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Twenty-Five Years of the United Nations Convention on the Rights of the Child: Achievements and Challenges

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TWENTY-FIVE YEARS OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: ACHIEVEMENTS AND CHALLENGES

by Karin Arts*

1. Introduction
2. A critical analysis of selected achievements
 - 2.1 A comprehensive standard
 - 2.1.1 The substantive coverage of the CRC
 - 2.1.2 The CRC's ratification record
 - 2.1.3 Concluding remarks
 - 2.2 A universal but differentiated standard
 - 2.2.1 Accommodation of diversity in the CRC's substantive provisions
 - 2.2.2 Accommodation of diversity in the CRC's implementation provisions
 - 2.2.3 Concluding remarks
 - 2.3 Law reform
 - 2.4 The CRC Committee and its procedures
3. Selected challenges
 - 3.1 Addressing poverty and other persistent causes
 - 3.2 Addressing child rights violations in the private sphere
 - 3.3 Data
 - 3.4 Mobilizing resources
4. Concluding Remarks

Abstract

The 25th anniversary of the UN Convention on the Rights of the Child in November 2014 is an appropriate occasion for reviewing its record of achievements and challenges in protecting children's rights worldwide. Clear accomplishments to build on are the comprehensive nature of the Convention and its capacity to

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accommodate the largely diverse contexts in which its provisions are to be realized. In addition, widespread and massive law reform is one of the most tangible achievements stimulated by the Convention. Finally, the existence and performance of the Committee on the Rights of the Child, charged with monitoring the implementation of the Convention, has been assessed positively. Most recently, this was rewarded with the entry into force of the third Optional Protocol to the Convention, which introduced communications procedures including individual and state complaints mechanisms. After having reviewed this record of selected achievements critically, four selected major challenges that still stand in the way of the fuller realization of the Convention will be presented more briefly. The main reason for this difference in emphasis is that, on the whole, the achievements speak more significantly to issues concerning the progressive development of international law while the challenges are, on the whole, more of a practical nature. The latter are: the persistence of poverty and other root causes of many child rights problems; difficulties in permeating into the private – including domestic and corporate – sphere where a considerable number of child rights violations occur but which are still hardly covered explicitly by international human rights law; and issues concerning the availability of data and resources.

1. INTRODUCTION

While the jury is still out in terms of an overall assessment of its effectiveness, there is no doubt about the fact that the United Nations (hereafter UN) Convention on the Rights of the Child (hereafter the Convention or the CRC) has inspired ample international and national actions on children's rights. Many governmental, as well as civil society, actors have embraced the Convention and use it as a frame of reference for their work relating to young people in the age range of 0 to 18 years.¹ The Convention's 25th anniversary in November 2014 is a natural occasion for reviewing its record of achievements and challenges in terms of promoting and protecting children's rights worldwide.

In the academic literature, on the one hand there is abundant praise for the Convention and/or the effects that it has had so far. For example, according to Roger Smith, 'internationally, there has emerged a high level consensus about the interests and needs of children as represented by the UN Convention on the Rights of the Child'.² And, according to Gary B. Melton: 'the nearly universal adoption of the Convention on the Rights of the Child (1989) has changed the global discourse on children's policy. This change is easily observed among academicians

1. The CRC was adopted by the UN General Assembly on 20 November 1989. For its text see: <www.ohchr.org/en/professionalinterest/pages/crc.aspx>. According to its Art. 1 a child is 'every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier'.

2. R. Smith, *A Universal Child?* (Basingstoke, Palgrave Macmillan 2010) p. 102.

even in the United States.³ Melton even suggested that ‘the Convention has achieved such a wide level of adoption within the community of civilized nations that it arguably has risen to the level of customary international law’.⁴ Jane Connors of the UN Office of the High Commissioner of Human Rights (OHCHR) referred to the ‘broad appreciation of the impact of the Convention’⁵ and took the position that: ‘the convention has transformed the way we view children, and provided the impetus for further standards to advance their rights, not least the Convention’s Optional Protocols, and the child-specific provisions in the most recent treaties on the rights of persons with disabilities and for the protection of all persons from enforced disappearances’.⁶

On the other hand, deeply critical voices exist as well. Samuel Okyere added the sobering note that ‘[n]early three decades after the CRC was created, no country has fully implemented its provisions’.⁷ Suman Khadka drew attention to the fact that, ‘[w]hile the key principles of the CRC include equal treatment and non-discrimination, these rights are simply minimum standards and do not come with any political theory of how best to achieve this, leaving stakeholders to develop their own interpretations’.⁸ Nicola Ansell took the position that the ‘CRC arguably imagines a particular type of child (Western, middle-class, male, able-bodied), and the more distant children’s circumstances are from this norm, the less relevant the articles of the CRC’.⁹ And, according to Matías Cordero Arce, ‘the hegemonic children’s rights discourse, crystallized in the UNCRC, is anything but child empowering because it is indebted to specific Euro-American adult understandings which picture *the child* as ignorant, innocent and needy and the child’s *human*

3. G.B. Melton, ‘Beyond Balancing: Toward an Integrated Approach to Children’s Rights’, 64 *Journal of Social Issues* (2008) pp. 903-920 at p. 904. At the time, and still today, the United States of America (USA) is one of the very few states that have not yet ratified the CRC. For an analysis of the general ratification record of the CRC see section 2.1 below. Less well-known is the fact that, despite its non-ratification of the Convention, the USA has ratified two of the Optional Protocols to the CRC, respectively on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. According to the UN Treaty Collection database, both Optional Protocols were signed by the USA on 5 July 2000 and ratified on 23 December 2002. See <treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en>.

4. Melton, *ibid.*, pp. 903-920 at p. 905, fn. 1.

5. Institut International des Droits de l’Enfant (IDE), *18 Candles: The Convention on the Rights of the Child Reaches Majority* (Sion, IDE 2007), <www.ohchr.org/Documents/Publications/crc18.pdf>, p. 6.

6. *Ibid.*, p. 5.

7. S. Okyere, ‘Children’s Participation in Prohibited Work in Ghana’, in A. Twum-Danso Imoh and N. Ansell, eds., *Children’s Lives in The Era of Children’s Rights: The Progress of the Convention on the Rights of the Child in Africa* (Oxford, Routledge 2013) pp. 92-104 at p. 98.

8. S. Khadka, ‘Social Rights and the United Nations – Child Rights Convention (UN-CRC): Is the CRC a Help or Hindrance for Developing Universal and Egalitarian Social Policies for Children’s Wellbeing in the ‘Developing World?’’, 21 *International Journal of Children’s Rights* (2013) pp. 616-628 at p. 621.

9. N. Ansell, ‘The Convention on the Rights of the Child: Advancing Social Justice for African Children’, in Twum-Danso Imoh and Ansell, eds., *supra* n. 7, pp. 228-246 at p. 235.

rights as a concession granted by adults'.¹⁰ So, all in all, while there is definitely a broad appreciation for the Convention, there is criticism as well and opinions differ on its exact relevance and impact. As a contribution to a critical assessment of the record of the twenty-five year old Convention on the Rights of the Child, this article reviews a selected number of its major achievements and challenges. Its findings further underpin the mixed record that emerges from the literature. The CRC regime's achievements are addressed much more elaborately than the challenges are. At least two different reasons justify this. Firstly, the achievements provide more insight into the contributions of the CRC to the progressive development of international law while the challenges, on the whole, are more of a practical nature. Secondly, while the achievements presented are all strong assets of the Convention, none of them show unequivocally positive track records only and require critical scrutiny. The challenges do not show this dual nature.

Clear accomplishments to build on are the comprehensive nature of the Convention and the manner in which its provisions have shown to be suitable for accommodating the largely diverse contexts in which they are to be realized. By the latter feature, the CRC and its implementation practice explicitly engaged with the debates about the universality and/or relativity of human rights – including children's rights – norms. In fact it surpassed this debate by introducing a nuanced system of provisions seeking to accommodate universal children's rights ideas and norms in culturally, economically, politically and socially sensitive and sensible ways. One of the most tangible achievements stimulated by the Convention is law reform. All over the world states have started to hold their national legal systems against the light in order to increase conformity with the letter and/or spirit of the Convention.¹¹ Another set of achievements is found in the work of the CRC Committee itself. The Committee has become a relatively vocal actor on behalf of children and their rights and has been searching for both substantive and procedural improvements throughout its term. In April 2014 a major procedural breakthrough was realized when the third Optional Protocol to the Convention – introducing individual and inter-state complaints procedures, and an inter-state inquiry procedure – entered into force.

After having discussed the above-mentioned four selected main overall positive features of the CRC's performance record, the remainder of this article then presents, much more briefly, an analysis of four selected major challenges that stand in the way of the fuller realization of the Convention. These comprise the following: the complex nature of tackling the persistent nature of the root causes of many

10. M. Cordero Arce, 'Towards an Emancipatory Discourse of Children's Rights', 20 *International Journal of Children's Rights* (2012) pp. 365-421 at p. 365.

11. For an account of one selective example, see G. Odongo, 'The Domestication of International Standards on the Rights of the Child: A Critical and Comparative Evaluation of the Kenyan Example', 21 *International Journal of Children's Rights* (2004) pp. 419-430. See also J. Krommendijk, *The Domestic Impact and Effectiveness of the Process of State Reporting under UN Human Rights Treaties in the Netherlands, New Zealand and Finland: Paper-Pushing or Policy Prompting?* (Antwerp, Intersentia 2014).

child rights violations; difficulties in permeating into the private – including domestic – sphere where a considerable number of child rights violations occur but which are still under-regulated in international human rights law; and issues concerning the availability of data and resources. At the end of the article brief concluding remarks are presented.

2. A CRITICAL ANALYSIS OF SELECTED ACHIEVEMENTS

2.1 A comprehensive standard

A first achievement to appreciate is that the CRC is a truly comprehensive standard of children's rights, both in its substantive scope and in its geographical application.

2.1.1 *The substantive coverage of the CRC*

While its immediate predecessor (the 1959 UN Declaration of the Rights of the Child)¹² counted only 10 principles, the Convention on the Rights of the Child consists of no less than 54 articles. These can be divided into 41 substantive articles which deal with a broad range of rather diverse specific children's rights. They cover for example the child rights to: life; a name and nationality; freedom of expression; freedom of thought, conscience and religion; health; social security; an adequate standard of living; education; enjoy his or her own culture, profess and practise his or her own religion and/or use his or her own language; or rest and leisure.¹³ In addition, the Convention recognizes the child rights not to be: separated from his or her parents against their will; abused, neglected or maltreated; exploited or abused; tortured or treated or punished cruelly or degradingly.¹⁴ This substantive section is followed by 13 procedural articles which address matters such as implementation and monitoring procedures and technicalities concerning signature, ratification of or accession to the Convention, its entry force, amendments, reservations, and denunciation.

As alluded to earlier on in this contribution, over time three additional Optional Protocols came about. The first two of these Optional Protocols added substance to the original CRC text on matters concerning the involvement of children in armed conflict, and the sale of children, child prostitution and child pornography. The third Optional Protocol introduced complaints and inquiry procedures.¹⁵ Thus,

12. As proclaimed by the UN General Assembly in Res. 1386 (XIV) of 20 November 1959.

13. See respectively CRC Arts. 6(1), 7(1), 12 and 13, 24, 26, 27, 30 and 31.

14. See respectively CRC Arts. 9(1), 19, 32 and 37.

15. The first two Optional Protocols were adopted on 25 May 2002 and entered into force on 18 January 2002. See *supra* n. 3. The third Optional Protocol came about on 19 December 2011 and entered into force on 14 April 2014. For further details, see <treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en> and section 2.4 below.

the Convention comprehensively covers most aspects of children's lives and rights. As expressed by Gary B. Melton: 'Stunning in its scope, the Convention on the Rights of the Child (1989) is remarkable in its sensitivity to the diverse ecology of childhood. With 54 articles ... the range of settings and situations that the Convention covers is an accurate representation of childhood, whether of children in ordinary or exceptional circumstances.'¹⁶

However, as was already alluded to in the introduction to this article, the achievement of this level of comprehensiveness is certainly not perfect. There are still certain aspects or realms of children's and/or young people's lives that the CRC neglects or underemphasizes. One of the most glaring examples is that of gender, which is hardly covered explicitly. However, Article 2, the CRC's non-discrimination article, is a first exception. It refers to 'sex' as a prohibited ground for discrimination. Another exception is Article 29(1d) which refers to 'the spirit of ... equality of sexes' as an element of the 'preparation of the child for responsible life in a free society'. Yet, the broader notion of gender differences is not referred to. In addition, none of the other CRC articles draws any specific attention to the gender dimensions of the subjects and/or problems covered. One could perhaps argue that the very fact that many of the States Parties to the CRC have also ratified the Convention on the Elimination of all Forms of Discrimination Against Women, combined with the fact that the CRC systematically contains sex-specific language ('his or her'), requires states to pay attention to the gender dimensions of both the child rights and violations of the child rights involved. In addition, the CRC's gender-sensitive language as such is certainly an improvement over the 1959 UN Declaration on the Rights of the Child¹⁷ which exclusively referred to children in masculine language (by 'he', 'his' and 'him'). However, quite a few of the CRC provisions still refer plainly to 'the child' and there are no satisfactory general or specific provisions prescribing attention for, and action where due, on gender differences. The Optional Protocol on the Involvement of Children in Armed Conflict does not distinguish between boys and girls at all and only refers to the 'child'. However, the preamble to the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography recognizes that 'a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited'.¹⁸ While this is definitely true in general terms, in certain settings this approach also runs the risk of stereotyping, unduly victimizing girls or overlooking other affected persons. In any case, this approach represents a limited conceptualization of gender which in practice may cause problems. For instance, there are examples of development projects in which narrowly conceived

16. Melton, *supra* n. 3, p. 908.

17. UNGA Res. 1386 (XIV) of 10 December 1959. According to Lois Jensen, in her *Women's and Children's Rights: Making the Connection* (New York, UNFPA and UNICEF 2010) p. 24: 'The CRC is the only major human rights instrument currently in force that consistently uses both male and female pronouns, making it explicit that the rights apply equally to girls and boys.'

18. Fifth preambular paragraph. More generally, see Jensen, *ibid*.

gendered assumptions resulted in an exclusive focus on female victims of trafficking whereas gradually it became clear that the reality on the ground was that a significant number of the persons involved were male who should also be assisted.¹⁹

Another substantive gap in the CRC relates to matters concerning neutral or positive notions of young persons' sexuality, which are not covered at all.²⁰ Other gaps in the content of the CRC that have been pointed out in the academic literature include: the position of 'social orphans', defined as children living outside of family care;²¹ the rights of older children, usually referred to as 'youth' or 'adolescents' which – to the extent that they still fall within the upper limit of the definition of childhood used by the Convention (up to 18 years old) – enjoy CRC protection alongside specific attention in global, regional and national youth policy instruments;²² the use made by children of digital/new media or alcohol and drugs; globalization; HIV/AIDS and environmental concerns.²³

Another manifestation of the comprehensiveness of the CRC is that, according to its Article 2, its scope of application extends to 'each child' within the jurisdiction of a State Party. This covers every possible child, regardless of whether, for example, the child holds a legal residence title for the state in which it is present, whether it is an indigenous or minority child, a girl or a boy, a child with disabilities or a fully abled child, or a child living in an urban or rural area. This is an important feature for addressing discrimination, marginalization and exclusion.

2.1.2 *The CRC's ratification record*

The Convention's geographical scope of application is comprehensive as well. At the time of its conclusion it set a record in the UN for a treaty of its kind, in terms of both the speed and extent of its ratification by states. It entered into force less than a year after its adoption, in September 1990, and it had achieved nearly universal ratification by the year 1997. In July 2014 the CRC had 195 States Parties,²⁴

19. For an example located in the Philippines, see K. Arts, 'Countering Violence Against Children in the Philippines: Positive RBA Practice Examples from Plan', in P. Gready and W. Vandenhoe, eds., *Human Rights and Development in the New Millennium: Towards a Theory of Change* (London, Routledge 2014) pp. 149-176 at p. 163.

20. The CRC only contains provisions on negative aspects related to sexuality, respectively in Art. 19 (on sexual abuse) and in Art. 34 (on sexual exploitation) and, as referred to already, in its second Optional Protocol.

21. S. Dillon, 'The Missing Link: A Social Orphan Protocol to the United Nations Convention on the Rights of the Child', 1 *Human Rights and Globalization Law Review* (2007-2008) pp. 39-87.

22. E. Desmet, 'Implementing the Convention on the Rights of the Child for "Youth": Who and How?', 20 *International Journal of Children's Rights* (2012) pp. 3-23.

23. P. Veerman, 'The Aging of the UN Convention on the Rights of the Child', 18 *International Journal of Children's Rights* (2010) pp. 585-618.

24. For all formal ratification data, see the UN Treaty Collection database at <treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en>. For a brief empirical analysis of ratification trends, see K. Arts, *Coming of Age in a World of Diversity? An Assessment*

that is all states in the world except Somalia,²⁵ South Sudan²⁶ and the USA,²⁷ but including Palestine.²⁸ This is all the more striking, given the far-reaching set of state obligations that is included in it. In addition, as Nigel Cantwell reminded in 2007, initially the response to the Polish proposal to draft the CRC ‘was hardly a unanimous wave of unbounded enthusiasm’.²⁹ It is also interesting that, on the whole, developing countries moved more quickly in ratifying the Convention than developed countries did. According to Price Cohen and others: ‘[o]nly one of the first twenty states to become parties to the Convention (Sweden) was a developed country’.³⁰ More broadly, an empirical analysis of CRC ratification patterns in the eight-year period between its adoption in 1989 and the achievement of nearly universal ratification in 1997 has shown that:

‘Statistically, the Americas and the Caribbean, and Africa consistently scored higher in terms of CRC ratification per centages than Europe did [western, central and eastern European states alike]. Asia and the Pacific surpassed Europe in the course of 1995. Meanwhile, the Middle East and North Africa clearly lagged behind, especially during the mid 1990s, although by 1997 they had achieved a 95 per cent ratification rate, compared to 96 per cent for the European countries.’³¹

Initially, the ratification record of the CRC could do with some differentiations as a relatively large number of states had qualified their ratifications by registering

of the UN Convention on the Rights of the Child, inaugural lecture at the ISS of EUR, The Hague, 18 November 2010, <repub.eur.nl/pub/22645/Inaugural%20Arts%20web.pdf>.

25. Somalia signed the Convention on 9 May 2002 and in 2009 announced its intention to ratify. See BBC, ‘Somalia to ratify UN Child Pact’, 20 November 2009, <news.bbc.co.uk/2/hi/8370357.stm>.

26. South Sudan gained independence in 2011. Reportedly it has started the CRC ratification process. See UNICEF Media Centre, ‘South Sudan National Legislative Assembly Passes the Bill for Ratification of UN Convention on the Rights of the Child’, 20 November 2013, <unicef.org/southsudan/media_ratification-CRC.html>.

27. For the USA’s ratification record, see *supra* n. 3. Reportedly, the chances of the USA still ratifying the Convention are low to non-existent. Powerful anti-CRC lobbies seem to have the upper hand in this regard, and, e.g., portray the ratification of the CRC as ‘the greatest assault ever on parental rights in America’ and as a threat to national sovereignty. See <www.nocrc.org>. P. Fagan, in his ‘How U.N. Conventions on Women’s and Children’s Rights Undermine Family, Religion and Sovereignty’, 1407 *The Heritage Foundation Backgrounder* (2001) pp. 1-21 at p. 1 stated that the CRC Committee, the OHCHR and several other UN agencies ‘are involved in a campaign to undermine the foundations of society’. See also B. Bennett Woodhouse and K. Johnson, ‘The United Nations Convention on the Rights of the Child: Empowering Parents to Protect Their Children’s Rights’, in M. Albertson Fineman and K. Worthington, *What is Right for Children? The Competing Paradigms of Religion and Human Rights* (Farnham, Ashgate 2009) pp. 7-18.

28. According to the UN Treaty Collection database and the OHCHR, the ‘State of Palestine’ acceded to the CRC on 2 April 2014, without any reservation. See <tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=217&Lang=en>.

29. IDE, *supra* n. 5, p. 21.

30. C. Price Cohen, et al., ‘Monitoring the United Nations Convention on the Rights of the Child: The Challenge of Information Management’, 18 *Human Rights Quarterly* (1996) pp. 439-471 in fn. 7.

31. Arts, *supra* n. 24, pp. 18-19.

broadly worded or vague reservations. For example, between September 1990 and February 2005 (when the state withdrew the reservation) the following limitation was on record for Indonesia: ‘The ratification of the Convention on the Rights of the Child by the Republic of Indonesia does not imply the acceptance of obligations going beyond the Constitutional limits nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution.’³² Upon its signature of the Convention, Pakistan declared that the ‘[p]rovisions of the Convention shall be interpreted in the light of the principles of Islamic laws and values’. This reservation was withdrawn in July 1997.³³ In August 2014, Mauritania still had the following reservation in place: ‘[T]he Islamic Republic of Mauritania is making reservations to articles or provisions which may be contrary to the beliefs and values of Islam, the religion of the Mauritania People and State.’³⁴ Seven other States Parties still maintained this kind of generic reservations at this point in time.³⁵

In 1996 William Schabas noted that, of the more than 175 States Parties at the time, no less than 47 states (i.e., slightly more than a quarter) had registered a reservation or an interpretative declaration, ‘intended to limit the scope of their obligations’.³⁶ In addition to generic references of the kind presented in the previous paragraph of this article, according to Schabas, the CRC provisions on adoption and child detention (in particular the aspect of their separation from adults) were also especially targeted, respectively by reservations by 12 and 5 states each.³⁷ In 2003, Sonia Harris-Short concluded that of the 33 CRC reservations that she found to be in force at the time, many were ‘extremely broad in nature’.³⁸ In May 2006, Edzia Carvalho reported the existence of 64 CRC reservations.³⁹ It is difficult to make a detailed comparison between these analyses and the numbers referred to, as the authors involved seem to have used different definitions and/or criteria for reporting particular reservations. In any case it is very interesting to note that over the years a significant number of States Parties have decided to drop one or more of the reservations that they had registered upon signature and/or ratification of the CRC. These included at least six states with a generic reservation and 23 states with specific ones.⁴⁰ In some cases these with-

32. See UN Treaty Collection database, *supra* n. 24, endnote 27.

33. *Ibid.*

34. *Ibid.*, under ‘Declarations and Reservations’.

35. *Ibid.*, these states were: Afghanistan, Brunei Darussalam, Iran, Kuwait, Oman, Singapore and Syria.

36. W. Schabas, ‘Reservations to the Convention on the Rights of the Child’, 18 *Human Rights Quarterly* (1996) pp. 472-491 at p. 472.

37. *Ibid.*, p. 480.

38. S. Harris-Short, ‘International Human Rights Law: Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child’, 25 *Human Rights Quarterly* (2003) pp. 130-181 at p. 135.

39. E. Carvalho, ‘Measuring Children’s Rights: An Alternative Approach’, 16 *International Journal of Children’s Rights* (2008) pp. 545-563 at p. 546.

40. See UN Treaty Collection database. The 6 states involved were: Djibouti, Pakistan, Indone-

drawals may have been the result of international criticism of their content or bearing, expressed by other States Parties to the CRC or by UN officials. They may also have been responses to explicit invitations by the UN Committee on the Rights of the Child to review and possibly withdraw the reservation(s) involved.⁴¹ In other cases, law reform processes that equipped the national legal system better for guaranteeing children's rights allowed states to drop some or all of their initial reservations. This has for example been reported about Indonesia.⁴²

The trend to approach reservations to human rights treaties more critically, and to try and pressure states to retain only absolutely essential reservations to human rights treaties such as the Convention on the Rights of the Child, is welcome. At the same time, the fact that some states have ratified the Convention without any reservation at all, while their national legal system is clearly incompatible with certain elements of the Convention, requires equally critical scrutiny. Sudan is a case in point.

The USA's decision in the end not to follow up its 1995 signature of the Convention by ratification was a disappointment to many who had been involved in the drafting process. This was especially the case because on a number of subjects the delegation of the USA had played a dominant role. As Melton noted, '[i]ndeed, review of the legislative history of the Convention ... shows ironically that many of the provisions that have been most commonly the source of political controversy in the United States were included at the insistence of the representative of the United States in the drafting group, typically during the Reagan administration'.⁴³

2.1.3 *Concluding remarks*

Despite the fact that the motivations that drive states towards ratifying a treaty are manifold and can range from genuine priority for children's causes, to political correctness or window-dressing, to international pressure, the rapidly growing constituency that embraced the CRC in any case created a new legal reality.

sia, Qatar, Syria and Tunisia. In addition, the following states withdrew one or more specific reservations: Andorra, Bosnia-Herzegovina, Cook Islands, Croatia, Denmark, Egypt, Germany, Iceland, Indonesia, Liechtenstein, Malaysia, Malta, Mauritius, Morocco, Myanmar, Norway, Poland, Republic of Korea, Serbia, Slovenia, Switzerland, Thailand, and the UK.

41. On the latter see, e.g., International Human Rights Instruments, 'Report on Reservations', UN Doc. HRI/MC/2008/5, 29 May 2008; and 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 (arts. 4, 42 and 44, para. 6)', UN Doc. CRC/GC/2003/5, 27 November 2003, p. 5. In addition, note, e.g., that, according to the Office of the High Commissioner for Human Rights, *OHCHR Report 2012* (Geneva, OHCHR 2013) at p. 80: 'Advocacy for ... withdrawal of reservations [to human rights treaties] is an office-wide effort.'

42. United Nations Children's Fund, *Law Reform and Implementation of the Convention on the Rights of the Child* (Florence, UNICEF Innocenti Research Centre 2007) p. 10. Harris-Short, *supra* n. 38, p. 154, fn. 102, found that in 1994 the government of Indonesia referred to 'societal changes allowing it to withdraw its broad reservations to the Convention'.

43. Melton, *supra* n. 3, p. 912.

According to Melton: ‘although compliance is undeniably incomplete, the realities that rights language has been embraced by governments around the world ... cannot be overlooked. Dismissal of children’s rights as “western” and therefore inapplicable in much of the world shows an unbecoming snobbery in itself.’⁴⁴ The fact that many civil society organizations all over the world have followed suit by incorporating the CRC into their mission statements, or using the Convention as a basis for developing child rights-based approaches to their work, further supports this position. Thus, the combined comprehensive substantive and geographical coverage of the CRC represent major steps ahead for the normative framework on children’s rights in the world.

2.2 A universal but differentiated standard

A second important achievement of the CRC is that, despite the frequent criticism of it being ‘Western inspired’ or ‘infantilizing the South’ by setting standards which are unachievable for developing countries,⁴⁵ it has turned out to be a human rights treaty that clearly has an eye for the different contexts in which it will operate.

2.2.1 *Accommodation of diversity in the CRC’s substantive provisions*

Several of its substantive provisions show explicitly that its drafters made a genuine effort to codify child rights standards that would be both relevant and sensitive to the broad variety of diverse circumstances prevailing in the different states in which the Convention is to be implemented. According to Thoko Kaime, the CRC is even ‘a perfect example of ... [a] multicultural and multi-polar process of norm-setting’ and ‘has the capacity to react to the situation of children everywhere’.⁴⁶ Thus, ‘it promotes children’s rights principles that were developed at international law whilst calling for those to be blended with local concerns and attitudes’.⁴⁷ While Kaime mainly substantiated this through a reference to the preamble to the CRC in which the States Parties take ‘due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child’,⁴⁸ many more examples can be provided of CRC articles that deliberately accommodate economic, cultural, political, legal or other relevant forms of diversity between states and the differences in the contexts in which implementation efforts come about.

44. Ibid.

45. See, e.g., remarks by Ansell and Cordero Arce in the introduction above, *supra* nn. 9 and 10 and Arts, *supra* n. 24, p. 12.

46. T. Kaime, “‘Vernacularising’ the Convention on the Rights of the Child: Rights and Culture as Analytic Tools”, 18 *International Journal of Children’s Rights* (2010) pp. 637-653 at p. 640.

47. Ibid., at p. 642.

48. Twelfth preambular paragraph CRC.

Right at the start of its main provisions, the CRC intentionally provides for some flexibility for states in determining who will be covered by this treaty regime. According to Article 1, the CRC's definition of childhood extends to 'every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier'. Accordingly, in case national legislation sets an age of majority that is lower than 18, the implication is that the age group that is older than the set age of majority will not be regarded as children and thus will not be covered by the Convention. It is interesting to compare this choice by the CRC drafters with the completely closed definition of childhood that is contained in Article 1 of the African Charter on the Rights and Welfare of the Child (hereafter ACRWC): 'a child means every human being below the age of 18 years'. The ACRWC was adopted soon after the CRC, in 1990, in the context of the then Organization of African Unity. It entered into force in 1999.⁴⁹ As is the case with all attempts to accommodate diversity, the CRC's more open definition of childhood provides space for local interpretation and adjustment. However, it also carries the potential risk of triggering seriously diverging state practice in relation to one and the same norm, and of states using this clause to minimize and/or escape their obligations under the treaty (in the above example of a nationally set age of majority below 18 this might occur through the formal exclusion of a particular age group from child rights protection). The clear advantage of the ACRW's definition of childhood is that it is crystal clear and not easily subject to different interpretations. A clear disadvantage is that the ACRW's definition is completely inflexible. Thus it might be difficult for certain states to commit to this norm, let alone to implement it. At the same time, if in a particular country the age of majority by law is lower than 18, this is a strong argument for not regarding such a person as a child any longer and thus for not applying a child rights treaty to the person. Here again, the positive achievement of a somewhat flexible definition of childhood is mirrored by the negative prospect of an abuse of that flexibility.

Another example of the accommodation of diversity in the CRC is found in its non-discrimination clause. The CRC's open-ended prohibition, in Article 2, on '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', offers ample opportunities for redressing historical, geographical or other structural disadvantages or vulnerabilities of particular (groups of) children in a particular context or location.⁵⁰

49. For the text of the ACRWC and basic information on the work of the African Committee of Experts on the Rights and Welfare of the Child, see <www.acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acerwc/>. See also, e.g., A. Lloyd, 'A Theoretical Analysis of the Reality of Children's Rights in Africa: An Introduction to the African Charter on the Rights and Welfare of the Child', 2 *African Human Rights Law Journal* (2002) pp. 11-33 and K. Arts, 'The International Protection of Children's Rights in Africa: The 1990 OAU Charter on the Rights and Welfare of the Child', 5 *African Journal of International and Comparative Law* (1993) pp. 139-162.

50. For additional information, see, e.g., Child Rights Information Network, *Guide to Non-Discrimination and the CRC* (CRIN 2009), <www.crin.org/docs/CRC_Guide.pdf>; B. Abramson,

A third tool by which the CRC provides space for introducing different accents and considerations when applying the treaty in different contexts is the notion of ‘the best interests of the child’ as specified in Article 3: ‘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 is a general principle of the Convention which should direct all implementation efforts. In a 2007 publication, UNICEF stated that turning the notion of best interests ‘into a principle that applies to all actions concerning children, both individually and as a group, is one of the most significant accomplishments of the CRC’.⁵¹ Nowhere does the Convention provide a definition of the term ‘best interests of the child’. This was done deliberately so as to impose on actors who need to determine what is in the best interests of a particular child the necessity to do so in accordance with the specific circumstances of the child and the circumstances it lives in.⁵² According to the CRC Committee in its General Comment on this subject:

‘The concept of the child’s best interests is complex and its content must be determined on a case-by-case basis. ... Accordingly, the concept of the child’s best interests is flexible and adaptable. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs. For individual decisions, the child’s best interests must be assessed and determined in light of the specific circumstances of the particular child. For collective decisions – such as by the legislator –, the best interests of children in general must be assessed and determined in light of the circumstances of the particular group and/or children in general.’⁵³

Here again, the gain of flexibility on the one hand is met by a risk of abuse on the other hand. According to the CRC Committee in the same General Comment, the best interests principle:

‘Article 2: The Right of Non-Discrimination’, in A. Alen, et al., eds., *A Commentary on the United Nations Convention on the Rights of the Child* (Leiden, Martinus Nijhoff Publishers 2008); S. Besson, ‘The Principle of Non-Discrimination in the Convention on the Rights of the Child’, 13 *International Journal of Children’s Rights* (2005) pp. 433-461.

51. UNICEF, *supra* n. 42, p. 23. The best interests principle was not introduced anew by the CRC but already featured in earlier legal documents, including the non-binding 1959 UN Declaration on the Rights of the Child (Art. 2). For criticism of the open-ended nature of the term, and especially of the way in which its use in relation to orphans in Uganda may have reproduced victimhood and vulnerability, see K. Cheney, ‘Conflicting Protectionist and Participation Models of Children’s Rights: Their Consequences for Uganda’s Orphans and Vulnerable Children’, in Twum-Dansoh Imoh and Ansell, eds., *supra* n. 7, pp. 21-22; and N. Cantwell, *The Best Interests of the Child in Intercountry Adoption* (Florence, UNICEF Office of Research 2014).

52. For a very short drafting history see Cantwell, *ibid.*, pp. 17-18.

53. 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)’, UN Doc. CRC/C/GC/14, 29 May 2013, para. 32.

‘may also leave room for manipulation; the concept of the child’s best interests has been abused by Governments and other State authorities to justify racist policies, for example; by parents to defend their own interests in custody disputes; by professionals who could not be bothered, and who dismiss the assessment of the child’s best interests as irrelevant or unimportant’.⁵⁴

Various other CRC articles also reveal that their drafters were strongly aware of the fact that the treaty text had to be relevant across a large variety of country, economic, social, cultural and legal contexts and have been used across many diverse contexts. An example is found in Article 5 – which addresses the responsibilities, rights and duties of parents to direct and guide the child in the exercise of her or his child rights. This provision clearly acknowledges the fact that children grow up in diverse family, community or other settings. Thus it recognizes the possible role of parents (i.e., nuclear families) but also the possible role of ‘members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child’. Article 20(3), on children without a family, is an example of the recognition of legal diversity. It does not prescribe a particular form of alternative care and appreciates that some alternatives which might be available in one country will be non-existent in other countries. The clearest example of such a potential form of alternative care is adoption, a notion which does not exist as such in Islamic law. Therefore, Article 20 suggests that alternative care arrangements ‘could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children’. In addition Article 20(3) emphasizes that, ‘when considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background’. Likewise, Article 7(2) – on the right to birth registration, the right to a name and nationality and the right to know and be cared for by his or her parents – links the implementation of these rights partly to the (potentially diverging) national law in place in the state concerned (as well as to the – potentially different – international obligations of the state in these realms).

Finally, the CRC also contains provisions that are partly or fully dependent on the capacities and needs of the child involved in a particular issue or situation. Thereby they provide space for a contextual interpretation and accommodation of diversity in a different way than was discussed above, namely child-focussed instead of state-focussed. For example, the ‘evolving capacities of the child’ are a co-determinant for delineating both the parental rights and duties to direct and guide a child in exercising her or his child rights in general, and to provide direction to a child in the exercise of her or his freedom of thought, conscience and religion.⁵⁵ CRC Article 12 extends the child right to express an opinion freely to every child who is ‘capable of forming his or her own views’. It provides for these

54. *Ibid.*, para. 34.

55. CRC, Arts. 5 and 14.

opinions to be ‘given due weight in accordance with the age and maturity of the child’. CRC Article 17(d), articulating the child right to information, calls for ‘the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous’. Article 23(3) refers to the special needs of children with disabilities and Article 37(c) draws attention to the needs of a ‘person of his or her age’ when a child is deprived of her or his liberty.

2.2.2 *Accommodation of diversity in the CRC’s implementation provisions*

In relation to implementation as well, the CRC envisages the accommodation of diversity by differentiating in the specific content and extent of certain child rights obligations. Its main general implementation provision, Article 4, calls on states to:

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

Article 4 thus differentiates both by the type of rights and by implementation capacity. Accordingly, the implementation of economic, social and cultural rights is made dependent on the resources that states have available. However, at the same time it should be very clear that ‘[w]hatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups’.⁵⁶ The CRC refers several times explicitly to the special needs of developing countries, e.g., in providing for education, health care or care for children with disabilities.⁵⁷ The importance of international cooperation for realizing the Convention, especially as regards the situation in developing countries, is emphasized in the last paragraph of the preamble, and in the above-mentioned provisions on education, health care and children with disabilities. In general terms, i.e., without specifying developing country needs, international cooperation is called for in the general implementation Article 4; in Article 17(a and b) on the production, exchange and dissemination of ‘information and material of social and cultural benefit to the child’; in Article 22(2) in relation to protecting and assisting refugee children; and in Article 45 which describes the CRC Committee’s mandate to stimulate cooperation by liaising between various relevant actors. As I observed in an earlier publication: ‘Other CRC provisions refer to realizing child rights “to the maximum extent possible”, for example in relation to a child’s right to survival

56. Committee on the Rights of the Child, *supra* n. 41, para. 8.

57. CRC, Arts. 28(3), 24(4) and 23(4).

and development ... or require states to take “all feasible measures” or to “endeavour” ensuring protection, as is the case in article 38 which refers to children affected by armed conflict.⁵⁸ Accordingly, in these cases the CRC creates obligations to make a maximum effort. By their very nature such obligations are deeply contextual.

All in all, this results in a system which takes due account of a state’s budgetary situation and other elements of its implementation capacity. Once a State Party can make credible that it has made available the maximum within its circumstances, including the best available budget, it will be deemed to have met its obligations under the Convention. This entails in the first place that it will need to be able to ‘identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly’.⁵⁹ In the second instance this may require a critical consideration of, and discussion about, for example military spending⁶⁰ as compared to expenditure on education or health causes. Obviously, here too there is a risk that States Parties will use the flexible implementation standard described above as an escape clause for not doing what is due. After all, it might be relatively easy to argue that the required resources are not available. Nevertheless, the space for policy dialogue that the CRC provides on this subject is invaluable. According to the CRC Committee, the way in which the CRC handles this matter ‘reflects a realistic acceptance that lack of resources – financial and other resources – can hamper the full implementation of [especially] economic, social and cultural rights in some States’.⁶¹ This is a reality that has to be confronted. The broader idea that a state’s available resources co-determine the extent of its obligations is more or less generally accepted in the realm of economic, social and cultural rights. However, in line with current ideas about obligations to respect, fulfil and protect all human rights I would extend this reasoning to some elements of civil and political rights as well. For example, the civil right to a fair trial requires a well-equipped national judicial system, with suitable courtrooms and trained judges. All of these require resources. In any case, the CRC provides concrete starting points for taking up the sensitive and complex – but highly necessary – issue of prioritizing children in resource allocation and, as indicated above (in n. 59), the CRC Committee has acted upon these, for example by engaging in policy dialogues on military spending as compared to child rights-

58. Arts, *supra* n. 24, pp. 16-17.

59. Committee on the Rights of the Child, *supra* n. 41, para. 51.

60. Military spending was, e.g., raised by the CRC Committee in the 2012 Concluding Observations on Algeria and Sudan, the 2010 Concluding Observations on Burundi and Sudan, the 2008 Concluding Observations on Eritrea, and the 2006 Concluding Observations on Ethiopia. For evidence see the column ‘best available budget/resources’ in the 2013 KidsRights Index Scoretable, which is based on the then latest available CRC Concluding Observations (up until and including 2012) for all States Parties to the CRC, available at: <www.kidsrightsindex.org/Portals/5/pdf/Domain%205%20Child%20Rights%20Environment%20Scoretable.pdf>.

61. Committee on the Rights of the Child, *supra* n. 41, para. 7.

related spending with various States Parties to the CRC. This clearly is an achievement to be praised.

Another manifestation of interest in accommodating diverse circumstances is found in Article 42 which stipulates that the implementation of the Convention also entails making its ‘principles and provisions ... widely known, by *appropriate* and active means, to adults and children alike [emphasis added]’. This provision has stimulated translations of the Convention, in the literal sense in a relatively large number of different languages and metaphorically in various forms of expression other than words, such as photographs, cartoons, children’s drawings and video-clips, including various child-friendly versions.⁶² Obviously, what is appropriate in one context may be inappropriate in another. Accordingly, this provision introduces some level of flexibility in choosing the means involved. As I have already observed in an earlier publication, the word ‘appropriate’ in itself is a key provider of space for accommodating diversity ‘as it requires consideration of what would be suitable in a given context’.⁶³ The term features no less than 48 times in the CRC, in most cases as a standard for measures to be taken on a certain issue or child. The word ‘appropriate’ prescribes a weighing of both the context and implementation capacity of the State Party and child-specific circumstances and particularities. As was referred to above, the main CRC implementation articles prescribe ‘appropriateness’ in a generic way. In addition, the word ‘appropriate’ features in almost all substantive articles of the CRC.⁶⁴ The CRC Committee has clearly indicated that this entails that context-specific interpretation is required. For example, in General Comment no. 5, the Committee remarked that it ‘cannot prescribe in detail the measures which each or every State Party

62. For examples of such alternative versions of the Convention see, e.g., <www.unicef.org/magic/briefing/uncorc.html> and <www.unicef.org/rightsite/484_540.htm>.

63. *Ibid.*, pp. 15 and 30.

64. Respectively in: the ninth preambular paragraph, on legal protection before as well as after birth; Art. 2(2) on non-discrimination; Art. 3(2) on the best interests of the child; Art. 5 on parental guidance; Art. 8(2) on assistance and protection of a child who is illegally deprived of his or her identity; Art. 9(4) on information concerning parents separated from a child due to state-initiated action; Art. 12(2) on the right to be heard in judicial and administrative proceedings; Art. 17(e) on guidelines for the protection of children against information and material that is harmful to a child’s well-being; Art. 18(2) on assistance to parents and legal guardians in child-rearing; Art. 18(3) on child-care for children of working parents; Art. 19(1 and 2) on measures against abuse and neglect; Art. 21(d and e) on intercountry adoption and international child placement; Art. 22(1 and 2) on refugee children; Art. 23(2 and 4) on care for disabled children and the exchange of relevant information; Art. 24(2, 2d and 3) on the right to health; Art. 26(2) on the right to social security; Art. 27(3) on assistance of parents and others responsible for a child in relation to realizing the right to an adequate standard of living; Art. 27(4) on recovery of maintenance; Art. 28(1b, 1c and 2) on the right to education; Art. 31(1 and 2) on the right to rest, leisure and play; Art. 32(2b and c) on regulation of the hours and conditions of employment of children and penalties in case of violations; Art. 33 on the illicit use, production and trafficking of drugs; Art. 34 on sexual exploitation; Art. 35 on the prevention of child abduction, sale or trafficking; Art. 37(b and d) on the period of time for arrest, detention and imprisonment, and on assistance for children deprived of their liberty; Art. 39 on the right to rehabilitation; Art. 40 (2bii and 2b iii, and 3b) on juvenile justice; and Art. 45 (a and b) on the mandate of the CRC Committee to liaise with other organizations.

will find appropriate to ensure effective implementation of the Convention' and that, 'as a treaty body, it is not advisable for it to attempt to prescribe detailed arrangements appropriate for very different systems of government across States parties'.⁶⁵ Accordingly, in effect states are implicitly invited to come up with contextual interpretations. General Comment no. 11, on the rights of indigenous children,⁶⁶ for instance stipulates that consultation with indigenous communities is required for deciding how the best interests of indigenous children in general can be decided in a culturally sensitive way. The same General Comment calls five times for a 'culturally appropriate' application of the Convention, and calls on states generally 'to ensure that indigenous children have access to culturally appropriate services in the areas of health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice'.⁶⁷ In addition, it calls eight times for a 'culturally sensitive' application, for example in relation to humanitarian assistance for displaced and refugee indigenous children, and legal assistance.⁶⁸ In its monitoring practices too, the CRC Committee often refers to the need for culturally and otherwise appropriate measures, laws, policies and practices. For example, the 2013 Concluding Observations on China contain nine such references to appropriateness, whereas nineteen such references can be found in the 2012 Concluding Observations on Canada.⁶⁹

2.2.3 *Concluding remarks*

Taking all the above arguments into account, the position emerges that the level of sensitivity to differences in economic, cultural, social or legal contexts that the CRC displays makes it a nuanced, but also complex,⁷⁰ international human rights instrument which is fit for application in all parts of the world but is also potentially subject to different interpretations. As a consequence of some of the open formulations referred to above, different implications might be drawn from the CRC in different contexts. This is an intended outcome of efforts to accommodate diversity and leads to a realistic normative framework. Obviously, as raised before, there is a risky downside to accommodating diversity as well: this might provide (all too) easy escape clauses or arguments for states to deny important child rights

65. Committee on the Rights of the Child, *supra* n. 41, respectively paras. 26 and 38.

66. See UN Committee on the Rights of the Child, 'General Comment No. 14 (2009): Indigenous Children and Their Rights Under the Convention', UN Doc. CRC/C/GC/11, 12 February 2009, para. 31.

67. *Ibid.*, respectively in paras. 20, 25, 34, 38 and 55, and again in para. 25.

68. *Ibid.*, respectively in paras. 68 and 76, and in paras. 31, 47, 51 (twice), 61, 68, 76 and 80.

69. UN Committee on the Rights of the Child, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of China', UN Doc. CRC/C/CHN/CO/3-4, 29 October 2013; and 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Canada', UN Doc. CRC/C/CAN/CO/3-4, 6 December 2012.

70. On this aspect see also J. Tobin, referring to P. Alston's work, in 'Judging the Judges: Are They Adopting the Rights Approach in Matters Involving Children?', 33 *Melbourne University Law Review* (2009) pp. 579-625 at p. 585.

obligations based on certain elements of difference. In turn this might give undesirable support to exceptionalist arguments and tendencies in international law. Therefore, it should be quite clear that there is a minimum core to the CRC that will have to be upheld in all circumstances, such as the right to life or the right to birth registration, and that context-based differentiation can only take place on the basis of thoroughly substantiated arguments. According to Thoko Kaime:

‘the CRC’s call to take due account of local traditions and cultural values should not be construed as a misplaced plea for a romantic rendition of some hegemonic culture that existed in the past but rather as a testament to the changing nature of both rights and culture and recognition that the two concepts can be used to reinforce and complement each other’.⁷¹

Some of the CRC provisions clearly limit the freedom of interpretation by states, and thus also limit the space for accommodating diversity. An example is Article 10(2), on family reunification, which clarifies that the child and his or her parents’ right to leave any country can only be restricted by law and if necessary ‘to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention’. Similar clauses are included in Article 13(2) on the freedom of expression, Article 14(3) on the freedom of thought, conscience and religion, and Article 15(2) on the freedom of association and peaceful assembly. The combination of the two elements – by law and if necessary – is important as sometimes national law plainly allows for derogations on a much too broad scale. An example is Zimbabwe on which, in its Concluding Observations of 1996, the CRC Committee made critical remarks in this regard exposing that ‘section 23 of the Constitution ... allows for derogations in important areas such as adoption, marriage, divorce and other matters of personal law and prevents, inter alia, girls from having inheritance rights’.⁷²

Nicola Ansell, who was quoted at the start of this article as one of the critical voices calling into question the relevance of the Convention for children who do not meet the type of child that, in her view, the CRC imagines (‘Western, middle-class, male, able-bodied’), in the same source shared the insight that:

‘the CRC can be interpreted in locally meaningful ways. This flexibility is often overlooked or denied in the implementation of the CRC through the programmes and advocacy of NGOs and even by national governments. More consideration is needed of how locally meaningful interpretations may be realized through the implementation of the CRC in different contexts, if social justice for children is to be advanced.’⁷³

71. Kaime, *supra* n. 46, p. 642.

72. UN Committee on the Rights of the Child, ‘Concluding Observations of the Committee on the Rights of the Child: Zimbabwe’, UN Doc. CRC/C/15/Add.55, 7 June 1996, para. 12.

73. Ansell, *supra* n. 9, p. 244.

In her view this implies that ‘in implementing the CRC, it needs to be seen more as a strategic tool through which contextually appropriate policies and programmes might be constructed, rather than a “solution” to be uniformly applied’.⁷⁴ In my view, if one closely analyzes the substance and tone of the Convention, as was done above, this is exactly what the CRC regime advocates. Practice by the CRC Committee and the actual positions taken by states in this regard point in the same direction. Already in 2003, Sonia Harris-Short analysed both state reports as submitted to the CRC Committee and the summary records of meetings in which these reports were discussed between the Committee and the government involved. She explored ‘how, if at all, the cultural relativism argument is actually being deployed in practice by state delegates appearing before the UN Committee on the Rights of the Child’.⁷⁵ She found that also states that had far-reaching generic relativist reservations on file, such as Djibouti and Indonesia, displayed a rather moderate position in the meetings with the CRC Committee. In the case of Djibouti, the government delegation even suggested the possibility of a review of its reservation. According to Harris-Short, her review revealed that ‘there clearly exist a number of deeply entrenched attitudes and practices that, at least on their face, appear to be inconsistent with the standards enshrined in the Convention’.⁷⁶ However, ‘despite the centrality of these traditions to the cultural life of the local populace, state delegates often make no attempt to defend them against criticism from the Committee. In fact, many of the delegates adopt a positively hostile attitude towards the culture and traditions of their own people.’⁷⁷ Harris-Short illustrated this by presenting various examples of government representatives contrasting ‘the “backward” traditions of the local people with their own progressive policies’, or claiming that problems would be solved by economic and social progress.⁷⁸

2.3 Law reform

Law reform is one of the most tangible achievements stimulated by the CRC. While significant room remains for intensifying the efforts made, the introduction of legislation on matters on which in many countries no designated legislation existed previously, such as juvenile justice, is a major step forward. This continues to be the case, even though the implementation record of the legislation involved is rather diverse. The incorporation of the content of the CRC into domestic legal systems – including its commonly identified general principles of non-discrimination, the best interests of the child, survival and development, and

74. *Ibid.*, p. 245. See also S. Farran, ‘Children in the Pacific: Giving Effect to Article 3 UNCRC in Small Island States’, 20 *International Journal of Children’s Rights* (2012) pp. 199-223.

75. Harris-Short, *supra* n. 38, p. 130.

76. *Ibid.*, pp. 147-148.

77. *Ibid.*, pp. 148-149.

78. *Ibid.*, p. 149 referring to delegates from the Central African Republic, Benin and China, and p. 150.

participation – clears the way for operationalizing the treaty at the national level, e.g., by becoming a basis for adjudication and for policy-making. In addition, as Julia Sloth-Nielsen has pointed out, ‘child law reform provides low income and developing countries with a real opportunity to set a rights-based resource agenda for children and to identify them explicitly as beneficiaries of development’.⁷⁹

The progress made on introducing enabling legislation is also reflected in the Concluding Observations adopted by the CRC Committee. As part of the 2013 KidsRights Index, an overview has been compiled of the latest available CRC Concluding Observations for all States Parties (up to and including 2012). These have been scored for state performance, according to the CRC Committee, on seven core elements of the enabling environment for children’s rights that, according to the Convention, should be in place everywhere. On the element ‘enabling legislation’ 16 per cent of the States Parties received a high score, 70 per cent of the States Parties received a middle score, and 12 per cent of the States Parties received a low score.⁸⁰ This is a significantly better performance level than is the case for the items ‘collection and analysis of disaggregated data’ and ‘best available budget or resources’. The scores on these items will be presented below in sections 3.3. and 3.4.

While certain sources suggest that a rather large number of states have incorporated the CRC into their national law,⁸¹ others highlight that they may have done this too hastily, enacting ‘European-styled laws’ which may not optimally fit their own context and ‘not translate into a general awareness of children’s rights’.⁸² In any case it is clear that most states do not approach this matter in a systematic manner. As Lundy and others found in 2012, it is ‘more common for states to incorporate specific Convention provisions into relevant legislation, rather than transposing the entire treaty into the national legal system’.⁸³ Brazil was one of the very first states that adjusted its laws to the CRC, through adopting the Child and Adolescent Statute (ECA) in 1990. Nevertheless, several pressing children’s problems remain inadequately covered in Brazil’s national law.⁸⁴ Kenya’s experiences point in the same direction. After the Children’s Act was enacted in 2001,

79. J. Sloth-Nielsen, ‘A Developing Dialogue – Children’s Rights, Children’s Law and Economics: Surveying Experiences from Southern and Eastern Law Reform Processes’, 12 *Electronic Journal of Comparative Law* (2008) pp. 1-17 at p. 17.

80. *Supra* n. 60. In 2 per cent of the Concluding Observations no score was provided for this element. A high score means that the CRC Committee only made positive remarks in the Concluding Observation. A middle score means that a combination of positive and negative remarks is on record in the Concluding Observation. A low score means that only negative remarks were recorded. For general information on the KidsRights Index see <www.kidsrightsindex.org>.

81. See, e.g., UNICEF, *supra* n. 42.

82. Kaime, *supra* n. 46, p. 649.

83. L. Lundy, et al., ‘Incorporation of the United Nations Convention on the Rights of the Child in Law: A Comparative Review’, 21 *International Journal of Children’s Rights* (2013) pp. 442-463 at p. 446.

84. A. Macias Saacco, et al., ‘Child and Adolescent Rights in Brazil’, 20 *International Journal of Children’s Rights* (2012) advance article, pp. 1-25 at p. 1.

as the first explicit attempt ever to domesticate the country's obligations under a human rights treaty, it became clear that 'in contexts such as Kenya's, where full compliance with international child rights norms requires a process of comprehensive audit of existing laws and policies, not even the enactment of a consolidated law such as the Children's Act suffices'.⁸⁵

As ordinary national laws can be repealed or changed fairly easily, constitutional anchoring is important as well.⁸⁶ This, too, has occurred in many different countries. In addition, in many countries the judiciary has played a crucial role in interpreting international and national child rights standards.⁸⁷

According to the above overview, there is ample evidence indeed that many governments have embarked on a law reform process after their ratification of the CRC. As a result, the state of legislation relevant to children has improved significantly across the globe. In many instances this has strengthened the basis for more systematic and solid implementation of the CRC.⁸⁸ However, realities on the ground necessitate the following qualification: even the most perfect laws are no guarantee for the realization of children's rights in practice. In relation to South Africa for instance, recent research revealed that '[w]ith a few notable exceptions, South Africa's challenge generally does not lie in the design of the laws but in the management, co-ordination and implementation of services required by the laws'.⁸⁹ For example, while South Africa's Child Justice Act of 2008 has 'represented a decisive break with the traditional criminal justice system'⁹⁰ and emphasizes diversion and reintegration, a big problem in practice is the fact that only less than

85. G. Odongo, 'Caught Between Progress, Stagnation and A Reversal of Some Gains: Reflections on Kenya's Record in Implementing Children's Rights Norms', 12 *African Human Rights Law Journal* (2012) pp. 112-177 at p. 112.

86. Odongo, *ibid.*, at p. 123. See, e.g., also J. Habashi, et al., 'Constitutional Analysis: A Proclamation of Children's Right to Protection, Provision and Participation', 18 *International Journal of Children's Rights* (2010) pp. 267-290.

87. Odongo, *ibid.*, at p. 128. See, e.g., also J. Sloth-Nielsen and H. Kruuse, 'A Maturing Manifesto: the Constitutionalisation of Children's Rights in South African Jurisprudence 2007-2012', 21 *International Journal of Children's Rights* (2013) pp. 646-678; P. Geary, *CRC in Court: The Case Law of the Convention on the Rights of the Child* (London, Child Rights International Network 2012).

88. See, e.g., S. Farran, *supra* n. 74, pp. 199-223 at p. 220; United Nations Children's Fund, *Study on the Impact of the Implementation of the Convention on the Rights of the Child* (Florence, UNICEF Innocenti Research Centre 2004); UNICEF, *supra* n. 42; L. Lundy, et al., *The UN Convention on the Rights of the Child: A Study of Legal Implementation in 12 Countries* (London, UNICEF UK 2012).

89. P. Proudlock, ed., *South Africa's Progress in Realising Children's Rights: A Law Review* (Cape Town, Children's Institute University of Cape Town 2014) p. 1.

90. *Ibid.*, p. 156. This law has been in force since April 2010. A notable exception to this positive assessment is the age of criminal accountability which was set at 10 years, i.e., two years below the age limit of 12 recommended by the CRC Committee. This occurs in various other States Parties as well, including Kenya where according to G. Odongo, in his 'The Domestication of International Standards on the Rights of the Child: A Critical and Comparative Evaluation of the Kenyan Example', 12 *International Journal of Children's Rights* (2004) pp. 419-430 at p. 426, the 'age of eight ... remains the minimum age of criminal capacity despite the fact that it was enacted in the 1930s and only reiterates the old English common law position on this subject'. In 2012 this situation still remained. Law reform has been announced but no confirmation of an actual increase of the age of

one quarter of South Africa's police officers have been trained in the new law.⁹¹ In relation to protecting South African children from violence, the 'scarcity of appropriately skilled social service practitioners' is a serious obstacle in implementing the relevant laws.⁹² Issues concerning the implementation capacity of states will be further discussed in section 3 of this contribution.

2.4 The CRC Committee and its procedures

Through the years the CRC Committee, mandated to monitor and facilitate compliance with the Convention, has contributed to the realization of various improvements of the CRC treaty regime, which were both substantive and procedural in nature. The Committee has certainly developed into an active and vocal actor for children's rights in the world. Research has revealed that the CRC Committee followed its own course fairly independently, rather than always following ongoing trends and hypes. For instance, in relation to street children, a subject that received a lot of international and national attention at the time of the first phase of the existence of the CRC, that is in the early 1990s, Michele Poretti and others found that '[t]he CRC Committee, for its side, never dedicated much attention to street children, despite frequent requests, including the UNGA (1992, 1993) for raising the profile of the issue on the international scene'.⁹³ A potential reason for this relative lack of explicit general attention for street children by the CRC Committee at the time might be the absence of street children's formal representation: they are not mentioned specifically in the Convention and their situation has not been addressed, as yet, in a dedicated General Comment.⁹⁴ However, at the specific country level things might have been different from the start. In any case, in more recent times the Committee certainly has had an eye for the situation of street children as exposed through the state reporting procedure. Even an incomplete analysis of non-specific data from the most recently available CRC Concluding Observations already indicates that in almost one quarter of these Observations the Committee has explicitly referred to street children. This occurred in its country-specific comments on the state of non-discrimination and/or the collection and analysis of disaggregated data only.⁹⁵ A complete search for references to

criminal accountability in Kenya could be found at the time of the finalization of this article (in August 2014).

91. Proudlock, ed., *supra* n. 89, pp. 4 and 159-160.

92. *Ibid.*, p. 179.

93. M. Poretti, et al., 'The Rise and Fall of Icons of "Stolen Childhood" Since the Adoption of the UN Convention on the Rights of the Child', 21 *Childhood* (2014) pp. 22-39 at p. 30.

94. L. van Blerk, 'Progressing Street Children's Rights and Participation in Policy: Evidence from South Africa', in Twum-Danso Imoh and Ansell, eds., *supra* n. 7, pp. 92-104 at p. 196.

95. As part of the generic data on the seven selected general elements that make up the desired CRC-based enabling environment for children's rights covered in the KidsRights Index (non-discrimination; best interests of the child; respect for the views of the child; enabling legislation; best available budget/resources; collection and analysis of disaggregated data; and state-civil society cooperation for child rights), 45 of the 189 most recently available CRC Concluding Observations

street children in all other sections of these Concluding Observations is likely to result in a higher to even much higher percentage, but the required data for such an analysis were not available at the time of writing this article.

In relation to the subject of violence against children, the story is the other way around and the CRC Committee is among those who helped to push the issue onto international agendas, despite possible resistance among certain states or civil society actors. According to Michele Poretti and others: ‘[c]onversely, through two successive days of general discussion dedicated to violence (2000, 2001), the Committee was a crucial instigator of the process leading up to the 2006 UN study on Violence Against Children’.⁹⁶

As of 2001, the CRC Committee has started to adopt and publish (roughly annually) General Comments on particular aspects of the CRC, some of which were already referred to earlier in this article. According to the Office of the High Commissioner for Human Rights:

‘each of the treaty bodies publishes its interpretation of the provisions of its respective human rights treaty in the form of “general comments” or “general recommendations”. These cover a wide range of subjects, from the comprehensive interpretation of substantive provisions, such as the right to life or the right to adequate food, to general guidance on the information that should be submitted in State reports relating to specific articles of the treaties. General comments have also dealt with wider, cross-cutting issues, such as the role of national human rights institutions, the rights of persons with disabilities, violence against women and the rights of minorities.’⁹⁷

The set of CRC General Comments adopted so far perfectly matches this description. More in particular, the CRC General Comments address the following subjects: the aims of education (no. 1, 2001); the role of independent national human rights institutions in the protection and promotion of the rights of the child (no. 2, 2002); HIV/Aids (no. 3, 2003); adolescent health and development (no. 4, 2003); general measures of implementation of the CRC (no. 5, 2003); treatment of unaccompanied and separated children outside their country of origin (no. 6, 2005); implementing child rights in early childhood (no. 7, 2005, revised in 2006); protection from corporal punishment and other cruel or degrading forms of punishment (no. 8, 2006); the rights of children with disabilities (no. 9, 2006); juvenile justice (no. 10, 2007); indigenous children (no. 11, 2009); the right to be heard (no. 12, 2011); the right of the child to freedom from all forms of violence (no.

of the CRC Committee contain one or two references to ‘street children’, ‘children begging on the streets’, ‘children in street situations’, ‘children living on the streets’ or ‘children working and/or living in the streets’. For evidence see <www.kidsrightsindex.org/Portals/5/pdf/Domain%205%20Child%20Rights%20Environment%20Scoretable.pdf>.

96. Poretti, et al., *supra* n. 93, p. 30.

97. Office of the High Commissioner for Human Rights, ‘Human Rights Treaty Bodies – General Comments’, <www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>. See also Rule 77 of the CRC Rules of Procedure, UN Doc. CRC/C/4/Rev.3, 16 April 2013, p. 22, which mandates the CRC Committee to adopt General Comments.

13, 2011); best interests of the child (no. 14, 2013); the right to the enjoyment of the highest attainable standard of health (no. 15, 2013); the impact of the business sector on children's rights (no. 16, 2013); and the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (no. 17, 2013).⁹⁸ It is hard to discover an organized idea behind the choice of subjects covered and the order of tackling these subjects. The Committee alternated highlighting specific rights with implementation issues, specific sub-groups of children, general principles of the CRC, and the role of specified actors.

The CRC Committee is generally referred to as having developed a non-confrontational approach to its work which, as described by UNICEF, seeks to 'engage States in a constructive dialogue with a view to critically assessing the situation of children and encouraging cooperation for implementation of the Convention'⁹⁹ on the Rights of the Child. Clearly the Committee finds dialogue to identify the obstacles that states face in realizing the Convention, as well as realistic options for assistance that may be required to increase or deepen the state's implementation capacity, to be more important than the blaming of states for their non-implementation of the Convention. Forging collaborative efforts is important in this regard, and is widely seen as a strength of the CRC Committee. As Louise Arbour (then UN High Commissioner for Refugees) already remarked in 2007: '[t]he Committee has ... been at the forefront of treaty bodies in welcoming the contributions of intergovernmental organizations, especially UNICEF, non-governmental organizations and other parts of civil society to its work and has thereby established the Convention as a key mobilizing force for the realization of the rights of all children'.¹⁰⁰ This function was of course greatly facilitated by CRC Article 45, which explicitly addresses the role of the CRC Committee in facilitating international cooperation. Recently this key feature of the CRC Committee's work received additional support by Article 15 of the third Optional Protocol which regulates international assistance and cooperation following communications or inquiries. This provision mandates the CRC Committee to 'transmit, with the consent of the State party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies its views or recommendations ... that indicate a need for technical advice or assistance, together with the State party's observations and suggestions, if any, on these views or recommendations'.¹⁰¹ The Committee may also inform such competent bodies, again only with the

98. For a complete list including links to all specific General Comments, see <tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11>.

99. UNICEF, 'FACT SHEET: The Committee on the Rights of the Child', no date, <www.unicef.org/crc/files/Committee_fact_sheet.pdf>, p. 2.

100. IDE, *supra* n. 5, p. 9. For an analysis of the involvement of NGOs in the work of the CRC Committee, see, e.g., G. Türkelli and W. Vandenhole, 'The Convention on the Rights of the Child: Repertoires of NGO Participation', 12 *Human Rights Law Review* (2012) pp. 33-64.

101. 'Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure', UNGA Res. 66/138, adopted 19 December 2011, published in UN Doc. A/RES/66/138, 27 January 2012, Art. 15(1).

consent of the State Party concerned, of ‘any matter arising out of communications considered under the present Protocol that may assist them in deciding ... on the advisability of international measures likely to contribute to assisting States parties in achieving progress in the implementation of the rights recognized in the Convention and/or the Optional Protocols thereto’.¹⁰²

A final achievement to be mentioned here is the entry into force, on 14 April 2014, of the above-mentioned third Optional Protocol, introducing an individual and an inter-state complaints procedure as well as an inter-state inquiry procedure.¹⁰³ This repaired a long-standing gap in the Convention. Already during the drafting of the CRC, the option of introducing a communications procedure was considered. At the time this idea received too little backing from states and the CRC became the only core UN human rights instrument without such a procedure.¹⁰⁴ In December 2009 this situation had drastically changed. At a meeting of the working group that prepared the ground for drafting the third Optional Protocol, the spokesperson of the NGO group for CRC captured this as follows:

‘The existence of this Working Group and the high number of States that have assisted in the present session (we have counted over 100 states present throughout the discussion), as well as the important participation of representatives from capitals show that a communications procedure under the CRC is both timely and necessary to recognise fully the status of children as rights-holders. ... We heard no State voicing opposition.’¹⁰⁵

Nevertheless, the ensuing drafting process was cumbersome and resulted in a final text which many have qualified as disappointing, among other things because of the following aspects: the limited specific child-friendly features of the third Optional Protocol, which is largely similar in content to that of the other UN human rights treaty communications procedures;¹⁰⁶ the failure to include a collective

102. *Ibid.*, Art. 15(2).

103. For the text of the Protocol, see <treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en>. For all signature and ratification details see <treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en>.

104. Y. Lee, ‘Communications Procedure under the Convention on the Rights of the Child: 3rd Optional Protocol’, 18 *International Journal of Children’s Rights* (2010) pp. 567-583 at p. 568.

105. Child Rights Information Network, ‘Complaints Mechanism: NGO Closing Statement’, <www.crin.org/resources/infoDetail.asp?ID=21476&flag=report>, visited last January 2010.

106. E.g., the response period of up to 6 months for states in the individual complaints procedure is deemed too long for a child victim by many. According to Rhona Smith, in her ‘The Third Optional Protocol to the UN Convention on the Rights of the Child? – Challenges Arising Transforming the Rhetoric into Reality’, 21 *International Journal of Children’s Rights* (2013) pp. 305-322 at p. 315, ‘an omission in the third optional protocol is the lack of provision for a neutral curator ad litem, guardian, or litigation friend to be appointed to help the child with the communication process’. See also: NGO Group for the CRC, ‘Joint NGO Submission to the Open-Ended Working Group on an Optional Protocol to the Convention on the Rights of the Child to Provide a Communications Procedure’, October 2010, <www.ohchr.org/Documents/HRBodies/HRCouncil/WGCRC/Session2/JointNGO_WS_October2010_en.doc>.

complaints possibility;¹⁰⁷ restrictive admissibility criteria;¹⁰⁸ and soft wording on the binding nature of interim measures.¹⁰⁹ The then Chair of the CRC Committee, Ms. Yanghee Lee, has been quoted as having stated in her closing statement at the end of the drafting process that she was ‘afraid that we have affirmed that children are mini humans with mini rights and the current draft fits this idea of children ... I am deeply sorry to every child that we have not succeeded in recognising them fully as rights holders.’¹¹⁰ Others have pointed out that the prospects for the third Optional Protocol to trigger flourishing practice are slim anyhow, given the immense and unique challenges that the Protocol is confronted with. Rhona Smith provided a reality check by identifying three such challenges. Firstly, ‘if children are unaware of their rights, they will not be able to take any steps to exercise those rights’.¹¹¹ Given the fact that in many states all over the world many children still lack awareness of their rights, this is a serious potential limitation for practice under the Protocol. Secondly, many children may not be able to access the new complaint procedure as it is likely that a number of highly populated countries such as China, India, Indonesia and the USA will not ratify the third Optional Protocol, given their non-acceptance of individual complaint mechanisms for other human rights treaties.¹¹² In addition, their inability to bring cases at the national level due to a lack of capacity in many jurisdictions, the existence of regional mechanisms and clashes between the views and rights of parents (or other caretakers) and ‘their’ children might play a role in limiting the use of the new CRC communications procedure.¹¹³

107. Proponents of the collective complaints procedure have brought up many potential advantages. E.g., it could help to avoid having to involve individual (or groups of) child victims, allow for preventive action, and could be efficient through avoiding large numbers of similar individual communications by using them as a basis for a collective complaint. See, e.g., P. Newell, ‘Collective Communications – An Essential Element in the New Optional Protocol for the Convention on the Rights of the Child’, briefing for the first session of the open-ended working group to explore the possibility of elaborating an optional protocol to the CRC – September 2010, <www.ohchr.org/Documents/HRBodies/HRCouncil/WGCRC/Session2/BriefingCollectiveCommunications_en.doc>, p. 5.

108. See, e.g., S. Egan, ‘The New Complaints Mechanism for the Convention on the Rights of the Child: A Mini Step Forward for Children?’, 21 *International Journal of Children’s Rights* (2013) pp. 1-19 at pp. 9-10.

109. See Egan, *ibid.*, and Smith, *supra* n. 106.

110. Ms. Lee reportedly quoted the words of Maud de Boer Buquicchio, spoken in her capacity as Deputy Secretary-General of the Council of Europe. See Child Rights Information Network, ‘Complaints Mechanism: Summary of Final Drafting Meeting’, 16 February 2011, <www.crin.org/en/library/publications/complaints-mechanism-summary-final-drafting-meeting>.

111. Smith, *supra* n. 106, p. 309.

112. *Ibid.*, pp. 312-313.

113. *Ibid.*, pp. 311-320. According to Geary, *supra* n. 87, p. 9, of the 132 cases then included in the ‘CRC in Court database’ of the Child Rights Information Network, no less than 24 cases were regional ones (12 from the European Court of Human Rights, 8 from the Inter-American Court of Human Rights, 2 from the European Social Committee, and 1 each from the European Court of Justice and the Eastern Caribbean Supreme Court).

All these concerns again underline that most CRC-related achievements are not unequivocal success stories. Nevertheless, it is important in itself that the third Optional Protocol complements the ladder of national and regional accountability mechanisms relating to the CRC by introducing global quasi-judicial intervention and inquiry options. Even if used only modestly, the Protocol will allow the CRC Committee to start developing its own quasi-jurisprudence. According to Suzanne Egan, this is likely to ‘assist in the development of the interpretation of CRC provisions, which in itself would be of assistance to national mechanisms and bodies operating in the field’.¹¹⁴ Accordingly, despite the reservations presented above, which reveal that the effectiveness and impact of the communications procedures involved remain to be seen, the entry into force of the third Optional Protocol is definitely a welcome procedural breakthrough. In this respect I concur with Egan who observed that ‘[i]t may be expected ... that the CRC Committee itself will do its very best through its Rules of Procedure to develop the operation of the Protocol in a manner calculated to serve the best interests of children’.¹¹⁵

This completes the overview of the selected main achievements that have been realized in 25 years of CRC practice. There is no question about the CRC having played a major role in mobilizing momentum and political will to address children’s rights issues, both among governments and civil society actors. Action taken to implement the CRC, combined with action in pursuit of relevant Millennium Development Goals (hereafter MDGs),¹¹⁶ is likely to have contributed to some of the impressive improvements that are on record at present as regards the conditions of children worldwide. In January 2014 UNICEF reported, among others, two such improvements. Firstly, ‘about 90 million children who would have died if mortality rates had stuck at their 1990 level, have, instead, lived past the age of 5’. Secondly, in the least developed countries primary school enrolment increased from 53 per cent in 1990 to 81 per cent in 2011.¹¹⁷ Nevertheless, many persistent challenges also remain for realizing children’s rights. To put the above findings on the achievements of the CRC regime into perspective, a selection of four key such challenges will be briefly presented in the next section.

114. Egan, *supra* n. 108, p. 2.

115. *Ibid.*, p. 18.

116. The 8 MDGs seek to eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality and empower women; reduce child mortality; improve maternal health; combat HIV/AIDS, malaria and other diseases; ensure environmental sustainability; develop a global partnership for development. See <www.un.org/millenniumgoals> for more information.

117. United Nations Children’s Fund, *The State of the World’s Children 2014 in Numbers: Every Child Counts – Revealing Disparities, Advancing Children’s Rights* (New York, UNICEF 2014) p. 3.

3. SELECTED CHALLENGES

3.1 Addressing poverty and other persistent causes

As indicated above, besides successes, efforts to realize children's rights are also confronted with persistent challenges. UNICEF recently reported that, in 2012, 'some 6.6 million children under 5 years of age died ... mostly from preventable causes'. Moreover, 'fifteen per cent of the world's children engage in child labour that compromises their right to protection from economic exploitation and infringes on their right to learn and play' and 'eleven per cent of girls are married before they turn 15'.¹¹⁸

Many child rights problems have structural underlying causes for which no quick fixes are available. While the CRC itself hardly refers to such causes, the preamble to its second Optional Protocol, addressing the sale of children, child prostitution and pornography, does list 'contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children'.

An obvious generic example of a root cause, or at least a frequent context of, many child rights violations is poverty.¹¹⁹ An incomplete analysis of non-specific data, generated from the most recently available CRC Concluding Observations for all States Parties and published in the 2013 KidsRights Index, already indicates that a significant number of these Observations refer explicitly to poverty. While the Index is not specifically geared towards generating information on poverty, more than one quarter¹²⁰ of the Concluding Observations nevertheless refer to poverty in sections addressing general issues of non-discrimination, budget and availability of data. Interestingly, the CRC Committee has also raised issues concerning poverty in developed countries.¹²¹ As was the case for street children, which was addressed in the previous section of this article, a complete search for references to poverty in all other sections of these Concluding Observations is likely to result in a higher to even much higher percentage, but the data required for such an analysis were not available at the time of writing this article.

118. UNICEF, *ibid.*, pp. 3-4.

119. Macias Saacco, et al., *supra* n. 84, p. 2; Odongo, *supra* n. 85, pp. 136-138. See also Arts, *supra* n. 19, p. 171.

120. For 50 countries out of 189, i.e., 26 per cent. The Committee referred to the context of (widespread) poverty, children (and families) living in (extreme) poverty, children affected by poverty and child poverty. For more information on the KidsRights Index, see *supra* n. 60 and 80 and <www.kidsrightsindex.org>.

121. In 9 countries out of 50 (18 per cent). In 2 such cases poverty was found to be a ground for discrimination, in 4 such cases the budget available for poverty reduction was found to be too low, and in 3 such cases data on the state of poverty in the country involved were found to be lacking.

Social assistance schemes, such as the well-known ‘Bolsa Familia’ programme in Brazil,¹²² recognize and seek to remedy the reality of poverty but often lack sufficient financial clout to really break through persistent poverty patterns. Recent research on South Africa’s Child Support Grant (CSG) scheme revealed that, while making a welcome contribution towards helping poor primary caregivers of children in South Africa cope with the expenses involved, ‘the low monetary value of the grant compared to objective poverty lines and the actual costs of feeding a child ... is preventing the CSG’s proven positive impact from being maximised to full potential’.¹²³ While popular because they may usefully relieve some elements of immediate poverty, social assistance schemes are also criticized for not leading up to changing the structural *status quo*. Issues concerning the mobilization of resources will be further discussed in section 3.4 below.

Putting an end to certain child rights violations clearly requires mentality changes and tackling, sometimes deep-rooted and sensitive, cultural elements. According to Farran, in certain parts of the world ‘[t]he very idea of children’s rights is just beginning to gain recognition and [for example] the experience of children’s rights in courts is very variable. Where judges do take account of the UNCRC, for example in family law, the approach is still paternalistic: children have interests which need protection.’¹²⁴ Tackling such approaches requires change agents to hold out. Research on tackling violence against children has explicitly confirmed all of these findings.¹²⁵ This directly confronts us with the limits of the law as well. According to Farran, ‘[a]t the end of the day ... the law can only go so far in protecting and nurturing ... children. In some cases changes are needed in attitudes, for example to the use of corporal punishment of children in the home and at school and here much may need to be done to reassure parents and teachers that the advocacy of children’s rights is not aimed at undermining the stability of society or existing moral codes.’¹²⁶

While complex, attention for the structural causes of child rights problems is obviously of crucial importance. As Suman Khadkha has put it, ‘[w]hile it is not wrong to condemn the phenomenon of child labour and child soldiers for example, it is equally important to condemn the conditions that lead to it’.¹²⁷ Tackling these conditions effectively is yet another story.

122. See, e.g., J. Watts, ‘Brazil’s *Bolsa Familia* Scheme Marks a Decade of Pioneering Poverty Relief’, *the Guardian*, 17 December 2013, <www.theguardian.com/global-development/2013/dec/17/brazil-bolsa-familia-decade-anniversary-poverty-relief>. *Bolsa Familia* provides cash payments to parents, in return for guaranteeing that their children will go to school and be vaccinated.

123. Proudlock, ed., *supra* n. 89, pp. 3 and 75-76.

124. Farran, *supra* n. 74, p. 220. See also Arts, *supra* n. 19, p. 169.

125. See, e.g., P. Pinheiro, *World Report on Violence against Children* (Geneva, United Nations 2006) and Arts, *supra* n. 19, pp. 155-156 and 169.

126. Farran, *supra* n. 74, pp. 220-221.

127. Khadkha, *supra* n. 8, p. 623.

3.2 Addressing child rights violations in the private sphere

Another serious challenge for the realization of children's rights is the fact that many child rights violations occur in the private sphere, for instance within the family. This private sphere has hardly been within the reach of international human rights treaty law. While we lack precise information, there are abundant indications that abuse, neglect and maltreatment of children – including physical, psychological and sexual violence – in the private sphere is widespread. This was exposed in a compelling manner in the influential 2006 United Nations *World Report on Violence Against Children*,¹²⁸ compiled under the inspiring leadership of Paulo Sérgio Pinheiro, and many of the national reports that were fed into the Report and followed on from it. In September 2014, UNICEF exposed further details, including that 'comparable data from 62 countries or areas show that households use violent disciplinary practices with the overwhelming majority of children: On average, about four in five children between the ages of 2 and 14 are subjected to some kind of violent discipline in the home, with percentages ranging from a low of 45 per cent in Panama to a high of almost 95 per cent in Yemen.'¹²⁹ For the Netherlands, current estimates of the number of children that are exposed to domestic violence range from 3 to 10 per cent of all children present in the country.¹³⁰ Research on South Africa published in 2010, in relation to corporal punishment in the home, indicated that '[m]ore than one in four children experience a time when they are physically punished daily or weekly with sticks, belts and other instruments; many children suffer physical injuries as a result'.¹³¹ These figures can in no way be compared as they were generated by different standards and methodologies. One should also keep in mind that probably they reveal just the tip of the iceberg as serious under-reporting is suspected to exist in this realm. Nevertheless, they indicate convincingly that domestic violence is a rampant problem.

As is the case for most international human rights law, the CRC explicitly regulates mainly the public sphere.¹³² However, its drafters were at the forefront of current trends to extend the reach of international human rights treaty law to the private sphere by, alongside formulations of state obligations, incorporating references to both rights and duties for parents, other carers of children, or spe-

128. Pinheiro, *supra* n. 125. The integral text and various background documents relevant to the UN Study are available through <<http://www.unviolencestudy.org>>.

129. United Nations Children's Fund, *Hidden in Plain Sight: A Statistical Analysis of Violence Against Children* (UNICEF, New York 2014) p. 96.

130. See, e.g., Nederlands Jeugd Instituut (Netherlands Youth Institute), 'Dossier Kindermishandeling: Cijfers' (Child abuse figures), <www.nji.nl/Kindermishandeling-Probleemschets-Cijfers> and No Kidding, 'Feiten en Cijfers over Kindermishandeling in Nederland' (Facts and Figures Concerning Child Abuse in the Netherlands), <www.no-kidding.nu/feiten_en_cijfers>.

131. Proudlock, ed., *supra* n. 89, p. 169.

132. See, e.g., P. Alston, ed., *Non-State Actors and Human Rights* (Oxford, Oxford University Press 2005); A. Clapham, *Human Rights Obligations of Non-State Actors* (Oxford, Oxford University Press 2006).

cifically identified other private actors such as mass media companies. CRC Article 3(2) plainly provides that states have to take into account the rights and duties of the child's 'parents, legal guardians, or other individuals legally responsible' for the child. Potentially even more impactful is CRC Article 5 which directly refers to the existence of the 'rights and *duties* of parents, or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide ... appropriate direction and guidance in the exercise by the child of' his or her rights as recognized in the Convention'.¹³³ Article 17(a and d) obliges states to encourage the mass media, which in many instances are private corporate actors, to 'disseminate information and material of social and cultural benefit to the child' and 'to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous'. CRC Article 19(1) provides that the state has the obligation to protect the child from violence, injury, sexual and other abuse, neglect, maltreatment or exploitation, 'while in the care of parent(s), legal guardian(s) or any other person who has the care of the child'. These are groundbreaking provisions for both the theoretical and practical development of international human rights law, as they oblige states, in specified cases, to intervene in the private realm and extend, to some extent, human rights-related obligations to non-state actors such as parents or other carers of children. Other manifestations of the same trend more broadly in relevant international law are: the adoption of the Domestic Workers Convention in 2011;¹³⁴ the recent outcries about, investigations of and public debates (including by the CRC Committee) about sexual abuse of children by representatives of the Catholic Church;¹³⁵ and efforts to address the environmental, and human and children's rights responsibilities of corporate entities – another private realm – through, as yet largely soft law – international instruments.¹³⁶ These developments combined should help to increase awareness and break through cultures of silence around child rights problems in private domains. If this were successful, by analogy with the words written by Rhona

133. Emphasis added. While Arts. 3(2) and 5 of the CRC are often (and correctly, in my view) presented as a serious potential threat to children's rights, since they could lead to far-reaching restrictions on children's rights in the name of parental rights, the fact that this provision also straightforwardly conceptualizes duties on the side of parents and other carers of children is a real breakthrough that deserves more exposure.

134. Convention Concerning Decent Work for Domestic Workers, ILO Convention 189, adopted 16 June 2011, entered into force on 5 September 2013, for all details see <www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189>. See, e.g., also Sjerly Rodriguez Pereira, *Behind Closed Doors: Child Domestic Labour, With a Focus on the Kamlari System in Nepal* (KidsRights Foundation and Leiden University 2014).

135. See, e.g., M. Milanovic, 'CRC Concluding Observations on the Holy See', *EJIL: Talk (blog of the European Journal of International Law)*, 5 February 2013; and BBC, 'UN Panel Confronts Vatican on Child Sex Abuse by Clergy', 16 January 2014, <www.bbc.com/news/world-europe-25748952>.

136. See, e.g., Children's Rights and Business Principles, via <childrenandbusiness.org> and the UN Global Compact, <www.unglobalcompact.org>.

Smith, 'the new barrier confronting advocates of international human rights'¹³⁷ would finally be removed.

3.3 Data

While explicitly called for in the CRC Reporting Guidelines,¹³⁸ on many child rights problems across the world disaggregated data are often not available. This is an enormous obstacle for making situation analyses and, for example, for designing policies to tackle the disadvantaged situation of marginalized groups.¹³⁹ After all, what one does not know about, or only in insufficient detail, one cannot address. The issue of the lack of data and the need for strategic but feasible data gathering, processing and management goes back to the early days of the Convention on the Rights of the Child and has not been resolved since.¹⁴⁰ The material on the 'collection and analysis of disaggregated data' presented in the earlier mentioned 2013 KidsRights Index also underlines that this is a truly problematic aspect of the current CRC implementation practice. No less than almost one third of the States Parties to the CRC scored low on this item, almost two thirds received a middle score and only one percent (i.e., two states) received a high score.¹⁴¹

Also in relation to evidence of the effects of ongoing or past project or programme interventions, data are often lacking. In relation to violence prevention programmes in South Africa for instance, research found that 'numerous violence prevention programmes have not been evaluated to assess their effectiveness. Quality evaluation requires long-term follow-up of monitoring and evaluation indicators that have been built into programmes from inception. This is not possible if programmes are sporadically and only partially funded.'¹⁴² Research on interventions to counter violence against children in the Philippines generated similar findings.¹⁴³ Serious efforts will need to be made to overcome the data challenge.

137. Smith, *supra* n. 106, p. 317.

138. 'Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child', UN Doc. CRC/C/58/Rev.2, 23 November 2010. These request states (at p. 11) to provide 'where appropriate, information and statistical data disaggregated by other indicators ... such as age and/or age group, gender, location in rural/urban area, membership of minority and/or indigenous group, ethnicity, religion, disability or any other category considered appropriate'.

139. Macias Saacco, et al., *supra* n. 84, pp. 4, 7-10.

140. See, e.g., Price Cohen, et al., *supra* n. 30, p. 458.

141. For an explanation of the scores and other information about the KidsRights Index, see *supra* nn. 60 and 80. The exact percentages are 35 per cent, 65 per cent and 1 per cent. For 3 per cent no score was available which means that the issue was not addressed in the latest available CRC Concluding Observations. The two top scorers were Libya in 2003 and the United Arab Emirates in 2002. As these data are relatively old, in the meantime this situation may well have changed.

142. Proudlock, ed., *supra* n. 89, p. 180.

143. Arts, *supra* n. 19, pp. 159-160 and 172. UNICEF highlighted the data problem in more general terms in 2014 in *supra* n. 117.

3.4 Mobilizing resources

Much of the wanting implementation record of the Convention on the Rights of the Child could be strengthened by a greater mobilization of financial and other resources. While not all implementation requires a high level of resources, and to a certain extent this is a matter of prioritization and political will, it is clear that many duty bearers of the Convention are confronted with resource constraints. Again, this is underlined by the picture emerging from the 2013 KidsRights Index. In the latest available Concluding Observations for them, more than one third of the states involved (34 per cent) received a low score on the item ‘best available budget or resources’, 58 per cent a middle score, and 1 state (1 per cent) a high score.¹⁴⁴

In highlighting CRC obligations, the emphasis is usually mainly on national implementation, including resourcing, and rightly so.¹⁴⁵ However, it is also important to underline that the CRC formulates fairly concrete obligations, for States Parties who are in the position to do so, to assist others (and especially developing countries) in realizing the Convention. The main implementation Article 4 provides that, where needed, the implementation of economic, social and cultural rights shall be undertaken ‘within the framework of international cooperation’ and thus clearly hints at international cooperation obligations. Depending on what exactly is needed in a particular location or for a particular problem, according to the CRC this may be done by: concluding bilateral or multilateral arrangements or agreements; promoting accession to international agreements; cooperating with the UN and ‘other competent intergovernmental organizations’ or NGOs cooperating with the UN; exchanging, disseminating and providing access to appropriate information; appropriate measures to recover maintenance for the child from persons who live abroad but who have financial responsibility for the child; and facilitating access to scientific and technical knowledge.¹⁴⁶

Exceptionally this has led some developed states to formulate an explicit child rights-based policy for part of their development cooperation activities. An early example is a Dutch Policy memorandum on children in developing countries, adopted in 1994, but unfortunately for already quite a long time not practised or updated anymore.¹⁴⁷ In 2005, Norway issued a child rights-based ‘Development

144. See *supra* n. 141. For 8 per cent of the States Parties no ranking was available on this item which means that it was not addressed in the latest available CRC Concluding Observations on these states. The single top scorer was the Netherlands in 2009. In the meantime resourcing patterns in the Netherlands may well have changed.

145. The CRC obligations on mobilizing the best available budget were already discussed in section 2.2 above.

146. As referred to respectively in CRC Art. 21 on adoption and Art. 27 on the right to an adequate standard of living; Art. 27 on the right to an adequate standard of living; Art. 22 on refugee children; Art. 23 on children with disabilities; Art. 24 on the right to health; and Art. 28 on the right to education.

147. Netherlands Ministry of Foreign Affairs, *First Steps: Policy Memorandum on Children in Developing Countries* (The Hague 1994).

Strategy for Children and Young People in the South’ which was ‘intended to be provide guidelines for Norway’s work in this field up to 2015’.¹⁴⁸ It presents ‘four especially important arenas for Norway’s efforts:

- in the global arena, to improve the international framework conditions for developing countries, such as market access, debt relief, etc.;
- among donors, to increase development assistance and improve the effectiveness and impact of our contributions;
- in recipient countries, to improve governance and distribution;
- in cooperation with non-governmental actors, to mobilise civil society and the private sector.’¹⁴⁹

More concretely child-focused priorities relate to, among others, promoting a coherent approach to the rights of the child, safeguarding the rights of children and young people in international negotiations, continuing efforts to increase assistance for education to 15 per cent of the Norwegian development assistance budget, strengthening child participation, human rights education, ‘critically vulnerable children and young people and groups at risk’, promoting gender equality, and preventing and halting the spread of HIV/AIDS. At the time, the Norwegian government also had a separate ‘Plan for Combating Poverty in the South Towards 2015’.¹⁵⁰ In June 2014 it launched a new White Paper on stepping up support for global education and in July 2014 it published its new 2014-2017 strategy on female genital mutilation (FGM) seeking ‘to ensure that no girls are subjected to FGM, and that those who already have been are given the best possible care’.¹⁵¹ Unfortunately, other developed countries have only made relatively few similar comprehensive policy efforts.

The monitoring work done by the UN Committee on the Rights of the Child can also only be done well if the Committee itself is properly resourced. Like the data challenge, this aspect too has been problematic since the early days of the Convention. As reported in 1996:

‘the budgetary problems that continue to plague the United Nations have also impacted heavily on the Centre for Human Rights. By fall 1995, most of the Centre’s previously planned studies were being dropped, and work-related travel was being cancelled; the situation had become so dire that a severe paper shortage made it impossible for the

148. Norwegian Ministry of Foreign Affairs, *Three Billion Reasons: Norway’s Development Strategy for Children and Young People in the South* (Oslo 2005) p. 5.

149. *Ibid.*, p. 9.

150. *Ibid.*, pp. 17, 23, 28 and 10-11.

151. Norwegian Ministry of Foreign Affairs, ‘Government to Double Support for Global Education’, press release 59/2014, <www.regjeringen.no/en/dep/smk/press-center/Press-releases/2014/Government-to-double-support-for-global-education-.html?id=762891>; and Norwegian Ministry of Foreign Affairs, ‘New Strategy for Intensified International Efforts to Eliminate Female Genital Mutilation’, press release, 21 July 2014, <www.regjeringen.no/en/dep/ud/press/news/2014/strategy_mutilation.html?id=765382>.

Centre to photocopy non-UN documents for distribution to members of the Committee on the Rights of the Child.¹⁵²

Much later, the former Chair of the CRC Committee Yanghee Lee for instance reported that serious problems arose in the process of negotiating the third Optional Protocol to the CRC when in December 2009 the underlying Human Rights Council resolution did not provide for a budget for interpretation services for a five-day meeting. This almost torpedoed the meeting but in the end a compromise was found in reducing the meeting to three days.¹⁵³ As a result of the large number of States Parties to the CRC, already for a long time the CRC Committee faces a considerable backlog in the state reporting procedures (which are conducted separately for the Convention proper and the Optional Protocols, to the extent ratified). This creates the risk of long delays between the submission of state reports and considering them, which then may result in outdated outcomes. In response to this challenge, in 2006 and again as of 2010, the CRC Committee decided to work in two parallel chambers.¹⁵⁴ While this was a creative move, with obvious advantages, there are also risks involved. For example, simply differences in the personalities of Committee members that staff the two chambers may lead to major differences in atmosphere and in the nature of the dialogue between the Committee and the government monitored (i.e., less or more critical)¹⁵⁵ which could well affect the outcome of the process.

4. CONCLUDING REMARKS

The overview of achievements presented above shows that, in its first twenty-five years of existence, the CRC has come alive, matured and become more complete. Major steps ahead were realized in terms of further detailing the normative framework on children's rights. In terms of substantive norms, this has been achieved mainly through the adoption of the first two Optional Protocols, of General Comments and Concluding Observations and other resources produced by the CRC Committee. In terms of procedural norms, this occurred especially through the development of the state reporting procedures and through the third Optional Protocol. The Convention clearly has long passed the age of majority by now. Strong achievements of the CRC regime encompass its comprehensiveness, the extent to which its provisions accommodate diversity and have triggered law reform, and the work and standing of the CRC Committee. However, for the CRC regime to have yet more impact in the future, it is important that the challenges presented above, including practicalities concerning data and resources, but also

152. See, e.g., Price Cohen, et al., *supra* n. 30, p. 453.

153. Lee, *supra* n. 104, p. 572.

154. Lee, *ibid.*, p. 573.

155. This observation is based on personal observations when attending a full week of CRC state reporting sessions on two different countries in the autumn of 2010.

more complex agendas on tackling structural causes of child rights problems and extending the coverage of international human rights more concretely into private domains, will be addressed more effectively than has been the case so far.