist states, initially opted for focus on social and economic provisions, while others, especially from Western Countries, advocated for a more comprehensive approach.<sup>11</sup> Ultimately, the CRC incorporated both sets of rights, making it the first major human rights treaty involving children. This holistic

8 Jupp, 1989, p. 31.

9 The delegation was led by Adam Lopatka.

10 Quennerstedt, 2018.

11 Ibid.

approach set a new standard for the recognition of children as full rights-holders, rather than passive recipients of protection.

The drafting process was guided by the principle of consensus, requiring broad agreement among participating states.<sup>12</sup> This approach, while facilitating widespread support, often necessitated the use of ambiguous or flexible language, especially in areas where deep disagreements persisted. Such linguistic compromises allowed the Convention to accommodate a wide range of legal systems and cultural practices, but also introduced interpretative challenges and, at times, internal inconsistencies. The resulting text reflects a deliberate balance between universality and adaptability, ensuring the UNCRC near-universal ratification.<sup>13</sup>

The final text of the UNCRC did not emerge from a single, coherent philosophical tradition. Instead, its drafters brought varied – and many times conflicting – conceptions of childhood, family, and the role of the state. The CRC's provisions were shaped more by pragmatic negotiation than by adherence to a unified theory of children's rights. This lack of a singular theoretical justification and emphasising and recognising the practical realisation of rights rather than their philosophical underpinnings did contribute to wide ratification and support.

Significant innovation during the drafting was the acknowledgment of children's evolving capacities. The CRC recognises that children's ability to exercise rights increases with age and maturity, challenging traditional notions of children as being merely vulnerable or dependent. This principle is particularly evident in articles concerning participation, such as the right to be heard in matters affecting the child. The inclusion of evolving capacities marked a shift towards recognising children as active agents, capable of contributing to decisions that shape their lives.

Another persistent issue was the challenge of reconciling universal standards with respect for cultural diversity. Some states expressed concern that certain rights – such as those related to family life, education, or protection from harmful practices – might conflict with local customs or religious beliefs. To address these concerns, the Convention's language was sometimes deliberately imprecise, and the drafters anticipated the development of regionally specific instruments, such as subsequently the African Charter on the Rights and Welfare of the Child. This approach allowed for broader acceptance of the CRC while acknowledging the legitimacy of cultural variation.

Specific rights generated particularly intense debates. The prohibition of sexual exploitation, the determination of the minimum age of criminal responsibility, and the treatment of abortion and the rights of the unborn were all highly controversial. Negotiations around these topics often resulted in compromises, with the final text reflecting a careful balance between competing moral, legal, and cultural considerations.

<sup>12</sup> Ibid.

<sup>13</sup> The UNCRC is, to this day, the most widely ratified human rights treaty in the world and all countries of the world ratified the Convention except for the United States of America.

The question of how to address sexual exploitation and abuse of children was among the most delicate matters debated by the drafters. While there was near-universal agreement on the need for robust protection, the challenge lay in articulating standards that would be acceptable across divergent legal systems and cultural contexts. Article 34, which obligates States Parties to protect children from all forms of sexual exploitation and abuse, emerged as a carefully worded compromise. It sets out the principle of protection but leaves considerable discretion to states regarding the mechanisms of enforcement and the precise definitions of prohibited conduct. This approach allowed for global agreement while also accommodating significant differences in national law and social attitudes.<sup>14</sup>

Another issue that generated intense debate was the determination of a minimum age of criminal responsibility. While the concept of shielding young children from criminal prosecution was widely accepted, opinions varied dramatically regarding the appropriate age threshold. Some delegations, reflecting their domestic legal traditions, advocated for a low MACR (Minimum Age of Criminal Responsibility) while others, informed by contemporary understandings of child development, argued for a higher age.<sup>15</sup> The Convention ultimately refrained from specifying a particular age, instead requiring states to establish a minimum age themselves (Article 40). This solution reflected a pragmatic recognition of the impossibility of consensus and resulted in considerable variation among states in the age at which children can be held criminally liable.<sup>16</sup>

Perhaps the most politically and ethically charged controversy centred on the status of the unborn child and the issue of abortion. The drafting process revealed deep divisions, with some states and religious groups advocating for explicit recognition of the rights of the unborn child, while others invoked reproductive rights and health of women and girls. Rather than risk a breakdown in negotiations, the drafters opted to avoid direct reference to abortion or rights of unborn children in the CRC. This omission allowed states to interpret the Convention's provisions in line with their own legal and moral frameworks and was instrumental in securing the broad ratification of the treaty.<sup>17</sup> Nevertheless, it is worth underlining that some State Parties, such as for instance the Holy See, did ratify the CRC with the reservation that the life of the child starts from the moment of conception.

The CRC also encountered resistance from certain religious and ideological quarters, particularly regarding provisions perceived as challenging traditional family structures or religious values. Concerns were raised about the Convention's recognition of the rights of children born outside marriage and its emphasis on the evolving capacities of the child. In response, the drafters emphasised the central role of the family and parental responsibilities, while maintaining the universality of children's

14 Detrick, 1999; Freeman, 2020.

15 Kilkelly, 2019.

16 Tobin, 2019.

17 Detrick, 1999; Freeman, 2020.

rights. This balancing act was necessary to ensure the CRC's acceptability across diverse cultural and religious contexts.<sup>18</sup>

The need to reconcile these divergent perspectives led to the adoption of a language that was, at times, intentionally broad or ambiguous. The drafting committee frequently sidestepped intractable disputes by omitting contentious details or by framing obligations in general terms. This strategy of constructive ambiguity was instrumental in forging a near-universal treaty but has left some provisions open to divergent interpretation and ongoing debate.<sup>19</sup>

## **2. Concept and Definition of the Child under the Convention on the Rights of the Child as a Subject of Rights**

The CRC established the notion of global child. The CRC's creation of the "global child" represents a paradigm shift in international law and policy. It universalises childhood as a protected, rights-bearing stage of life and establishes a common benchmark by which the dignity, development, and participation of all children are to be respected and promoted, regardless of borders or backgrounds.

Article 1 of the CRC defines a child as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'. This definition balances universal applicability with respect for national legal systems, reflecting a compromise between international standardisation and state sovereignty.<sup>20</sup> The CRC establishes 18 as the global benchmark for childhood, grounded in scientific consensus on physical, emotional, and cognitive development. This threshold ensures consistent protection for adolescents, particularly in areas like education, labour, and criminal justice. States may set a lower age of majority (e.g., 16 or 17) for specific rights or responsibilities, such as voting, marriage, or criminal liability. However, the CRC Committee emphasises that such exceptions must not undermine protections for all under the age of 18. For example, even if a country permits marriage at 16, the CRC still classifies individuals under 18 as children entitled to safeguards against exploitation. The CRC establishes the upper boundary of childhood but does not directly specify a starting point. It is up to the State Parties to define the beginning of life. Some – as for instance the Holy See – opted for a reservation to make their position clear and underline the beginning of childhood from the moment of conception.

When discussing the concept of the child it is inevitable to mention the name of Janusz Korczak, a Polish-Jewish physician, educator, and writer, who made foundational contributions to the modern concept of the child, particularly as it relates to children's rights and dignity.

<sup>18</sup> Kilkelly, 2019.

<sup>19</sup> Tobin, 2019.

<sup>20</sup> Ibid.

Janusz Korczak's legacy in shaping contemporary understandings of childhood is both profound and multifaceted. His pioneering work, spanning the early twentieth century, challenged prevailing notions of children as mere dependents or future adults, instead advancing a vision of the child as a person with present rights, agency, and dignity (Godawa, 2024).

Korczak's approach marked a significant departure from traditional, adult-centric models of child-rearing. He argued that children are not simply passive recipients of adult care or socialisation, but individuals who possess their own perspectives, emotions, and entitlements. His assertion that children are "people of today" (Lifton, 1988) laid the groundwork for the recognition of children as autonomous rights-holders, a principle now central to international child rights law.

A hallmark of Korczak's educational philosophy was his emphasis on genuine respect for children's opinions and experiences. He implemented innovative practices in his orphanages, such as children's councils and peer courts, which provided young people with real opportunities to participate in decision-making and resolve conflicts collaboratively (Council of Europe, 2007). These democratic structures anticipated the participatory ethos enshrined in Article 12 of the UNCRC, which guarantees children the right to express their views in matters affecting them.

Korczak viewed the child as a complex being whose development encompasses emotional, intellectual, and moral dimensions. He advocated for environments that nurture curiosity, independence, and empathy, while also ensuring robust protection from harm. His insistence on balancing children's need for guidance with their right to self-expression resonates with the UNCRC's focus on both protection and empowerment (Mikayilli, 2025). The resonance of Korczak's ideas is evident in the foundational principles of the UNCRC, particularly regarding respect for the child's dignity, the right to participation, and the imperative of non-discrimination. The Polish government's reference to Korczak's legacy during the drafting of the Convention underscores his enduring impact on global child rights discourse (Godawa, 2024).

The CRC's approach to the child as a subject of rights is characterised by a careful equilibrium between the recognition of children's inherent dignity and the preservation of traditional family authority. The UNCRC does not envision children as isolated rights-bearers independent of their familial context. Rather, it places the child within the protective and formative environment of the family, affirming the family as 'the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children'.<sup>21</sup> This perspective is reinforced throughout the CRC, particularly in provisions such as Article 5, which underscores the role of parents (and, where applicable, extended family) in providing guidance and direction appropriate to the child's evolving capacities. The CRC's general principles are thus interpreted through a lens that prioritises the child's gradual acquisition of autonomy within a supportive family structure turning the child's right to grow up in a loving and caring family environment into an interpretative principle of

21 Preamble to the CRC.

the CRC. Crucially, the CRC does not seek to supplant parental authority or diminish the centrality of the family.<sup>22</sup> Instead, it recognises that the realisation of children's rights is most effective when anchored in the family unit, with the state playing a subsidiary and supportive role. The UNCRC emphasises that while children are indeed subjects of rights, these rights are exercised in harmony with the guidance, values, and responsibilities imparted by their families.

### 3. Principles of the Convention on the Rights of the Child

The CRC is guided by five principles, the principle of *non-discrimination* (Article 2), the principle of the *best interest of the child* (Article 3), the *child's right to life, survival and development* (Article 6), the *viewpoint of the child* and the *right to live in a loving and caring family environment* from which four are also confirmed by the Committee on the Rights of the Child (hereinafter referred to as CRC Committee).<sup>23</sup>

#### 3.1. Non-discrimination (Article 2)

The principle of non-discrimination constitutes a *foundational element* of the CRC, representing not only a core right but also a guiding principle that permeates the interpretation and implementation of all other rights under the Convention.<sup>24</sup> Article 2 of the CRC explicitly obligates States Parties to

‘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’.

This provision ensures that every child's enjoyment of rights is protected, regardless of individual or familial characteristics.

The obligation to ensure non-discrimination is both negative and positive in nature. States must not only refrain from discriminatory practices but also take proactive measures to eliminate discrimination and ensure equal access to rights for all children. This includes protecting children from adverse treatment based on the status, activities, expressed opinions, or beliefs of their parents, legal guardians, or family members. The principle thus extends beyond the child's own attributes, recognising the potential for children to face discrimination due to circumstances beyond their control.<sup>25</sup>

22 KilKelly, 2019.

23 UN Committee on the Rights of the Child, 2003.

24 Daly, Stern and Leviner, 2022.

25 Ibid.

Non-discrimination is recognised as one of the four<sup>26</sup> general principles of the CRC, alongside the best interests of the child, the right to life, survival and development, and the right to participate and be heard. These principles are interdependent and must be considered collectively in the application of the CRC. The CRC Committee has emphasised the particular importance of non-discrimination for traditionally disadvantaged groups, such as girls, ethnic minorities, and children with disabilities, and has called for greater attention to its explicit inclusion in law, policy, and practice.<sup>27</sup>

Discrimination, as defined in the context of the CRC, encompasses both direct and indirect forms. Direct discrimination occurs when a child is treated less favourably because of a protected characteristic, while indirect discrimination arises when a seemingly neutral policy or practice disproportionately affects certain groups of children. The CRC's approach to non-discrimination is also notable for its recognition of affirmative action: special measures aimed at remedying historical or structural discrimination are permissible, provided they are temporary and cease once their objectives are achieved.

The CRC allows for considering children with special needs and status.<sup>28</sup> It was the first international convention that covered the principle of non-discrimination in terms of disability which allowed children with disabilities to become more visible.

The principle of non-discrimination in the CRC establishes a comprehensive and proactive duty on states to ensure that every child enjoys all rights under the Convention without distinction, and to create conditions that foster genuine equality of opportunity and protection for all children, especially those most vulnerable to exclusion and marginalisation.

### **3.2. Best Interest of the Child (Article 3)**

The principle of the best interests of the child, enshrined in Article 3(1) of the CRC, represents a foundational value and a guiding norm that permeates every aspect of the Convention. According to this principle, '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*'. This requirement applies not only to individual decisions affecting specific children but also to the formulation and implementation of laws, policies, and programmes that impact children collectively.

The principle of the best interests of the child functions on multiple levels within the legal framework of the CRC. First, it acts as a substantive right, obligating decision-makers to base their actions on what is most beneficial for the child's well-being and development. Second, it serves as an interpretative principle: where legal provisions are ambiguous or open to more than one interpretation, the interpretation

26 We consider the right to live in a loving and caring family environment as a plus one principle of the CRC.

27 Daly, Stern and Leviner, 2022.

28 Wedel-Domaradzka, 2024, p. 66.

that most effectively serves the child's best interests should prevail. Third, it operates as a procedural rule, ensuring that decision-making processes involving children are transparent, participatory, and reasoned, with children's views being duly considered and their interests explicitly articulated.<sup>29</sup>

The CRC Committee, in its General Comment No. 14,<sup>30</sup> emphasises that the best interests of the child is a dynamic concept, requiring a contextual assessment tailored to the specific circumstances of each child or group of children. This assessment must take into account the child's identity, background, needs, and views, as well as the broader context in which the child lives. The principle is thus both flexible and adaptable, but it cannot be manipulated or used to override other rights guaranteed by the Convention.

Importantly, similarly to the principle of non-discrimination, the best interests of the child is recognised as one of the four plus one general principles of the CRC. These principles are interdependent and must be considered collectively in the application of the Convention. The principle of the best interests of the child is not absolute in the sense that it always overrides all other considerations; rather, it is a primary consideration that must be given significant weight in any balancing of interests involving children.

In summary, the principle of the best interests of the child under the CRC is a multifaceted legal norm that requires decision-makers – whether in public or private sectors – to prioritise the child's well-being and development in all actions affecting children. It demands a contextual, rights-based, and participatory approach to decision-making, ensuring that children's interests are not overlooked or subordinated to other concerns.

### ***3.3. The child's Right to Life, Survival and Development (Article 6)***

This principle imposes a dual obligation on States Parties: to recognise every child's inherent right to life and to ensure 'to the maximum extent possible' the child's survival and development. Unlike other human rights instruments that focus solely on the right to life, the CRC uniquely integrates survival and development as inseparable components of this right, reflecting the Convention's child-centred approach. Article 1 paragraph 1 of the CRC obliges State Parties to act on children in particularly vulnerable situations, including children with disabilities, any form of sickness, victims of violence etc.<sup>31</sup>

The obligation to ensure survival and development extends beyond mere physical existence. The CRC Committee emphasises a holistic understanding of development, integrating physical, intellectual, emotional, social, and moral dimensions. The provision of Article 6 paragraph 2 is quite general in its sense, allowing states to

<sup>29</sup> Ibid., p. 71.

<sup>30</sup> UN Committee on the Rights of the Child, 2013, Art. 3 para. 1.

<sup>31</sup> Wedel-Domaradzka, 2024, p. 75.

adapt its fulfilment to their economic possibilities, development level, culture and traditions.<sup>32</sup>

### **3.4. The View of the Child (Article 12)**

The principle of the child’s right to express their views – commonly referred to as the “view of the child” principle – is a cornerstone of the CRC, expressly enshrined in Article 12. This principle establishes that every child capable of forming their own perspective has the right to express those views freely in all matters affecting them, and that these views must be given due weight in accordance with the child’s age and maturity. This right is not limited to formal legal or administrative proceedings but applies broadly to all contexts of a child’s life, including family, school, and community settings.<sup>33</sup>

The CRC’s approach marks a significant shift from viewing children as passive recipients of adult decisions to recognising them as active subjects with agency. The principle of Article 12 is closely linked to other participation rights, such as the freedom of expression (Article 13), the freedom of thought, conscience, and religion (Article 14), and the freedom of association (Article 15), which collectively ensure children’s visibility and respect in society.<sup>34</sup>

States parties are required to create legal and practical frameworks that facilitate children’s effective participation in decision-making processes. This includes providing children with appropriate information, ensuring that their views are heard directly or through a representative, and giving feedback on how their input has influenced outcomes. The right to express views is not an obligation; children cannot be forced to participate but must be informed of their right to do so and to withdraw at any time.<sup>35</sup>

The view of the child principle is essential for realising the best interests of the child, as decisions about children’s lives can only be made with a full understanding of their perspectives. The principle is also fundamental for empowering children, promoting their development, and fostering a culture of respect and inclusion.<sup>36</sup>

### **3.5. The Right to Live in a Loving and Caring Family Environment**

The *right to live in a loving and caring family environment* is both a guiding principle and a core objective of the CRC. The Convention places the family at the heart of children’s rights, requiring states to protect, support, and assist families in their responsibilities, while also ensuring that children deprived of family care receive appropriate alternative protection and support. This principle is fundamental to the CRC’s vision of ensuring every child’s right to develop to their fullest potential in an atmosphere of happiness, love, and understanding.

32 Ibid., p. 76.

33 Simovic, 2024, pp. 137–158.

34 Ibid.

35 Ibid.

36 Ibid.

While the CRC does not explicitly codify a standalone “right to a family” in a specific article, its preamble and provisions underscore the family’s fundamental role as the natural setting for a child’s growth, well-being, and development. The Preamble affirms that

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

It further states that ‘the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding’.

Within the body of the CRC, several articles reinforce this principle. Article 18 recognises that parents or legal guardians have primary responsibility for the upbringing and development of the child, and that the best interests of the child are paramount. States are required to support parents and guardians in fulfilling these responsibilities and to ensure the development of institutions, facilities, and services that support family care. Article 20 addresses situations where a child is temporarily or permanently deprived of a family environment, mandating that the state provide special protection and assistance, and ensure alternative care that respects the child’s background and needs.

#### **4. Selected rights of the Convention on the Rights of the Child**

The CRC includes 54 articles, covering civil, political, economic, social, and cultural rights essential for the well-being, development, and protection of children under 18 years of age. The first 41 articles focus on the rights themselves, while articles 42–54 focus on how governments and adults should work together to make sure all children can enjoy their rights.

The categorisation of children’s rights under the CRC is essential for both understanding and implementing its provisions. Over the years, several models have emerged to organise these rights into coherent frameworks, each offering unique insights and practical advantages.

Perhaps the most widely recognised is the 3P model, which groups children’s rights into three main pillars: provision, protection, and participation. Under this model, provision refers to the rights that ensure that children have access to essential resources such as healthcare, education, and a decent standard of living. Protection covers safeguards against abuse, exploitation, neglect, and harmful practices. Participation emphasises the right of children to express their views, be heard in matters that

affect them, and participate actively in their communities.<sup>37</sup> This model is valued for its clarity and practicality, making it preferred among policymakers and advocates who need to translate complex legal provisions into actionable strategies.

However, some scholars and practitioners argue that the 3P model can be somewhat limited, as it does not explicitly address the need for preventing rights violations before they occur. In response, the 4P model was developed, adding prevention as a fourth pillar. Prevention focuses on proactive measures to address root causes such as poverty, discrimination, and social exclusion, which can lead to the violation of children's rights. This expansion reflects a growing recognition that effective child rights advocacy must not only respond to harm but also work to eliminate the conditions that make children vulnerable in the first place.<sup>38</sup>

Other frameworks have emerged that categorise children's rights in slightly different ways. For example, some models describe children's rights as falling into four dimensions: survival, development, protection, and participation. Here, survival and development are separated (rather than combined under "Provision"), highlighting the distinction between basic needs and the broader opportunities necessary for a child's growth. Protection and participation remain as in the 3P model, but the framework is often used as an educational tool to help children and adults understand the full scope of their rights.

Critics of the 3P and 4P models point out that participation can sometimes be reduced to mere consultation rather than meaningful involvement in decision-making. There have also been calls for even more expansive models, such as the 5P framework, which might include pillars like Promotion (actively advocating for children's rights) or Policy (ensuring that legal and institutional frameworks support children's rights). However, these extensions are less standardised and not as widely adopted as the 3P and 4P models.<sup>39</sup>

In practice, the choice between these models depends on the context and goals of the work. The 3P model is particularly useful for advocacy and monitoring, offering a straightforward way to organise and assess efforts to protect and promote children's rights. The 4P model is especially relevant in situations where addressing systemic risk factors is crucial, such as in post-conflict settings or in efforts to combat child trafficking and exploitation. Meanwhile, four-dimensional frameworks are often used in educational settings to help children and adults understand the interconnected nature of their rights.

Ultimately, all these models recognise that children's rights are indivisible and interdependent. The fulfilment of one right often depends on the achievement of others, and effective child rights advocacy requires a holistic approach that considers both immediate needs and long-term structural change.

37 Lansdown, 2005.

38 Bellamy and UNICEF, 2004.

39 Tobin, 2019.

In this chapter three rights (group of particular type of rights) are analysed in a deeper manner, based on the 3P model, (I) from Protection, *the right of the child to freedom from all forms of violence*, (II) from Provision, *the right of the child to education*, (III) from Participation, *the right to free expression of views and the right to be heard*.

#### **4.1. The Right of the Child to Freedom from all Forms of Violence**

The right of the child to freedom from all forms of violence is a cornerstone of the CRC and is most explicitly articulated in Article 19. This provision obligates States Parties to take all appropriate legislative, administrative, social, and educational measures to protect children from every form of physical or mental violence, injury, abuse, neglect, negligent treatment, maltreatment, or exploitation – including sexual abuse – while in the care of parents, legal guardians, or any other person responsible for the child's care. The CRC's approach is comprehensive, recognising that violence is not limited to physical harm but also encompasses psychological abuse, verbal aggression, intimidation, and exposure to harmful environments etc.

Article 19 further requires states to establish effective procedures for supporting children and caregivers, as well as for the prevention, identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment. Judicial involvement is also mandated when appropriate. This framework highlights the necessity of a multi-sectoral response that combines legal, social, and educational strategies to ensure children's safety and well-being. The CRC's provisions are reinforced by other articles, such as Article 37, which prohibits torture and cruel, inhuman, or degrading treatment or punishment of children, and Article 28, which requires school discipline to be consistent with the child's human dignity.

General Comment No. 13 (2011) by the UN Committee on the Rights of the Child provides detailed guidance on the interpretation and implementation of Article 19. It emphasises that the prohibition of all forms of violence against children is absolute and leaves no room for legalised violence, including corporal punishment. The General Comment also stresses the importance of a holistic, child rights-based approach that integrates prevention, protection, and rehabilitation, ensuring that children's rights to survival, dignity, well-being, health, development, participation, and non-discrimination are upheld. The Committee calls for coordinated national frameworks and international cooperation to address violence, with particular attention to the vulnerability of specific groups, such as children with disabilities.

The CRC establishes a robust legal and policy framework for the protection of children from all forms of violence. The right to freedom from violence is recognised as essential for children's dignity, development, and participation in society. States are required to adopt comprehensive measures to prevent, respond to, and eliminate violence, ensuring that children grow up in environments that respect and uphold their rights.

Violence against children, as expressly prohibited by Article 19 of the CRC, is not only a violation of children's immediate safety but also a profound threat to the attainment of their broader rights. When children experience physical, emotional,

or sexual violence – whether in homes, at school, or in the community – it creates ripple effects that undermine their development, health, education, and participation in society.

The CRC is founded on the principle that children’s rights are indivisible and interdependent. This means that when one right is violated, other rights are often compromised as well. For example, a child who suffers abuse or neglect is at risk of having their right to survival and development (Article 6) severely curtailed. The trauma and physical harm associated with violence can impair a child’s growth, limit their potential, and even threaten their life.

Violence also directly impacts a child’s right to health (Article 24). Physical injuries from abuse require medical attention, and the psychological toll – such as anxiety, depression, or post-traumatic stress disorder – can have lasting effects on mental well-being. Children exposed to violence may also develop behavioural issues, such as substance abuse or self-harm, further endangering their health.

In the context of education (Article 28), violence disrupts a child’s ability to learn and thrive in school. Children who experience violence at home or in educational settings often struggle with concentration, attendance, and academic performance. They may also be subject to humiliating or degrading disciplinary practices, which contradict the CRC’s requirement that school discipline respect a child’s dignity.

The right to participation (Article 12) is another casualty of violence. Children who live in fear of retaliation or further abuse are less likely to express their views or participate in decisions affecting their lives. This silencing effect undermines their agency and self-esteem, making it difficult for them to advocate for themselves or engage with their communities.

Violence against children is also closely linked to exploitation (Articles 34–36). Children who are abused or neglected are more vulnerable to sexual exploitation, child labour, and trafficking. The trauma of violence can make it harder for them to seek help or escape exploitative situations, perpetuating cycles of harm.

The right to a family environment is also at risk when violence is present. In cases where children are removed from abusive homes, inadequate alternative care systems can compound their trauma. Moreover, exposure to violence within the family can disrupt healthy attachments and lead to intergenerational cycles of abuse.

Violence disproportionately affects marginalised children (Article 2, non-discrimination), including girls, children with disabilities, and those from minority backgrounds. These children often face compounded risks and barriers to accessing protection and support, further violating their right to non-discrimination.

Finally, violence restricts children’s right to play and leisure (Article 31). Traumatised children may withdraw from social activities, and unsafe environments can deprive them of opportunities for recreation and cultural participation.

Violence against children is a systemic issue that threatens the full spectrum of their rights under the CRC. Protecting children from violence is not only a legal obligation but a prerequisite for building societies where all children can grow, learn, and thrive in safety and dignity.

#### ***4.2. The Right of the Child to Education***

The right of the child to education is a central pillar of the CRC, articulated most comprehensively in Articles 28 and 29. The CRC establishes education not only as a fundamental right but also as an essential means for achieving children's broader development, empowerment, and participation in society.

Article 28 of the CRC obliges States Parties to recognise the right of every child to education, with the aim of achieving this right progressively and on the basis of equal opportunity. Specifically, it mandates that primary education be made compulsory and available free to all children. It further requires states to encourage the development of various forms of secondary education – including general and vocational – and to make these accessible to every child, with appropriate measures such as the introduction of free education and financial assistance where needed. Higher education should be made accessible to all on the basis of capacity through every appropriate means. The article also calls for educational and vocational information and guidance to be available and accessible to all children, and for measures to encourage regular school attendance and reduce dropout rates. Importantly, it stipulates that school discipline must be administered in a manner consistent with the child's human dignity and in conformity with the Convention. Finally, states are to promote and encourage international cooperation in matters relating to education, with particular attention to the needs of developing countries.

Article 29 complements Article 28 by defining the aims of education. It states that education should be directed to the development of the child's personality, talents, and mental and physical abilities to their fullest potential. Education should also foster respect for human rights and fundamental freedoms, as well as for the principles enshrined in the Charter of the United Nations. It must develop respect for the child's parents, cultural identity, language, and values; for national values and those of civilizations different from the child's own; and for the natural environment. Education should prepare children for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national, and religious groups, and persons of indigenous origin. The article also recognises the liberty of parents to choose the kind of education for their children and the liberty to establish and direct educational institutions, provided these adhere to minimum state standards.

The CRC's approach to the right to education is both expansive and nuanced. It recognises education as a right in itself and as a key enabler of other rights, such as the right to participation, freedom of expression, and protection from exploitation. Education empowers children to understand and exercise their rights, to develop critical thinking, and to become active and responsible members of society. The CRC also acknowledges the practical challenges faced by states, allowing for progressive realisation and recognition of the need for flexibility in implementation, especially in resource-constrained settings. The Convention's provisions reflect a global commitment to ensuring that every child has the opportunity to learn, grow, and thrive in a supportive and empowering environment.

### 4.3. *The Right to Free Expression of Views and the Right to be Heard*

Article 12 of the CRC provides that

1. State 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’.

Paragraph 1 is about the *right to free expression of views* in all matters affecting the child which is linked to a capability of forming views, but apart from the mere possibility of expressing views, it is strongly about the genuine consideration of these views and giving them due weight in accordance with age and maturity.

Paragraph 2 is about the *right to be heard* in formalised, namely judicial and administrative proceedings, where he or she is affected.

Both rights are obligations on the side of the state, indirectly on the side of adults i.e. parents, and a right on the side of the child, being individual or belonging to a group of children. This right can never turn into an obligation on the side of the child and must always remain a free choice of the child, where he or she receives all the necessary information in order to be able to make this free choice as safely as possible in the given situation.

*The child’s right to express their views in all matters affecting them, with those views given due weight according to the child’s age and maturity* has five key attributes that shape its interpretation and implementation.<sup>40</sup>

First, the phrase “shall assure” places a clear obligation on states to take all necessary legislative, administrative, and practical measures to actively solicit children’s views and ensure these are considered in all relevant matters. The state’s role is not passive; it must create opportunities and mechanisms for children to be heard.

Second, ‘capable of forming his or her own views’ is to be interpreted broadly, with the presumption that every child has the capacity to form opinions. The CRC Committee insists that there should be no minimum age for this right, warning against laws or practices that introduce age limits, as these can unjustly restrict children’s participation. The Committee also emphasises the importance of recognising diverse forms of communication – such as play, art, and body language – so that very young children and those with disabilities are not excluded from expressing themselves. Furthermore, efforts must be made to ensure that children from minority, indigenous, or migrant backgrounds, or those who do not speak the majority language, are not marginalised in this process.

40 UN Committee on the Rights of the Child, 2009.

Third, ‘the right to express those views freely’ means that children must be able to share their opinions voluntarily, free from manipulation, undue influence, or coercion. This requires creating a safe environment where children feel comfortable expressing themselves and are provided with sufficient, age-appropriate information. Parents and guardians should also be informed and supported to facilitate the child’s participation.

Fourth, ‘in all matters affecting the child’ is to be understood as broadly as possible. The drafters of the CRC deliberately rejected any attempt to limit this to a specific list of issues, emphasising that children’s views should be taken into consideration in any context that impacts them, with the only limitation being the principle of the child’s best interests.

Fifth, ‘being given due weight in accordance with the age and maturity of the child’ requires that children’s views are not only heard but are also seriously taken into account. The weight given to a child’s opinion should be determined by an assessment of both age and maturity, not age alone. The CRC Committee research highlights that a child’s capacity to form views is influenced by factors such as information, experience, environment, and cultural context, and should be evaluated on a case-by-case basis.

*The child’s right to be heard in any judicial or administrative proceeding that affects them* is a right defined by three essential attributes.<sup>41</sup> First, the right applies to “any” such proceeding, a deliberate choice by the drafters to ensure the broadest possible scope. This means the provision covers not only official court processes but also alternative dispute resolution mechanisms such as arbitration and mediation. The right is relevant in a wide range of contexts, including parental separation, custody, care and adoption, children in conflict with the law, child victims of violence or abuse, health care, social security, unaccompanied children, asylum seekers, refugees, and children affected by armed conflict or emergencies. Administrative proceedings may involve decisions about education, health, environment, living conditions, or protection. Importantly, the right applies regardless of who initiated the proceedings – whether it is the child or someone else.

To ensure effective and genuine implementation, the environment in which the child is heard must be safe, sensitive, and appropriate to the child’s age and maturity. This necessitates proceedings that are accessible and child-friendly, with attention paid to providing child-appropriate information, support for self-advocacy, appropriately trained staff, and the careful design of physical spaces, such as courtrooms and waiting areas. Measures like sight screens and separate waiting rooms help reduce stress and create a more supportive environment for children.

The second attribute specifies that the child may be heard ‘directly, or through a representative or an appropriate body’. The choice between direct participation or representation should be made by the child whenever possible, and the CRC Committee recommends that children be given the opportunity to be heard directly whenever

41 Ibid.

feasible. If the child is not heard directly, the selection of a representative becomes crucial. Parents or guardians may serve as representatives if there is no conflict of interest. However, in cases where such a conflict exists – such as disputes between the child and parent – alternative representatives such as lawyers (child attorneys) or social workers should be appointed. All representatives must prioritise the child’s interests above those of any other person or institution.

The third attribute requires that the right be exercised ‘in a manner consistent with the procedural rules of national law’. However, these rules should not restrict or limit the child’s right to be heard; rather, they should facilitate the broadest possible application of Article 12(2). National laws and procedures should be designed to support and empower children’s participation, not to create barriers.

The right to be heard must be exercised on a voluntary basis, meaning the child should not be forced to participate. The child’s choice to exercise this right – and the way of doing so – must be respected.

## 5. Committee on the Rights of the Child

*Article 43 of the CRC* provided for the establishment of a committee that in its competence is examining the progress made by States Parties in achieving the realisation of the obligations undertaken in the CRC. Upon this provision, the Committee on the Rights of the Child was established on 27 February 1991. The CRC Committee consists of eighteen experts of high moral standing and recognised competence in the field covered by the CRC. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, as experts, consideration being given to equitable geographical distribution, as well as to the principal legal systems.<sup>42</sup> The CRC Committee is the specialised United Nations body established to monitor the implementation of the CRC and its Optional Protocols by States Parties. The Committee operates as a treaty-based mechanism under articles 43, 44, and 45 of the CRC.

The primary mandate of the CRC Committee is to review the periodic reports submitted by the States Parties regarding the measures taken to implement the CRC and its Optional Protocols. All States that have ratified the Convention are required to submit an initial report within two years of ratification and subsequent reports every five years thereafter. During its regular sessions – typically held three times a year – the CRC Committee examines these reports, engages in dialogue with government delegations, and issues *concluding observations*. These concluding observations highlight progress, identify concerns, and provide recommendations for legal, policy, and practical improvements to better protect children’s rights.

In addition to reviewing state reports, the CRC Committee issues interpretations of the Convention through *General Comments*. These documents clarify the meaning

42 Article 43 para. 2 of the CRC.

and scope of specific provisions as it is understood by the Committee, offering their guidance to States Parties and stakeholders on how to implement the CRC. The Committee's General Comments are widely referenced in academic, legal, and policy discussions on children's rights, nevertheless they are not legally binding documents.

With the coming into force of the Third Optional Protocol on a Communications Procedure (hereinafter referred to as OPIC) in 2014, the CRC Committee gained new competencies. It now has the authority to consider individual complaints alleging violations of children's rights under the Convention and its first two Optional Protocols, provided certain conditions are met. The Committee can also conduct inquiries into grave or systematic violations of children's rights, further strengthening its role in holding States accountable. The CRC Committee exercises these competencies only towards State Parties that ratified OPIC, which is the least ratified Optional Protocol of the CRC.

Through its monitoring, reporting, and complaint mechanisms, the CRC Committee plays a central role in advancing the realisation of children's rights worldwide. It promotes legislative and policy reforms, encourages international cooperation, and provides a platform for civil society and children themselves to participate in the monitoring process.

## **6. The Optional Protocols to the Convention on the Rights of the Child**

The CRC established a comprehensive framework for the protection, promotion, and fulfilment of children's rights. Over time, however, it became clear that certain critical issues either required further elaboration or were not sufficiently addressed in the original text. To respond to these evolving challenges and to strengthen the implementation of children's rights, the international community developed three Optional Protocols, each targeting distinct areas of concern and expanding the obligations of States Parties beyond those set out in the CRC itself.

Optional Protocols are supplementary treaties that allow states to address new or more detailed issues that were either not covered or not fully developed in the main treaty. The adoption of these protocols is voluntary, meaning that states must separately sign and ratify each one, thereby accepting additional responsibilities and international oversight mechanisms. The three Optional Protocols to the CRC are: the Optional Protocol on the Involvement of Children in Armed Conflict, the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and the Optional Protocol on a Communications Procedure.

### ***6.1. Optional Protocol on the Involvement of Children in Armed Conflict***

The protection of children during armed conflict is addressed by two main bodies of international law: international humanitarian law and international human rights law. International humanitarian law, rooted in the Geneva Conventions of 1949 and their Additional Protocols of 1977, sets minimum standards for the protection of

civilians, including children, distinguishing between military and civilian targets and emphasising special protections for children due to their vulnerability.<sup>43</sup> The Fourth Geneva Convention, in particular, offers extensive safeguards for children, reflecting the horrors witnessed during the Second World War. International humanitarian law treats children as a category deserving special protection, recognising their immaturity and the need to shield them from the consequences of war, including their involvement in hostilities and the offences they may commit under duress.

International human rights law further reinforces these protections through instruments such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination against Women. However, the most significant treaty for children's rights is the Convention on the Rights of the Child (CRC), adopted in 1989, which sets the age of majority at 18 and obliges states to protect children from all forms of violence and exploitation.<sup>44</sup> Despite these protections, Article 38 of the CRC, which addresses children in armed conflict, was criticised for only prohibiting the direct participation of children under 15 in hostilities and allowing recruitment from age 15, falling short of the "straight-18" principle advocated by child rights activists.<sup>45</sup>

Recognising these gaps, the international community developed the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC), adopted in 2000.<sup>46</sup> The OPAC was the result of years of advocacy and negotiation, driven by organisations such as the International Committee of the Red Cross, UNICEF, and the Coalition to Stop the Use of Child Soldiers, and was advised by influential reports such as the 1996 Machel report, which highlighted the severe impact of armed conflict on children. The OPAC aims to strengthen the prohibition against the recruitment and use of children in hostilities, raising the minimum age for compulsory recruitment to 18 and requiring states to take all feasible measures to prevent children under 18 from direct participation in hostilities.<sup>47</sup>

The OPAC underlines that states must take "all feasible measures" to ensure that members of their armed forces under 18 do not take a direct part in hostilities.<sup>48</sup> It sets out that compulsory recruitment of persons under 18 is prohibited.<sup>49</sup> It provides for states to raise the minimum age for voluntary recruitment, with stringent safeguards to ensure that recruitment is genuinely voluntary and informed, and with parental consent required for minors.<sup>50</sup> It establishes that non-state armed groups are prohib-

43 Garayová, 2024, p. 210.

44 *Ibid.*, p. 211.

45 *Ibid.*

46 *Ibid.*, p. 213.

47 *Ibid.*

48 OPAC, Art. 1.

49 OPAC, Art. 2.

50 OPAC, Art. 3.

ited from recruiting or using children under 18 in hostilities under any circumstances, and states must take all feasible measures to prevent such practices.<sup>51</sup>

Despite these advances, the OPAC is a product of compromise. The use of the phrase “all feasible measures” in Article 1, rather than a strict prohibition, allows for some flexibility and has been criticised for not providing absolute protection. Additionally, OPAC only prohibits direct participation in hostilities, leaving open the possibility of children being used in indirect roles, such as messengers or porters, which still exposes them to significant risks<sup>52</sup>. OPAC also requires states to demobilise and rehabilitate child soldiers, providing physical and psychological recovery and supporting their social reintegration. The OPAC also includes provisions for international cooperation and support for the rehabilitation and reintegration of child soldiers, recognising the need for technical and financial assistance, especially in conflict-affected countries.<sup>53</sup>

While the OPAC represents significant progress, challenges remain. Many states still permit voluntary recruitment of children aged 16 or 17, and non-state armed groups continue to recruit and use children in large numbers.<sup>54</sup> The Protocol’s effectiveness depends on robust national implementation, international cooperation, and ongoing advocacy to uphold the “straight-18” principle. The international community must remain vigilant and committed to ensuring that children are protected from the devastating effects of armed conflict and that their rights are fully realised.<sup>55</sup>

## **6.2. *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography***

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted in 2000 and in effect since 2002, stands as a landmark international instrument aimed at addressing severe forms of child exploitation that persisted despite the protections offered by the CRC itself.<sup>56</sup> The Protocol was developed in response to ongoing concerns raised by monitoring bodies such as the Committee on the Rights of the Child and the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, who highlighted the need for stronger legal frameworks to combat the commercial sexual exploitation of children, including trafficking, prostitution, and pornography.<sup>57</sup>

At its core, the Optional Protocol requires States Parties to prohibit and criminalise a range of exploitative practices. The sale of children is defined broadly as any act or transaction where a child is transferred for remuneration or any other consideration,

51 OPAC, Art. 4.

52 Garayová, 2024, p. 210.

53 Ibid.

54 Ibid., p. 236.

55 Ibid.

56 Stajanko and Fetai, 2024, p. 182.

57 Ibid., p. 183.

specifically targeting situations such as sexual exploitation, organ transfer for profit, forced labour, and improperly induced consent in adoption processes.<sup>58</sup>

The Protocol also mandates the criminalisation of child prostitution, defined as the use of a child in sexual activities for remuneration or any other consideration, and child pornography, which is any representation of a child engaged in real or simulated explicit sexual activities or the depiction of a child's sexual parts for primarily sexual purposes.<sup>59</sup> The legal framework established by the Protocol is more specific and detailed than the general obligations under the CRC, requiring states to ensure that not only direct perpetrators but also intermediaries and accomplices are held accountable, and that legal persons (such as corporations) may also be liable for offenses.

A significant area of controversy and complexity arises in the interpretation and application of these definitions. For example, the Protocol's approach to commercial adoption focuses on the improper inducement of consent by intermediaries, but does not explicitly address other criminal acts in the adoption process, such as kidnapping. Similarly, the Protocol's stance on commercial surrogacy is ambiguous. While some argue that commercial surrogacy should be considered a form of child sale, the Protocol does not explicitly cover this practice, leaving it to the states to regulate or prohibit surrogacy according to their own legal frameworks and international obligations.

In the area of child pornography, the Protocol criminalises the production, distribution, and possession of such material, but leaves some questions unresolved, particularly regarding the criminalisation of mere possession, the treatment of virtual or fictional pornography, and the boundaries between prohibited material and permissible artistic expression. The Protocol's definition is intended to be interpreted narrowly, with the Committee on the Rights of the Child encouraging states to avoid overcriminalisation and to consider the context and intent behind the creation and dissemination of material. However, the Protocol's broad language has led to debates about the criminalisation of self-generated sexual content by minors, with some arguing that the Protocol's approach is overly paternalistic and fails to recognise the agency of older children.

Jurisdictional issues are also addressed by the Protocol, which requires states to establish jurisdiction over offenses committed within their territory and encourages them to extend jurisdiction to offenses committed by their nationals or against their nationals abroad. The Protocol also facilitates international cooperation through provisions on extradition, mutual legal assistance, and the seizure and confiscation of assets used in or derived from offenses. Notably, the Protocol does not require the freezing of assets, which some commentators view as a missed opportunity for more effective asset recovery.

The rights and protection of child victims are a central concern of the Protocol. States are required to design criminal procedures that protect the rights and interests

<sup>58</sup> *Ibid.*, pp.183–184.

<sup>59</sup> *Ibid.*, pp.188–196.

of child victims, ensure their safety and privacy, and provide for their physical and psychological recovery and social reintegration. The Protocol also emphasises the importance of preventive measures, including awareness-raising, education, and support for vulnerable families, as well as international cooperation to address root causes such as poverty and underdevelopment.

Despite its strengths, the Protocol has been criticised for certain omissions and ambiguities. For example, it does not set a uniform age for the protection of children, allowing states to define the age of majority according to their own laws, which can lead to uneven protection across jurisdictions. The Protocol also does not explicitly address emerging issues such as live-streamed child sexual abuse or grooming, and its provisions on prevention are considered by some to be too vague.

The Optional Protocol represents a significant advance in the international legal framework for protecting children from commercial sexual exploitation, trafficking, and abuse. It provides detailed and enforceable obligations for states to criminalise and combat these practices, while also emphasising the rights and needs of child victims. However, its effectiveness depends on robust national implementation, ongoing international cooperation, and careful interpretation to avoid overreach or unintended consequences.

### ***6.3. Optional Protocol on a Communications Procedure***<sup>60</sup>

The Optional Protocol to the United Nations Convention on the Rights of the Child (UNCRC) on a Communications Procedure (hereinafter referred to as OPIC), adopted in December 2011 and having entered into force in April 2014, represents a significant development in the international protection of children's rights by establishing a mechanism for individual complaints to be brought before the CRC Committee.<sup>61</sup> The core objective of OPIC is to enhance children's access to effective remedies at the international level, filling a longstanding gap in the UN treaty body system. With OPIC's adoption, all core UN human rights treaties now have procedures for individual communications, but despite the broad ratification of the UNCRC and its first two Optional Protocols, OPIC has a notably low rate of ratification among states.<sup>62</sup>

The need for a communications procedure was recognised during the drafting of the UNCRC between 1978 and 1989, but initial proposals were set aside due to concerns about the justiciability of economic, social, and cultural rights and the perceived overreach of empowering the CRC Committee with quasi-judicial authority. The idea resurfaced in the late 2000s when the UNCRC remained the only core human rights treaty without a communications mechanism. Advocacy by the CRC Committee Chairperson and non-governmental organisations led to an in-depth study and ultimately the drafting of OPIC. The drafting process, which began in 2009, was marked by debates over the added value of the Protocol, the CRC Committee's workload and

<sup>60</sup> Benyusz, 2024, pp. 241–257.

<sup>61</sup> *Ibid.*, p. 243.

<sup>62</sup> *Ibid.*

legal expertise, the scope of the Protocol, the legal capacity of children to submit complaints, and the implications for national sovereignty.<sup>63</sup>

OPIC is structured into a preamble and four main parts: General Provisions, Communications Procedure, Inquiry Procedure, and Final Provisions.<sup>64</sup> The preamble, while not legally binding, provides an interpretative framework that emphasises the special vulnerability of children, the importance of child-sensitive procedures, and the best interests of the child. The General and Final Provisions set out the principles and rules governing OPIC, while the Communications and Inquiry Procedures detail the three key mechanisms: individual communications, inter-state complaints, and the inquiry procedure.<sup>65</sup>

The individual communications procedure allows the submission of complaints to the CRC Committee alleging violations of rights under the UNCRC or its first two Optional Protocols, provided domestic remedies have been exhausted or no effective action has been taken within a reasonable time. Individuals, who were children at the time of the alleged violation, may also submit complaints.<sup>66</sup> The procedure is confidential, child-sensitive, and includes safeguards to prevent manipulation and protect the safety of complainants. Interim measures may be requested in cases of potential irreparable harm, and the Committee may seek information from various sources during its examination. The procedure allows for friendly settlements, and if no settlement is reached, the Committee issues views and recommendations, which the State Party is expected to implement and report on within six months.

The inter-state complaint mechanism allows State Parties to OPIC to bring complaints against other State Parties for alleged violations, but this mechanism is optional and, as of now, has never been used.<sup>67</sup> The inquiry procedure, which is accepted upon ratification unless a State Party opts out, enables the CRC Committee to investigate reliable information indicating grave or systematic violations of children's rights.<sup>68</sup> This procedure may involve confidential cooperation with the State Party, additional information gathering, and, if necessary, visits to the country. The Committee issues findings and recommendations, and the State Party is required to respond within six months.

OPIC does not address the legal representation or capacity of children in detail, leaving open questions about genuine child participation and the risk of manipulation by representatives.<sup>69</sup> The Rules of Procedure emphasise child-sensitive processes and the need to give due weight to children's views, but do not provide comprehensive safeguards against conflicts of interest or improper influence. The CRC Committee submits biennial reports on its activities under OPIC, and States Parties are required

63 Ibid.

64 Ibid., p. 244.

65 Ibid.

66 Ibid., p. 247.

67 Ibid., p. 251.

68 Ibid.

69 Ibid., p. 253.

to disseminate information about the Protocol and facilitate access to it for children and adults.

Despite its innovative features, OPIC has faced challenges. The ratification rate remains low, and there are ongoing debates about the CRC Committee's capacity to act as a quasi-judicial body, the adequacy of safeguards for children's participation, and the extent to which the procedure is genuinely adapted to children's needs.

## 7. Concluding Remarks

The CRC stands as a landmark achievement in international law, heralding a paradigm shift in how society views and protects children. By recognising children not merely as objects of adult protection but as rights-holders in their own right, the CRC has fundamentally transformed the legal, social, and cultural landscape concerning childhood. Its near-universal ratification underscores the global consensus on the importance of safeguarding children's dignity, well-being, and development, and it provides a comprehensive framework that integrates civil, political, economic, social, and cultural rights specifically tailored to children's needs.

The CRC's drafting process was marked by a spirit of compromise and inclusivity, seeking to balance universal standards with respect for cultural diversity and national sovereignty. This approach enabled the Convention to achieve broad acceptance, but it also introduced certain ambiguities and necessitated ongoing interpretation and adaptation. The CRC's core principles – non-discrimination, the best interests of the child, the right to life, survival and development, and the right to participate and be heard and the right to live in a loving family environment – serve as both substantive rights and guiding norms that shape the implementation and interpretation of all other provisions. These principles underscore the CRC's holistic vision of children's rights, emphasising the interdependence and indivisibility of rights and the need for a child-centred perspective in all actions affecting children.

The CRC's definition of the child as every human being below the age of eighteen, unless national law provides otherwise, reflects a compromise between international standardisation and respect for national legal systems. This definition, together with the Convention's emphasis on the evolving capacities of the child, acknowledges that children are not a homogenous group but individuals whose agency and autonomy develop over time. The legacy of Janusz Korczak, whose ideas profoundly influenced the CRC, continues to inspire efforts to empower children and ensure their participation in decisions affecting their lives. The same applies to the legacy of Professor Tadeusz Smoczyński, the initial drafter of the CRC, whose family-centred approach is there behind each provision of the CRC.

Over time, the CRC has been complemented by three Optional Protocols, each addressing critical gaps and emerging challenges in the protection of children's rights. The Optional Protocol on the Involvement of Children in Armed Conflict strengthens protections against the recruitment and use of children in hostilities, while the

Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography provides detailed obligations to combat commercial sexual exploitation and abuse. The Optional Protocol on a Communications Procedure, although less widely ratified, represents a step forward in ensuring children's access to justice at the international level by enabling them to submit complaints about rights violations.

The CRC and its Optional Protocols are underpinned by the work of the Committee on the Rights of the Child, which monitors implementation, interprets the Convention's provisions, and provides guidance to States Parties.

Despite these achievements, significant challenges remain. The CRC's principles and provisions require robust national implementation, ongoing international cooperation, and a genuine commitment to child participation. The effectiveness of the CRC and its Optional Protocols depends not only on legal and policy reforms but also on societal attitudes and practices that recognise and respect children's agency, dignity, and evolving capacities.

Ultimately, the CRC and its Optional Protocols represent a collective commitment to the future of humanity – a commitment to uphold the rights and dignity of every child, everywhere. Their success will be measured not only by the laws and policies they inspire but by the lived experiences of children whose lives are shaped by the promise of the Convention and its vision of a world in which children's rights are fully realised.

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