



# Status of Child Rights in the International Community

Yanghee Lee and Lothar Krappmann

## Abstract

The UN Convention on the Rights of the Child (OHCHR, Convention on the Rights of the Child, Retrieved from [www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx](http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx), 1989), enforced since 1990, obliges States to ensure by appropriate legislation and effective provisions children's rights to care, protection, social security, development, education, and active involvement in all actions and measures that are of concern to them. The articles of the Convention are highly relevant throughout the world for teachers, parents, and children who cooperate in the institutions of educational systems serving children and their societies. This chapter gives a concise summary of the content of the Convention, the history of child rights since the beginning of the last century, and the debates about adequate

understanding and implementation of the rights incorporated in the Convention. It underlines that the Convention, though titled as the Convention on the Rights of the Child, asks for an intense dialogue of adults and children who have to be respected as human beings with their own perspectives, best interests, and hopes for a good life in community with others.

The desire of our children's well-being has always been the most universally cherished aspiration of mankind . . . There is no task more important than building a world in which all of our children can grow up to realize their full potential, in health, peace and dignity. (Kofi Annan, 2001)

This statement of Kofi Annan, former UN General Secretary, captures the most important aspiration of humankind. It is shared by all people, regardless of culture, time, and tradition. For this reason, and this reason only, they will pay full attention to events and processes that have impact on children, their well-being, and thriving.

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Yanghee Lee is Member of Committee on the Rights of the Child (CRC; 2003–2013), Chairperson of CRC (2007–2011)

Lothar Krappmann is Member of Committee on the Rights of the Child (CRC; 2003–2011), Rapporteur of CRC (2007–2009)

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Y. Lee (✉)  
Sungkyunkwan University, Seoul, South Korea  
e-mail: [leeyh@skku.edu](mailto:leeyh@skku.edu)

L. Krappmann  
Max Planck Institute for Human Development,  
Berlin, Germany

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## The Convention on the Rights of the Child and Its Three Optional Protocols

The adoption of the international treaty on all children's rights, the UN Convention on the Rights of the Child, was a monumental event in

history, which deserves utmost consideration of everybody and particularly of all persons who are engaged with unfolding the children's personalities within the family, school, and other institutions influencing children's lives and personal development (OHCHR, 1989). For the first time, a universal definition of the child had been agreed upon as applicable to all those under the age of 18, "unless under the law applicable to the child, majority is attained earlier" as stated in Article 1.

Envisaging that this treaty is a juridical document, many people, though interested in this matter, had a hard time following the details of this undertaking to guarantee to children, wherever they are, good conditions of living and growing up. Therefore, the aim of this chapter is to build understanding of this great project and its consequences for child rights-based interaction and relationship of children and adults, which have far-reaching implications for the school setting.

It was indeed a decisive moment in history when the General Assembly of the United Nations adopted the drafted text in November 1989 and recommended to its member states that they ratify the Convention on the Rights of the Child<sup>1</sup> (hereinafter referred to as the Convention) and incorporate the provisions of this international treaty into their legal systems. It took 10 years of tough negotiations to draft the articles of the Convention by a UN Working Group, which was attended by delegates from governments, UN agencies, and activists from civil society organizations from all world regions. Many did not quite believe that this instrument would be ratified in a speedy manner as the drafted Convention recognized children as subjects and holders of inherent, inalienable universal rights, while many institutions still treated children mainly as objects in need of charity. However, quite the contrary, this human rights instrument dedicated for children was ratified in record speed; thus, the Convention came into force in 1990, more quickly than any other human rights treaties.

As of April 2016, 196 member states of the United Nations had ratified the Convention on

the Rights of the Child. By ratifying an international treaty, a country (hereinafter referred to as the State) first makes a public commitment to the international community to uphold, guarantee, and protect all the rights enshrined in the treaty. At the same time, it is making a public commitment to their children that all the provisions enshrined within the treaty will be the responsibility of the State.

Many of the States also ratified Optional Protocols. These were negotiated and adopted by the General Assembly later: the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OHCHR, 2000a; enforced since 2002; ratified by 173 States, as of September 2019), the Optional Protocol on the Involvement of Children in Armed Conflict (OHCHR, 2000b; enforced since 2002; ratified by 170 States, as of September 2017), and The Optional Protocol on a Communications Procedure (OHCHR, 2011; enforced since 2014; ratified by 46 states, as of September 2019).<sup>2</sup> The only non-ratifying UN member state on the Convention is the USA. However, it has signed the Convention and ratified two Optional Protocols, excluding the Optional Protocol on a Communications Procedure. Signing of a treaty by a State indicates agreement to refrain from acts that would be against the object and purpose of the treaty. It is a public expression, however, that the State is unwilling to subject itself to the monitoring procedures inherent in human rights treaties (Villiger, 2009).

Upon ratification, States can formally deposit a reservation with the UN General Secretariat. Reservations are legitimate if they refer to a specific issue and do not spoil the substance of the treaty. On the one hand, such reservations restrict the implementation of a concrete right. On the other hand, a reservation demonstrates that the State is aware of the imposed obligations, which it deems unable or unwilling to fulfill at the time of ratification. Many States later withdrew their

<sup>1</sup>The full text of the Convention articles and Optional Protocols are provided in the Appendix of this volume.

<sup>2</sup>Handbooks are available which introduce into the juridical content of the Convention and the two Protocols on the Sale of Children and on the Involvement of Children in Armed Conflicts (UNICEF, 2003, 2007, 2009).

reservations as they observed that the diversity of cultures and religions are respected by the Convention and its implementation efforts or when the economic or social situation later facilitated implementation of the particular provision.

A note is appropriate in order to avoid misunderstandings: the rights enshrined in the Convention (OHCHR, 1989) were not put together for the purpose of intervening into the trivial though vital everyday procedures for which families and children's institutions have arranged to facilitate cooperation and togetherness, such as division of tasks, pocket money, TV viewing, and time to go to bed. Instead, the rights enshrined spell out the human rights, which were stated by the Universal Declaration of Human Rights (hereinafter referred to as UDHR) from 1948, respecting the nature of children's life situations. Definitely children need protection, but protection that takes account of the child as an active participant in all measures concerning her or him (Hart, Lee, & Wernham, 2011). Children are on the way from entire dependence on persons caring for their well-being and development, to increasing and full responsibility for their goals, actions, and relationships. A critical and fragile unfolding of capacities and reason evolves during this process. Nevertheless, children are entitled to all rights which are ensured to every human being: respect for human dignity and identity, life with parents and family, consideration of best interests and views, access to health services and education, opportunity to play and cultural activities, and protection against violence, exploitation, and unfair treatment.

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## Looking Back Through History

The unprecedented broad level of acceptance of the Convention sends a strong signal underlining that the States of the world are willing to recognize children as human subjects with inalienable rights from the beginning of their lives. It would be naive to think that these rights would become a reality everywhere in the world overnight. We have to remember that the path to support for the conception that children are full members of

human society with rights of their own and not just objects of benevolence or authoritarian decision has a long history, in which child rights activists had to fight against traditional views, prejudices, and material interests of enterprises, organizations, and institutions (Cunningham, 2005).

In the twentieth century, critics of children's mistreatment and exploitation, child-oriented pedagogues, lawyers, and social workers, were eventually heard by a larger public, when they pointed at the adverse conditions under which many children were raised in the various regions of the world. Among them were Eglantyne Jebb (the UK) and Janusz Korczak (Poland) in Europe and Bang Jung Hwan (Korea) and Toyohiko Kagawa (Japan) in Asia (Kerber-Ganse, 2015; Krappmann, 2013; Lee & Jung, 2015; Morita, 2013).

Eglantyne Jebb was the visionary for children and their human rights. She was an instrumental figure behind the Geneva Declaration of the Rights of the Child in 1924. The UN adopted a more comprehensive Declaration of the Rights of the Child in 1959. Along with the UDHR, these declarations did not create binding obligations. Throughout the period of two decades after the UN Declaration of the Rights of the Child, voices incited the international community for an expanding debate about the need for an international legal instrument to define obligations in the juridical meaning. As there is no world government, such an instrument can only be a treaty adopted by autonomous states which deliberately accept the agreed responsibilities. In the context of the International Year of the Child in 1979, it finally became evident that it was the right time to discuss the notion of a human rights instrument devoted to children.

As mentioned earlier, it took 10 years for the international community to finally agree upon the Convention (OHCHR, 2007). The United Nations General Assembly finally adopted the Convention without dissent on November 20, 1989, shifting the paradigm for consideration of children. The birth of the Convention was an outcome of the will of governments and civil societies negotiating a treaty to end a charity orientation toward

children. Of course, children need to grow up in an atmosphere of love, friendliness, happiness, and kind behaviors. But many prerequisites of children's good life and development, food, care, health, education, and participation, cannot be just a matter of benevolence, but rather a rightful entitlement and obligation of the State, parents, and the society.

The Convention demands from all State parties compliant legislation as well as measures and institutions, which respect, protect, and fulfill the stipulated rights. The Convention inspired the foundation and work of many child rights organizations around the world which act to remind the governments to accomplish what they have guaranteed to children. Certainly, the Convention has established the place of children's rights on the political agenda of states and international agencies and networks.

The Convention includes 41 substantive articles and 13 procedural and administrative articles. The Preamble makes note of the importance of traditions and cultural values and reaffirms the Charter of the United Nations that the child "should be prepared to live an individual life in society...and in particular in the spirit of peace, dignity, tolerance, freedom, equality, and solidarity" (OHCHR, 1989). A noteworthy aspect of the Convention is that it is the first human rights treaty that deals with civil and political rights together with social, cultural, and economic rights. The Convention sets the obligations enshrined within the legal obligation on States, thus beyond a moral obligation (see the commentaries on the Convention: Alen, Vande Lanotte, & Verhellen, Alen, Vande Lanotte, & Verhellen, 2005; Vuckovic, Doek, & Zermatten, 2012).

In terms of human rights, rights do not have a hierarchy. All of the rights enshrined in the Convention are indivisible, inalienable, and interdependent. The UN Committee on the Rights of the Child (subsequently referred to as the Committee) identified four general principles which must always be regarded when actions bear on children: Nondiscrimination (Art. 2); best interests of the child (Art. 3); life, survival, and development (Art. 6 and 4); and respect for the views of the child (Art. 12). Children are to

be considered in accordance with their "evolving capacities" (Art. 5), as active human beings, who have to cope with ever more complex tasks, sociocultural challenges, and institutional transitions.

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## Child Rights and Culture

Observers of the development of the human rights system have discussed whether human rights including child rights can be regarded as universal concepts to be applied across the diverse cultures, religions, and other traditions patterning lives of groups and societies. In fact, no government refused an obligation under the Convention with reference to cultural traditions, when the Committee examined the implementation of rights under the Convention. It was crucial that the language of the articles did not ask for approval of a philosophy of childhood or a value system prioritizing children but described basic requirements for children's life, well-being, and development. For an example of how the Convention deals with what are called harmful practices, see Article 24, para. 3. Such practices are regarded as harmful, when they hurt or impair children's real lives, health, capacity development, or social relationships. The articles avoid judging about the various religious or cultural worldviews behind these practices. The only basis for application is the respect for the child as a human being interacting with others in a shared cultural context, which is special and unique, but shall not damage the well-being, potentials, or best interests of the subject.

The drafters of the Convention were well aware of the cultural embedding of childhood and youth in all societies and cautiously paid attention to the language of respective articles to give leeway to different interpretations of responsibilities, obligations, and mutual support in various forms of family lives from extended kinship systems to the nuclear or one-parent family. So, for example, Article 5 stipulates to "respect the responsibilities, 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 avoid additional and undue burden on States that do not have sufficient financial resources, Article 4 stipulates that “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.”

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### **Success, But Also Unsatisfactory Progress**

After ratification of the Convention, States, to different extents, have initiated changes in many areas, for example, decrease of violence toward children, reduction of child and maternal mortality, extended health services, more access to education including access of girls, and more weight for the voices of children. To this end, laws were revised, institutions were established, and resources were expanded. Such changes are certainly not enough but constitute steps in the desired direction in spite of backlashes and catastrophes.

It is easily understood that child rights activists are not satisfied with the progress made in the past 30 years since the Convention came into force. Too many children live under disastrous conditions, are exploited, and are not heard. To further promote the implementation of the Convention, child rights organizations have established awareness-raising campaigns in many countries. Also encouraging are the training of professionals, for example, lawyers, medical staff, teachers, social workers, and law-enforcing staff, and the information given to parents who have to guide their children with regard to children’s enjoyment of their fundamental rights, sometimes questioned in school, in the neighborhood, in the community, and also in the family, when conflicts or emergencies emerge. Nastasi and Naser (chapter “Professional Development of School Psychologists as Child Rights Advocates”, this volume) address the training of school psychologists as child rights advocates.<sup>3</sup>

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<sup>3</sup>See also the training manual provided as a resource for this volume on the Springer website.

### **Monitoring Compliance to the Convention**

Since the Convention is a legal text borne through an intergovernmental process, notably under the auspices of the United Nations, a committee to monitor compliance is stipulated in Article 43. This particular article created the Committee on the Rights of the Child (Committee), composed of 18 independent experts, coming from relevant disciplines and fields of activities, and who are not to act as representatives of their respective governments. The first Committee was formed in February of 1991. It began considering initial reports from States Parties from January of 1993 (Lee, 2010).

The primary task of the Committee is to monitor the implementation of the Convention and its additional Optional Protocols.<sup>4</sup> The main responsibility is the careful analysis of the reports, which State Parties to the Convention have to submit every 5 years on the progress made with regard to implementing the Convention. The vast majority send substantial reports, although often with some delay.<sup>5</sup> Most of these reports provide valuable information as to the current state of children’s rights and frank self-evaluation of what are some of the reasons for delay in implementation. On the other hand, some of the reports give little information as to the actual facts and circumstances and also lack information on progressive implementation.

The Committee members look for and receive additional information about children’s situations in the countries under consideration. Additional

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<sup>4</sup>The Committee comes together for three 1-month sessions per year in Geneva (Switzerland). Members receive a per-diem remuneration of their expenditures during the months of work in Geneva, but no salary. Much work has to be done at home to prepare the dialogues with State Party Governments and other work of the Committee.

<sup>5</sup>As at July 2019 the Committee had received 551 State Party reports which inform about the implementation of the Convention and 119 reports which in form about the implementation of the Optional Protocol on Children in Armed Conflicts and 118 reports which inform about the implementation of the Optional Protocol on the Sale of Children. For more details see: UN Document A/74/231 (New York, 2019): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/232/06/pdf/N1923206.pdf?OpenElement>



reports are regularly sent by nongovernmental organizations, the independent national human rights institution of the State under review, UN agencies, notably the United Nations High Commissioner for Refugees (UNHCR) and United Nations International Children's Emergency Fund (UNICEF), if UNICEF runs programs in respective countries. These additional reports are discussed with delegates from these organizations. After soliciting and receiving information, the government is invited to a day of "dialogue" (or more accurately, scrutiny) by the Committee in Geneva. Based on the State Party report and additional materials, the Committee members are equipped to ask precise questions and make concise comments. The Committee summarizes its comments and concerns in a document called Concluding Observations which also contains recommendations about how to address deficient issues of implementation. Concluding Observations are public documents available from the website of the Committee.<sup>6</sup> Since the constituency of the Convention is the child, the Committee welcomes information submitted by children themselves (more information on this is provided in the next section).

Throughout the years of examining States Parties reports, it has become evident to the Committee that States needed more detailed interpretation of children's rights and guidance to better implementation. Thus, the Committee started to elaborate on specific rights and publish General Comments (GCs), which provide guidance and expert opinions on interpretation of rights and provisions of the Convention. The GCs are an instrument to give advice on how to cope with new developments or disregarded challenges, for example, expansion of early childhood institutions and their responsibility for a good start for all children into the educational system, rights of children outside their country of origin, and rights of children with disabilities.

<sup>6</sup>Database for Concluding Observations issued by the Committee after the dialogue with a State Party: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5)

GCs provide advice to governments and civil society with regard to strengthening implementation efforts. The first of these General Comments (2001: see Appendix A) gave thorough explanations of Article 29 of the Convention under the title "The Aims of Education." Since then, 24 General Comments have been published. They provide high relevance for all professionals who work for and with children and care for their well-being and development (see list of GCs to date in Appendix A).

In an effort to address and discuss new and emerging issues at the global level, the Committee invites NGOs, human rights institutions, and UN agencies, such as UNICEF and UNHCR, to Days of General Discussion which take place either annually or biennially. The first Day of General Discussion was devoted to children and armed conflict. The discussions produced recommendations on many child rights issues (see list of topics to date in Appendix B).

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## Participation of Children in the Monitoring Process

Given the potential impact of the Convention on children and their rights to participation, the role of children in the monitoring system is critical. NGOs submitting reports to the Committee often quote children and include children in their delegations to Geneva, Switzerland. Children and children's organizations also send their own reports, which are encouraged by the Committee. The Committee arranges special meetings with children if they can come to Geneva, and children have access to Committee members with whom they wish to talk. Often the country rapporteur, the Committee member who prepares and directs the dialogue with the government of the State under review, meets with the children. The basis of this practice is stated in Article 12 of the Convention, enabling children to be true rights-holders and social agents with the right to be heard (OHCHR, 2014).

The Committee has no resources to support the involvement of children but has recently summed up the possibilities to establish closer

cooperation with children in a memorandum addressed to organizations and foundations having the potential to facilitate and finance children's participation. Although the Committee often relies on internationally active nongovernmental organizations (NGOs) and UNICEF to help fund children's travel to Geneva, information and communication technology (ICT) has been increasingly instrumental in allowing children to express their concerns without having to travel to Geneva.

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## The Potential of a Public Dialogue

An expert committee and its monitoring procedure is the standard for all Conventions to push the responsible actors to more effective actions. Every word in the text of Conventions is negotiated down to the final dot. In so doing, the language gets compromised, and the rights originally intended are likely to get somewhat diminished. Governments negotiating the treaties do not want to give a strong mandate to a foreign body (here the UN) because they fear it may interfere with their national sovereignty. Henceforth, the monitoring body cannot judge any country and cannot demand States to make changes. They can only offer observations of concerns and recommendations. The Committee must try to convince the government to convert its commitment into definite reality. The UN activists call this kind of joint deliberation a "dialogue."

This procedure is criticized as a tool, which is too weak to effectively urge governments' stronger efforts. Nevertheless, one has to consider that the review of State Party reports takes place in front of a public audience in Geneva and is transmitted by webcams and Internet worldwide. This means that governments, except for the most authoritarian, must try to explain why the implementation process fell short and communicate which related steps they plan to undertake since they are also observed by political activists and child rights advocates from their home country. This unfolds in a six-hour dialogue that can sometimes be grueling from the perspective of the States. Furthermore, UNICEF and other orga-

nizations and foundations carefully listen to the presentations in order to make determinations about the fruitfulness of their previous and potential investments, in the form of assistance, in developing countries under review.

All monitoring committees including the Committee on the Rights of the Child have attempted to exert more pressure on governments to address gaps and speed up implementation. In order to keep child rights on the agenda, they ask governments to react to the recommendations by a comment or, even better, by an action plan. Governments, however, mostly refused to accept such suggestions indicating that the whole reporting procedure already is such a burden, in particular for States, which are Parties of many treaties. The Committee has proposed and achieved to some degree that reports more concisely focus on a limited number of child rights issues, which deserve priority in governmental activities. The Committee also encouraged activities aiming at a system of observations and indicator construction that could make the implementation process more transparent, thus strengthening the accountability of governments.

Certainly, the quality of the work of the Committee positively contributes to the acceptance of its recommendations. The members' professional background generally is jurisprudence, developmental psychology, pedagogy, sociology, medicine, and social work (and sporadically other disciplines); members are independent experts who are engaged in research, teaching, services for children, welfare, or civil society organizations, but do not work for the government; equitable geographical distribution is required. To guarantee independence and transparency, when an expert's country is under review, this expert does not participate at any stage of the monitoring process.

State Parties have the right to propose candidates for membership, which are elected for four-year terms by the assembly of State Parties and usually leave the Committee after two terms to give opportunities for new members. The work of the Committee members is supported by a rather small staff located in the Office of the High Commissioner for Human Rights in Geneva. The

work of the Committee would be seriously hampered without targeted assistance received from UNICEF and some other international foundations and organizations. The NGOs are strong allies of the Committee since in their home countries, they remind the government and make the public aware of the conclusions and observations of the Committee. There is also an office in Geneva that organizes and supports NGO activities worldwide, by helping to bring their voices to the Committee and to bring them to Geneva for the Committee's Pre-Sessional Working Group. This is the time when the national NGOs have a chance to meet with the Committee and express their concerns. This meeting is held privately to ensure confidentiality and protection from reprisal.

The activities of all human rights committees and bodies take place under the umbrella of the Human Rights Council, an assembly of 47 elected UN member states, which has the official responsibility to promote and protect human rights in the world. The Human Rights Council strongly draws on the work of the committees and bodies when it runs its Universal Periodic Review of all UN member states. The Council appoints special rapporteurs, experts who do research and make reports on specific topics and, in this case, focus on special conflict areas or the implementations of specific human rights, for example, right to education, extreme poverty, sale of children, and other rights and freedoms. The Committee on the Rights of the Child cooperates with rapporteurs close to children's issues and with other human rights committees (e.g., the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of all Forms of Discrimination Against Women).

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### **Status of the Convention in the States' Legal Systems**

Most of the Governments demonstrate good will when the dialogue takes place in Geneva. In many countries, however, public statements in Geneva are not followed by consequent actions. What is the problem with more straightforward implementa-

tion? Successful implementation of the rights requires more than good will and a child-friendly attitude that subscribe to the spirit of the Convention. An effective implementation structure has to be established within the State, which consists of a well-functioning legal and administrative system and which can rely on adequate resources as stipulated by Article 4 of the Convention. According to respective statutory rules:

- Either the Convention will immediately become part of the national legal system by its ratification and hence can be invoked before court without further legislative procedures.
- The legislator of the State has to adopt new laws after ratification or harmonize existing laws in compliance with the provisions of the Convention, so that a child or her/his representative can refer to the respective law.

Both procedures of integrating the Convention into the legal system generate the same result at the end of the process. The second procedure may have the advantage that the review and adaptation of the entire legal system to assure consistency with the Convention require detailed scrutiny of all relevant issues in the legislative body, and the public has the opportunity to contribute to an enlightened implementation practice, when the legal base has been generated. This may last for many years, and in the meantime, judges and administrators may doubt whether they have to apply the rights under the Convention or not, even though orientation to an expected act of law is a professional habit of lawyers in general. Also, the fact that a State has already signed a Convention should incite an interpretation of legal conflicts by advocates and judges under consideration of international law developments.

In the event of the immediate integration of the Convention in its entirety into the legal system of a State by the act of ratification, children can directly claim their rights wherever they are relevant and in particular before courts. By and by, the practice of the different courts creates a shared understanding on how to realize children's rights. As courts have to decide individual cases, court orders will be sensitive with respect to specific aspects of the case, which is a positive result.



But it may take some time until a shared understanding emerges of what is expected by the Convention.

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### Self-Executing Rights of Children

According to common juridical opinion, some provisions of the Convention do not need an explicit legal confirmation, although it may be preferable for the sake of further enforcement. Provisions of the Convention that are self-executing in this sense include the following: (a) the right to nondiscrimination, (b) the right to primary consideration of a child's or children's best interest, (c) the right to life and development, and (d) the right of the child and children to be heard in matters which affect the child or children. What is meant is so understandable and so definitely established in ubiquitous practice that no legal clarification is needed before these rights can be implemented.

These four rights, called the general principles of the Convention, recapitulate the essence of the Convention: the underlying concept of the child as a respected member of the human society who must not be excluded from, but invited to, participation so that her or his mental, social, emotional, and spiritual capacities can evolve toward the child's personal well-being and society's advantage. From this point of view, active implementation and enjoyment of children's rights can start from the very moment of the State's accession to this human rights treaty. To listen to children, to seriously consider their best interests, to take account of their further development, and to make sure that no child is left behind or out are necessary in all situations. It is important to make this requirement clear to everybody who figures in children's lives.

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### Human Rights: Customary Law in All Settings?

The observation articulated in the preceding section stimulates the query whether many, if not all, rights of the Convention on the Rights of the Child belong to customary international law and,

therefore, have to be implemented not because of the formal ratification of the Convention by the State but as an integral part of customary human right. Customary international law comprises rules which are derived from consistent conduct of States and applied with the conviction that these rules have binding characters (Treves, 2006). Many of the requirements for well-being and development of children have long been established (*diuturnitas*) with conviction that such actions or measures must be provided for children (*opinio juris*). Otherwise, consent on the Convention in the drafting working group and the General Assembly could not have been achieved.

Such juridical considerations should incite States, which did not or could not accede the Convention (e.g., the USA, Taiwan, Palestine, Kosovo, or North Cyprus), to de facto orient their child politics and measures to the rights of the child specified in the Convention. It is apparent that the USA has a long record of events, measures, and laws which refer to children's laws, and it is assumed that the adjourned ratification is motivated more by general considerations about the sovereignty of the State and its federal structure than by a humiliating view of the child.

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### Mutual Enhancement of Children's and Parents' Rights

When the ratification of the Convention was at stake, debates in many States focused on the responsibilities of parents and the duties of children to respect and support parents and family. On the one hand, the idea that children have unconditional rights, which have to be observed also by parents, is obvious in modern social life. On the other hand, this idea still excites traditional fears against full inclusion of children in decisions concerning them: Don't they lack knowledge and experience and are likely to be misled and victimized? It was also feared that children, who learn about their rights, feel encouraged to oppose parental guidance and deny contributing to care and maintenance. Parental rights would be threatened and disciplining children would become very difficult. Many had feared that once rights are given to the

child, they will become unruly and run around wild, with promiscuous behaviors.

From social history, we know that once undisputed authority of the father or the clan chief was functional for surviving, while today the recognition of every person's share of responsibility is essential in times with daily changes or challenges posed by new developments and situations. This is the sociopsychological base of the rights of children to be respected as a human being endowed with capacities, which evolve in dialogue and interaction with persons who advise and guide children in view of their awarded rights. The Convention has definitely shifted the paradigm toward viewing children as citizens and rights-holders with the right to take part in the shaping of their own development, according to their age and level of maturity (Lee, 2010).

The reflections expressed in this section generated the language of Article 5 of the Convention, which acknowledges parental rights together with their explicit responsibility for assisting the development of a capable, free, and responsible personality of the young human being. Thus, the Committee provides a strong basis for a constructive dialogue between the generations (Krappmann & Luescher, 2011). This conception in principle prevails worldwide, although still some social groups put emphasis on different aspects of children's participation in and contribution to shared activities and tasks. Yet, it is hard to foresee the survival of cultural traditions that do not foster children's self-reliant competence and faculty of judgment.

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## The Essential Role of School

Teachers and caregivers of schools and day care centers are in a particularly crucial role with regard to children's rights and the creation of a world in which people of all origins cooperate in freedom, justice, and peace (see the Preamble of the Convention with reference to the Charter of the United Nations). The Convention dedicates two articles to children's rights to education, Articles 28 and 29. Deliberations and activities often focus on Article 28, para. 1, emphasizing the universal

school attendance and insistence on measures taken by the State, to ensure schools on all levels are made available and accessible (free on the primary and secondary level). The content of the school curricula is mostly left aside, although Article 29, para. 1, requires a strict child-centered and human rights-directed orientation of the education. Education was deemed most important to the Committee, and, therefore, it devoted its first General Comment to "Aims of Education."

According to the Convention, education must be comprehensive, that is, education has to be "directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential" (Art. 29, para. 1(a)). The State Parties have furthermore agreed that educational institutions generate "respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations" (Art. 29, para. 1(b)), and the following sections of Article 29, para. 1, detail this aim. Moreover, State Parties have to guarantee that, in the case of conflict of a child with behavioral rules, the disciplinary measures "are administered in a manner consistent with the child's human dignity" (Art. 28, para. 2).

Such educational goals cannot be achieved by verbal instruction only. Children should be actively involved in human rights issues, which are present in many schools and have to be dealt with and overcome together with the children of the classroom or the school community, for example, through inclusion of children of different origin without any discrimination, prevention of bullying, gender equality, non-humiliating assistance to children who make mistakes, participation of children in relevant decisions, reasonable use of water and other scarce resources, service-learning programs, etc. All of these issues have to be part of an education oriented to "the preparation of the child for responsible life in a free society" as stipulated by Article 29 of the Convention (Krappmann, 2016). It is obvious that close cooperation with children's parents is essential and required. It is essential that the curriculum is stimulating and interesting for children but also necessary that the school environment is child rights respecting.

## Critical Issues and Prospects

Even 30 years after the adoption of the Convention, there is no doubt that children still do not fully enjoy their rights. The Convention, its Committee, States Parties, and civil societies everywhere in the world are continuously confronted with unsolved, increased, and new challenges. Persistent resistance, challenges, and new and emerging dilemmas are seen as barriers to the full realization of rights. War and armed conflicts, hunger and unemployment, supremacy of the business sector, intolerance and hatred, migrations, escape from prosecution, and displacement have heavy consequences for millions of children and their enjoyment of rights. Also new developments in science and technology have massively changed children's conditions of life and growing up (e.g., reproduction medicine, endangered environments, climate change, life rhythms, nutrition, digital communication, and increased mobility, inter alia).

The first 20 years of the Convention saw progressive changes in the lives of children. As mentioned earlier, States became active in adopting or harmonizing national legislations to comply with the Convention. Constitutions were changed to include the fundamental rights of children. More resources were allocated to education, health, and social services for children. Bodies, institutions, and offices of children's commissioners were created to implement rights of children, at least in several domains. However, recent years have demonstrated how easily such a positive agenda can be frustrated and confined by austerity politics, international economic competition, or public insecurity.

In some societies, children are being viewed as violent, delinquent, or insufficiently achievement oriented, warranting stricter control and more punitive laws. One clear example of regression is the recurring debates in several countries on lowering of the minimum age of criminal responsibility and the age of marriage. Such measures misconceive that the Convention focuses on mutual respect, intergenerational dialogue, and shared responsibility in order to agree on rules of

conduct and constructive roles in family, social group, and society. This understanding highlights that the Convention is an instrument promoting the prevention of deviation and impairment of others and self.

Undoubtedly, still, the Convention is a good fundament for all efforts to be undertaken to ensure consideration of children's best interests and participation. Additional expertise and vigor, however, must be mobilized in the child rights movement to deal with the abundance of tasks and to achieve closer cooperation with other actors and agencies. A significant frame for all activities has to be the 2030 Agenda for Sustainable Development Goals (SDGs) of the United Nations adopted in September 2015, since the full realization of child rights is dependent on and also has to contribute to the implementation of the goals specified in the Agenda (see Appendix C for a list of the 17 SDGs).

Certainly, fundamental structural reforms are required, but also needed are competent and responsible people who can use the new ways of problem solving to create good life conditions for everybody. More than ever, accountability must become an integral part of State responsibility. As the saying goes, "the road to hell is paved with all good intentions." Good intentions and political declarations are necessary, but they are not enough. Actions or inactions must be measured against the promises made by the State and against its accepted human rights obligations.

The Committee of the Rights of the Child must not give up strengthening the implementation efforts of States and civil societies. In this regard, a strategic point is the dialogue with the governments. Consultations and debates between States Party governments and the Committee cannot acquire the quality of an effective dialogue when they take place every 5–10 years, when usually members of a government and the Committee have changed. More focused reviews, timely feedback, and direct responses of greater continuity are needed, which is possible only when the work capacity of the Committee is expanded. Additionally, more regional and international cooperation would be instrumental in overcoming

ing impediments, since child rights issues such as migration and child sexual exploitation are often not a national problem only.

Such improvements would be facilitated if the Convention on the Rights of the Child were to become known and well understood by every-

body who lives and works with children. School is the institution and environment which is experienced by most (unfortunately not all) young people in the world. This fact once more underlines the role of school in the endeavors to make life more free, just, and peaceful.

## Appendix A: A General Comments Adopted by the UN Committee on the Rights of the Child

No.	General Comment	Year
1	The aims of education <sup>a</sup>	2001
2	The role of independent national human rights institutions in the protection and promotion of the rights of the child	2002
3	HIV/AIDS and the rights of the child	2003
4	Adolescent health and development in the context of the convention on the rights of the child	2003
5	General measures of implementation of the convention on the rights of the child	2003
6	Treatment of unaccompanied and separated children outside their country of origin	2005
7	Implementing child rights in early childhood <sup>a</sup>	2005
8	The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, Para. 2; and 37, inter alia)	2006
9	The rights of children with disabilities <sup>a</sup>	2006
10	Children's rights in juvenile justice	2007
11	Indigenous children and their rights under the convention	2009
12	The rights of the child to be heard <sup>a</sup>	2009
13	The right of the child to freedom from all forms of violence <sup>a</sup>	2011
14	The right of the child to have his or her best interests taken as a primary consideration (Art. 3, Para. 1) <sup>a</sup>	2013
15	The right of the child to the enjoyment of the highest attainable standard of health (art. 24)	2013
16	State obligations regarding the impact of the business sector on children's rights	2013
17	The right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31) <sup>a</sup>	2013
18	Joint general recommendation/general comment no. 31 of the committee on the elimination of discrimination against women and no. 18 of the committee on the rights of the child on harmful practices <sup>a</sup>	2014
19	Public budgeting for the realization of children's rights (art. 4)	2016
20	The implementation of the rights of the child during adolescence	2016
21	Children in street situations	2017
22	Context of International Migration: States parties' obligations in particular with respect to countries of transit and destination	2017
23	Context of International Migration: General Principles	2017
24	Children's rights in the child justice system	2019

All *General Comments* can be downloaded from the webpage of the OHCHR: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11)

<sup>a</sup>Relevance to the school setting

## Appendix B: Topics of the Day of General Discussion

Topic	Year
Children in armed conflict	1992
Economic exploitation	1993
Role of the family	1994
Juvenile justice	1995
The girl child <sup>a</sup>	1995
The child and the media	1996
Children with disabilities <sup>a</sup>	1997
HIV/AIDS <sup>a</sup>	1998
10th anniversary: General measures of implementation	1999
State violence against children	2000
Violence against children within the family and in school <sup>a</sup>	2001
The private sector as a service provider	2002
The rights of indigenous children	2003
Implementing child rights in early childhood <sup>a</sup>	2004
Children without parental care	2005
The right of the child to be heard <sup>a</sup>	2006
Resources for the rights of the child – Responsibility of states	2007
The right of the child to education in emergency situations <sup>a</sup>	2008
Children of incarcerated parents	2011
The rights of all children in the context of international migration	2012
Digital media and children's rights <sup>a</sup>	2014
Children's rights and the environment <sup>a</sup>	2016

All recommendations issued on the base of the debates in the *Days of General Discussion* can be downloaded from the webpage of the OHCHR: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays.aspx>

<sup>a</sup>Relevance to the school setting

## Appendix C: Sustainable Development Goals

Goal number	Goal
1	No poverty
2	Zero hunger
3	Good health and Well-being
4	Quality education
5	Gender equality
6	Clean water and sanitation
7	Affordable and clean energy
8	Decent work and economic growth
9	Industry, innovation and infrastructure
10	Reduced inequalities
11	Sustainable cities and communities
12	Responsible consumption and production
13	Climate action
14	Life below water
15	Life on land
16	Peace, justice and strong institutions
17	Partnerships for the goals

The *Sustainable Development Goals* can be found and downloaded from the webpage of the UNDP: <http://www.undp.org/content/undp/en/home/sustainable-development-goals.html>



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