

# Coming of Age in a World of Diversity?

An Assessment of the UN Convention on the Rights of the Child

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# **Coming of Age in a World of Diversity? An Assessment of the UN Convention on the Rights of the Child**

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Inaugural Lecture delivered on 18 November 2010, upon the acceptance of **the Endowed Chair of International Law and Development**, established by the EUR Trust Funds, at the International Institute of Social Studies, Erasmus University Rotterdam.



## Prelude<sup>1</sup>

An inaugural lecture is an excellent occasion to present to a diverse audience a topic of general academic and personal interest. The designation of my professorial chair is deliberately rather general, which deserves some explanation. International law and development has been and will be my terrain of work. International law is a normative framework that originally was designed purely to govern the relations between states. However, as explained so well by Thomas Frank (1995: 5), over time international law:

has matured into a complete legal system covering all aspects of relations among states, and also, more recently, aspects of relations between states and their federated units, between states and persons, between persons of several states, between states and multinational corporations, and between international organizations and their state members.

Development here is to be understood in a very broad sense as an objective, concept and process that is 'dynamic, pluriform and comprehensive, and comprises economic, social, cultural, political and any other relevant dimensions' (Arts, 2000: 10). Development issues and challenges present themselves and/or require action not only in and by so-called developing (or Southern) states, but also in and by so-called developed (or Northern) states. Qualifications such as 'developed' and 'developing' should, however, be used with considerable caution as often the one is present within the other: there are elements of a (global) South in the North and the other way around.

The terrain covered by my professorial chair calls for a critical academic examination of the following, interrelated and mutually reinforcing fields and topics:

- the role of international law as an instrument of change and/or constraint for realizing equitable development and human rights around the world;
- the role of international organizations and institutions for realizing the right to development, with a special emphasis on the extensive development cooperation policies of the European Union;
- the contents and implications of (human) rights-based approaches to development;
- the role of global human rights instruments in framing the institutionalization of specific national action for realizing development, equity and human rights on the ground, with, at least initially, a special emphasis on the track record of the United Nations Convention on the Rights of the Child.

Obviously this menu of fields and topics still leaves considerable space for choice.

When selecting the topic of this inaugural address I opted to zoom into the United Nations Convention on the Rights of the Child (CRC), for three main reasons. First, at present, across so-called developed and developing countries, pertinent societal and developmental issues arise around children and youth in particular. These issues need to be addressed in child and youth sensitive ways. As will be explained below, the Convention provides a relevant framework for doing so. Second, the CRC is a prominent example of a global human rights regime that both seeks to confront and address development challenges, and accordingly provides space for contextual interpretation and accommodation of the diverse circumstances in which children's rights have to be implemented. The CRC is the most widely ratified global UN human rights instrument, with 193 states parties at present; that is all except Somalia and the United States of America. The Convention has triggered many interesting and relevant implementation efforts, and has generated an unprecedented level of commitment among both state and non-state actors. The CRC experience is therefore worth studying in order to deepen our understanding of the particular role of international law instruments for development and positive social change, as well as the constraints that may arise in the struggle towards the realization of children's rights. The third, and more personal set of reasons for zooming into the CRC realm is that it is one to which, over the years, I have become particularly committed, personally and academically. This commitment has been nourished, deepened and enriched by the considerable teaching on children's rights that I have done in the Institute of Social Studies and by work done on projects and publications. The field – and other – exposure that I have had to child rights issues in, among others, Palestine, the Philippines, South Africa and Sudan have shown me that, even in very difficult circumstances, child rights-based approaches have much potential to help improving the quality of children's lives. In the years to come, I look forward to finding opportunities for developing a more pronounced line of research activities on the Convention on the Rights of the Child and its role in processes of development.

## **1. Introduction: The UN Convention on the Rights of the Child at 21**

On 20 November 2010 the United Nations Convention on the Rights of the Child (CRC) will turn 21 years old, reaching a phase which – across several countries and cultures – is regarded as one of full legal capacity and, at least in a formal sense, full adulthood.<sup>2</sup> This *coming of age* is therefore an appropriate occasion to assess the performance record and maturity of the global human rights treaty which has been hailed by so many for its achievements. These include the United Nations Children’s Fund (UNICEF), which in 2009, on the occasion of celebrating the 20th birthday of the United Nations Convention on the Rights of the Child referred to the Convention as a ‘revolutionary treaty that gave rights to all children everywhere’ (UNICEF, 2009a).

After a brief reflection on the state of children’s rights in the world today, this inaugural address elaborates an argument that the qualification ‘revolutionary’ is indeed justified in relation to the CRC. It will map out the extent to which this global human rights instrument has contributed to the aim of universalizing children’s rights and explain what has been involved in this process. The ratification record and the content of the CRC, and the impact that it has had on legal systems will also be reviewed. This impact in turn often triggered and/or strengthened policy-making efforts and various kinds of grassroots interventions in children’s lives all over the world.

All of this will provide ample material for making an assessment as to whether the Convention does indeed live up to the expectations linked to its coming of age, expectations of now being a fully-developed human rights regime. Has the CRC become a fully mature instrument in the sense of being adequately equipped to face the many challenges that exist for children’s rights in our world today? Is it a relevant and useful global international human rights instrument in a world that is so strongly characterized by economic, social, political and cultural diversity? Is it a fitting tool for addressing the persistent inequalities that determine the situation of children in different parts of the world, with dramatic disparities both between and within different states?

## **2. Children’s Rights World-Wide: Progress, Disparities and Regression**

To set the context of this inaugural lecture, it would be appropriate to present the current state of children’s rights in the world at the outset. However, this is not as simple as one might think at first instance. Assessing and measuring human rights is a complex thing to do, for both practical and methodological reasons. Primarily on the practical side, relevant statistical data are often not available, unreliable, incomplete and/or lacking disaggregation, notably by age. Baseline information is often missing as well, which makes it difficult to develop credible assessments of whether or not human rights records have

improved or deteriorated over time. On the methodological side, complications may arise in defining the human rights to be measured and in developing indicators. Most human rights problems have multiple causes, some of which interact dynamically with others. This makes human rights situational analyses and other measuring exercises complex and ambiguous undertakings. In addition to the problems of establishing direct causal linkages, it is also extremely difficult to attribute particular human rights outcomes or effects to specified actors or actions. Finally, the process involved in achieving the full realization of human rights is rather lengthy. This is not easily captured within the time constraints to which most human rights measuring exercises will be subjected.<sup>3</sup>

All of these complicating factors frequently stand in the way of achieving fully reliable and/or integral human rights measurements, as also addressed by Landman and Carvalho (2009). All too often, the content of such measurements is driven by value judgements or preconceived ideas about a given situation, standards or issues at stake; existing political agendas or formal organizational mandates or priorities; satisfaction of donor requirements; or other, rather subjective, if not overtly biased considerations. Specifically as regards children's rights, conceptual confusion between child well-being, child welfare or children's needs and child rights has often barred accurate assessments of the implementation of children's rights, including the fulfilment of children's rights obligations (Carvalho, 2008: 546; Save the Children UK, 2008).<sup>4</sup> All of the above-mentioned factors help to explain why there are relatively so many different evaluative tools for measuring human and also children's rights.<sup>5</sup>

#### *Progress for Children's Rights*

In light of the above, it should be of no surprise that it is impossible to give an unambiguous account of the state of children's rights world-wide. Instead, various readings of the situation – both positive and negative – are possible and can be substantiated. On a positive note, the following random selection of different kinds of encouraging progress made on realizing children's rights presents a somewhat hopeful picture.

According to combined UNICEF, World Health Organization, World Bank and UN Population Division data, the number of deaths of children under the age of 5 declined by 28 per cent during the period 1990-2008. The rate of decline increased from 1.4 per cent in the 1990s to 2.3 per cent in the period 2000-2008 (UNICEF, 2009b). Notwithstanding these positive indicators, in 2010, scientific evidence even showed that the figures thus far used by UNICEF on both child and maternal mortality rates had presented an overly pessimistic picture. Through using larger data sets and new and more accurate calculation methods than before, medical researchers found out that in 2010, 7,7 million children will die before the age of 5, rather than the UNICEF estimated number of 8,8 million children (Knoll Rajarathan, 2010). Although this figure obviously is still unacceptable, as is the case for maternal mortality rates, according to some

of the researchers involved, the 'new evidence suggests there is much greater reason for optimism than has been generally perceived, and that substantial decreases ... are possible over a fairly short time' (Hogan et al., 2010: 1619).

Equally, in the field of education, impressive progress has also been reported. According to UNESCO's latest *Education for All Global Monitoring Report* (2010:1): the 'number of children out of school has dropped by 33 million worldwide since 1999'; 'South and West Asia more than halved the number of children out of school – a reduction of 21 million'; the share of girls out of school declined from 58 to 54 per cent, and 'the gender gap in primary education is narrowing in many countries'.

In West African Mauritania, where an estimated 70 per cent of girls undergo seriously harmful genital cutting, in January 2010 a group of Muslim religious leaders signed a 'fatwa' (religious decree) banning this traditional practice.<sup>6</sup>

In the Netherlands, in 2010 the Dutch branches of Defence for Children International and UNICEF (2010: 5) reported numerous positive achievements for the realization of children's rights, including: a reduction in the waiting lists for youth care, the appointment of a children's ombudsman and the right of children to be provided with assistance by a lawyer or person of confidence during a police hearing.

#### *Lack of Progress for Children's Rights and Deepening Disparities*

Despite these positive developments, obviously still many sobering facts about child survival and development in the world remain, including the following. According to UNICEF, 'Every day about 24,000 children under the age of 5 do not survive' (UNICEF, 2010: 4). The two leading causes of under five child mortality are pneumonia and diarrhoea (UNICEF 2009b), both easily preventable and curable diseases. Shocking regional differences also exist. A 'child born in sub-Saharan Africa faces an under-five mortality rate that is 1.9 times higher than in South Asia, 6.3 times higher than in Latin America and the Caribbean and 24 times higher than in the industrialized nations' (UNICEF, 2010: 7).

While in many countries across the globe encouraging progress can be reported in terms of the health situation and development potential of children, many others lag behind. This is especially the case among the least-developed countries of sub-Saharan Africa and South Asia. According to UNICEF research (2010:8), poverty, gender exclusion and geographic isolation still are three major determinants for the extent to which children's rights are likely to be realized.

A very important starting point for the realization of children's rights is birth registration. Chances for protection, provision and participation in official circles are usually much more difficult to obtain for a child who does not exist in official records. Nevertheless, in the developing world only half of the under five

year old children have their births registered (UNICEF, 2010: 44). Even within countries significant differences occur in birth registration levels. For example, in India, overall national birth registration prevalence is 41 per cent. However, in the area of India with the highest birth registration level, 95 per cent of the under five year olds are registered, while in the area with the lowest level only 6 per cent of them are (ibid.).

In the so-called developed world, grave child rights issues exist as well. The prevalence of child abuse and the treatment of Roma children across Europe are serious cases in point (on the latter see e.g. Amnesty International (2010); UNICEF (2007a); Child Rights Information Network (2008) and Willers (2009)).

### *Regression*

Deeply troubling trends are also unfolding in some developed states that are confronted with tough – although largely justified – international criticism on the human and children’s rights implications of their government’s policies, especially in the realm of immigration and the treatment of so-called illegal or undocumented migrants. For example, in the Netherlands the situation of minors who have no residence permit is worsening. Ever more of these children are detained. Family reunification requests are increasingly rejected. The number of minors without a residence permit for the Netherlands that stayed in institutional care for longer than five years has increased considerably (Defence for Children-ECPAT Nederland, 2010: 5). In recent years, various authoritative international bodies such as the United Nations Committees on Racial Discrimination, Torture and the Rights of the Child, the European Committee of Social Rights and the European Court of Justice have criticized and at times harshly condemned certain elements of Dutch immigration policies (Arts, 2010).

Rather than taking such international criticism to heart and embarking on swift action to remedy the situation and bring it into conformity with the state’s international human rights obligations, the current Dutch government reacts in a hostile manner and persists in its behaviour. The September 2010 Coalition Agreement that formed the basis for the formation of a new government in the Netherlands (VVD-CDA, 2010), announced an intensification of the state’s return and deportation policy, in which families with children ‘will receive priority’ (VVD-CDA, 2010: 32). In relation to unaccompanied minors too, the Agreement states that ‘every effort will be made to effect their return’ (VVD-CDA, 2010: 29). The logic followed by the current Dutch government seems to be that, as children relatively quickly build up firm rights, as recognized across various international human rights instruments and as confirmed especially in European and increasingly also in national Dutch jurisprudence (Arts, 2010), they have to be forced to return to their country of origin or previous place of residence as soon as possible.

On a more general note, the Coalition Agreement contains no less than 11 references to new policy initiatives which are likely to bring about a clash with existing international obligations of the Netherlands, especially in the area of immigration. Rather than implementing those obligations, the new government has assigned itself the tasks of renegotiating, or seeking amendment of international obligations that are laid down in relevant treaties and EU Regulations. Where this will not yield results, as far as bilateral treaties are concerned, these will be terminated.<sup>7</sup> These attacks on international law are disturbing expressions of the changed climate among leading political parties and politicians in the Netherlands as regards the rule and role of international law.

This presentation of selected achievements in realizing children's rights, and of more than a few corresponding challenges, indicates that there is enormous diversity between and within countries in all parts of the world. While for some aspects of children's lives impressive progress has been achieved, for others disparities have deepened. In yet other areas one can even see regression taking place.

### **3. Universalizing Children's Rights? Theoretical Perspectives**

The next part of this inaugural lecture maps out the extent to which the Convention on the Rights of the Child has contributed to the aim of universalizing children's rights, in the sense of their true acceptance and implementation over time. Both theoretical and practical perspectives on this matter will be explored. According to the Dutch Advisory Council on International Affairs, universalization is the process 'by which human rights come to be realised' (2008: 10). According to this conceptualization, universalization:

should reduce the gap between principles and practice and covers a number of separate actions and processes that should take place within a given cultural, religious, social and political context: a) increasing knowledge and awareness of human rights ...; b) popular acceptance of human rights as a relevant way of looking at certain issues; c) the implementation and legal enforcement of human rights norms; d) their mobilisation in addressing social concerns; and e) the actual realisation of human rights by all economic, political and legal means (ibid: 11).

This position reflects the state of the art of the debate about the universality and/or relativity of human rights. The former concept denotes the thought that human rights are ideas, norms and values that are globally applicable across cultures, economies, geographies, gender and so on. Relativism denies the general applicability of human rights, or at least automatic applicability, by arguing for example that every society is 'a morally self-contained whole' (Parekh, 2005: 285) as a consequence of which certain features of human rights ideas, norms and

values might not apply. Relativism has found its strongest expression in connection with cultural practices and identities.

In the late 1980s and throughout the 1990s the universality-relativism debate in international relations was fierce, inviting qualifications such as ‘a trench war between “universalists” and “relativists” ’ (Viaene and Brems, 2010: 205). Since then, the theoretical debate about the universality and relativity of human rights has settled on a solid middle-ground position between the two notions – of neither taking normative universality in human rights for granted, nor abandoning it ‘in the face of claims of contextual specificity or cultural relativity’.<sup>8</sup> This position is reflected in international policy documents, human rights instruments, among practitioners and in academia which introduced terminology such as ‘pluralist universalism’ (Parekh, 2005: 286) or mitigated relativism (see also Marks and Clapham, 2004; Advisory Council on International Affairs, 2008; and Addo, 2010). The process of finding a middle-ground was stimulated by the inescapable factual reality that in the end all human rights norms will have to be applied and realized in a particular economic, historical, social, political and cultural context.

Regardless as to whether or not a particular normative framework explicitly allows for contextualization, which could, for example, lead to the setting of different priorities across different contexts or to the formulation of different levels of human rights obligations, the fact of the matter is that the particularities of that context inevitably influence the scope and direction of implementation efforts. For example, human rights consciousness, knowledge, data and financial resources are all important prerequisites for a competent recognition of human rights problems and for developing adequate responses. While it is important to consider context when applying international human rights instruments to specific states and to recognize the need for giving space for diversity, indicating the boundaries to an accommodation of diversity is extremely difficult and complex.<sup>9</sup> From a purely pragmatic point of view, the utility of doing so might even be questionable. And yet, international law has recognized a core set of universal norms and implementation principles that should be upheld at all times and everywhere.

Across many circumstances, implementation capacity, in the first place, is very much a matter of political will. Secondly, this political will will have to combine with a country’s technical, financial and other required capacity, knowledge and skills. Dialogue and pragmatism, or what Michael Addo (2010: 630) has called a ‘policy-approach to issues concerning cultural practices and international human rights obligations’, seem to be reasonably effective courses of action. According to Addo (2010: 601 and 610), tensions between cultural diversity and universal respect for human rights can, and must, be managed or proactively resolved. He suggested that the United Nations human rights treaty bodies, especially in the state reporting procedures, have found an appropriate way for

performing this task through using 'a legal approach in which cultural diversity and universal respect for human rights complement and reinforce each other' or even adopting 'a consistent approach on matters of culture and cultural practices which seeks to reconcile the diversity of cultural practices with the guarantees set out in human rights treaties' (ibid.: 601-602). Accordingly, Addo suggests that 'the treaty bodies do well to avoid the polemicism that has generally characterized the bulk of the scholarly debate' and 'they aim to strike a credible balance between the universal ideals of human rights and the reality of their implementation in different national and cultural contexts' (ibid: 626).

In more general terms, a process approach<sup>10</sup> which conceives human rights obligations as contextual and as to be realized progressively, and culture and the economy as dynamic, and thus changeable, seems to be an important key to a successful balancing of the universal and the relative, or the universal and the context. An example may be found in efforts to ban the practice of female genital cutting through the introduction of alternative rites of passage from girlhood to womanhood.<sup>11</sup> In any case, the reconciliation of human and children's rights notions and the particularities of the context in which they arise require one to actively forge connections between them. This is referred to by some, including Merry, as 'translation', 'vernacularization' or 'localization' of international human rights standards. While this will rarely be an easy process, at the same time, across contexts, there will always be entry-points for making connections that are required and desirable, at least from the point of view of those wishing to implement international human rights instruments (Merry, 2006; Blanchet-Cohen and Fernandez, 2003; Shepler, 2005; Murray, 2010). But, obviously there is no guarantee for success. According to Merry (2006: 40):

Translators are not always successful. New ideas and practices may be ignored, rejected, or folded into pre-existing institutions to create a more hybrid discourse and organization. Or they may be subverted: seized and transformed into something quite different from the transnational concept, out of the reach of the global legal system but nevertheless called by the same name.

Occasionally, the adoption of a global human rights instrument may serve as an additional trigger for the creation of more specific, and perhaps contextual, regional standards. It is widely recognized that the CRC drafting process has served as such a trigger for the African Charter on the Rights and Welfare of the Child (ACRWC) adopted in 1990 by the then Organization of African Unity.<sup>12</sup> In some respects, such as the definition of 'child' or recruitment of child soldiers, the ACRWC codified more stringent formulations of children's rights than the CRC did. However, on other issues, such as (restrictions on) political rights, it clearly settled for a lower standard (Arts, 1993). These reflections raise relevant, but so far not formally addressed aspects of incompatibility of regional and global children's rights standards.

Another theoretical aspect which underpins the idea that there is a workable middle-ground between universal and relative understandings of human rights lies in the acknowledgement that human rights instruments are in most cases not absolute in their conceptualization and in their application. Most instruments allow for temporary derogations in order to protect certain prescribed interests such as national security, public health or order. Most also allow states parties to opt out of certain obligations through registering reservations.<sup>13</sup> Both courses of action restrict the application of certain elements of international human rights instruments for some particular states and thus provide space for accommodating diverse interests, needs and understandings.

#### **4. Universalizing Children's Rights? Practical Perspectives on the Accommodation of Diversity**

In academic contributions, especially in anthropological literature, the CRC has regularly been labelled as being a western invention and/or imposition, or a global human rights instrument unfit for the daily realities in developing countries. Such criticisms typically portray the CRC as over-protective of children, idealizing childhood as 'a time of play and training for adulthood' (Bentley, 2005: 117), outlawing the experience of childhood in developing countries or 'infantilizing' the South (ibid.; Valentin and Meinert, 2009; Shepler, 2005: 205). These critiques often lack a nuanced, and at times in-depth, knowledge of the CRC regime and its implications. For example, according to Vanessa Pupavac (2001: 101): a 'vision free from labour and other (adult) responsibilities is a luxury that developing countries which have not experienced the economic development of Western Societies are unable to universalise in their current circumstances.' In addition:

the institutionalizing and globalizing of Western models of childhood under the Convention means that the experience of childhood in developing countries is outlawed' and thus 'Southern societies through the failure to comply with Western childhoods become permanent objects of outside intervention. In other words, the discourse on children's rights infantilizes the South (Pupavac, 1998: 518).

Savitri Goonesekere, in her book *Children, Law and Justice: A South Asian Perspective*, is clearly an exponent of the counter-position. In her view:

The important point is that cross-cultural influences have taken place, and there are sometimes common roots in the problems that societies face in a given period of their histories. Asian children today are struggling as a result of a common legacy of authoritarianism and exploitation ... The international norms on child rights are thus as relevant for children in developing countries as they are for children in the Western world ... (Goonesekere, 1998: 22).

Many others support her universalist position. According to Sonja Grover (2010: 432): 'Both Western and non-Western children are in dire need of those protections and they have equal entitlement to security of the person'. In her view (ibid.: 441) there can be 'no more profound way in which to "infantilise the South" than to remove the State obligation to protect the rights of children in the developing world.' She rightly noted that implementation difficulties are no justification for denying the universality of the substance of the CRC. This, however, does not mean that the exact features of children's rights and the obligations to realize them, including the implications of the Convention on the Rights of the Child, will be exactly the same across all contexts.<sup>14</sup>

Rather than simply accepting the above-mentioned criticisms and relativist positions on the CRC, which result in arguments in favour of exceptionalism that carry great risks for the realization of human rights in general and children's rights in particular, another approach is possible. This approach recognizes and works within the space that the CRC provides for the accommodation of diversity in the interpretation and implementation of (at least a good part of) its content. Such an approach, which will be further sketched below, is likely to bring about more useful and constructive outcomes than an approach of strict relativism would. In addition, it is strongly underpinned by the practice record of the Convention. As previously indicated, when attempting to realize children's rights – both in developing and developed countries – one is confronted with real dilemmas, challenges and constraints posed by economic, cultural and other influential realities on the ground. While some elements of the CRC may certainly have roots in purely western concepts, as arguably is the case for the general principle of the 'best interests of the child',<sup>15</sup> on the whole the Convention is deliberately accommodating of diverse implementation contexts and relatively flexible. In the words of Abdullahi An-Na'im (in Alston, 1994: 62): the CRC 'reflects sensitivity to the impact of contextual factors and cultural considerations on the norms it purports to set'.

The CRC's sensitivity to context and contextual implementation did not occur by chance. Rather, it was an outcome that was consciously striven for during the drafting process. The Working Group that was in charge of this process explicitly tried to secure maximum participation of United Nations member states in the process. In the last substantive CRC negotiation round in November-December 1988, 19 western, 6 eastern European, 15 Asian, 9 African and 8 Latin American states took part in one or more of the sessions involved (Johnson, 1992: 96). Five issues had already been identified as the subject of serious 'differences arising from cultural, regional, religious, or socio-economic cleavages' that stood in the way of finalizing the Convention text. These five issues were: freedom of religion, inter-country adoption, the rights of the unborn child, harmful traditional practices and duties of children towards their parents. On each of these issues, a compromise was found that responded to the different positions held by participating states. According to Johnson, the 'result was a

document that was arguably richer in values than if a narrower perspective had been more rigorously followed' and 'cross-cultural barriers have not proven to be a significant impediment to achieving consensus' (1992: 112 and 113).<sup>16</sup>

*Accommodating Diversity: The Substantive Provisions of the Convention on the Rights of the Child*

The substance of the CRC's sensitivity to context contains different features. First, the very determination of the personal scope of application of the CRC is left somewhat open to context. Article 1 states that a child covered by the Convention is 'every human being below the age of 18 years, *unless, under the law applicable to the child, majority is attained earlier*' (emphasis added). While, on the one hand, it is surprising that this definition, at the heart of the Convention, was left relatively open, on the other hand, by doing so the CRC is in line with the remarks made earlier about the arbitrariness of age limits.<sup>17</sup> While article 1 provides room for national law to restrict the scope of application of the Convention by regulating a lower formal age of majority, which for example could be appropriate in countries where the voting age is also below 18, the threshold of requiring a national law is likely to be high enough to avoid an all too easy abuse of this escape clause.

Article 3 of the CRC posits the 'best interests of the child' as a primary consideration 'in all actions concerning children', which turns it into a general principle to be applied in all efforts made to implement the Convention. According to UNICEF (2007c: 23), 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.' The content of the best interests of the child was deliberately left undefined at the central level of the Convention. The underlying reason for this lack of definition was to allow for the best interests principle to provide room for contextual application, and for it to be interpreted and applied according to the detailed situation of one or more particular children, in accordance with the specific features of national and local circumstances and the nature of decisions to be made. In other sections of the Convention, notably in articles 5 and 12(1), 'evolving capacity' and 'age and maturity' of the child are presented as factors that determine, respectively, parental guidance in exercising children's rights and the freedom of expression. These factors all provide ample space for bringing in contextual elements, both in relation to the child her or himself and in relation to her or his everyday surroundings.

Other CRC provisions clearly show sensitivity to context in relation to specific children's rights. These include the following. Article 5, which addresses parental responsibilities, rights and duties, acknowledges that children may grow up in diverse family or community settings. It defines a wide circle of possible caretakers of children, including both nuclear and extended families and members of the community 'as provided for by local custom, legal guardians or other

persons legally responsible for the child'. Such caretakers can provide 'appropriate direction and guidance' to the child in exercising her or his rights. The word 'appropriate' again provides ample space for accommodating diversity as it requires consideration of what would be suitable in a given context. It is used in many other CRC provisions as well, often as a qualification for measures to be taken.<sup>18</sup>

Article 20(3), on alternative care, shows sensitivity to legal pluralism and to the fact that certain concepts known in one legal system, such as adoption, may not exist in another. Therefore, the CRC does not prescribe one or more particular forms of alternative care for children, but presents a non-exhaustive list of foster placement, *kafalah* as in Islamic law, adoption and institutional care options. Furthermore, the child's 'ethnic, religious, cultural and linguistic background' must be regarded by the state when 'considering solutions'. Article 22(1) on adoption starts out with a reference to states parties 'that recognize and/or permit the system of adoption'.

Cultural particularities of children's lives are addressed in various articles. These include article 17 on the mass media, information of cultural benefit and 'the linguistic needs of the child who belongs to a minority group or who is indigenous'; articles 30 and 31 which respectively address the protection of minority or indigenous children and the general child right to participate in cultural life; article 23(3) on supporting the cultural development of disabled children; and article 29 which provides that education shall be directed to 'development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from he or she may originate, and for civilizations different from his or her own'.

Article 32 of the CRC deliberately does not ban child work, but seeks to protect children from economic exploitation and from labour that interferes with their education, health or personal development. While the Convention leaves the door open to non-exploitative and non-harmful work done by children, it also contains an assignment to combat exploitative and harmful child labour. Meanwhile, article 36 bans all exploitation that would harm 'any aspects of the child's welfare'.

Other examples of CRC provisions that provide space for accommodation of context and diversity in the application of specific child rights are:

- article 23(2), which refers to assistance for disabled children that is 'appropriate to the child's condition and to the circumstances of the parents or others caring for the child';

- article 24(1), which prescribes the highly contextual ‘highest attainable’ standard of health;
- article 40, which refers to the promotion of ‘the child’s sense of dignity and worth’ when treating children in conflict with the law. It also calls for diversion measures, that is for not resorting to criminal law responses, ‘whenever appropriate and desirable’. The ‘circumstances’ of children in conflict with the law are twice referred to as elements to be considered when determining measures to be taken;
- the Convention also contains many references to national laws as spaces for elaboration of certain specific requirements or procedures.<sup>19</sup>

Another way in which the Convention seeks to accommodate diversity is in assigning differentiated implementation obligations, essentially determined by the implementation capacity of states. Acknowledging economic diversity and incorporating that into the formulation of state obligations under the CRC is a crucial addition to the slightly more traditional recognition of cultural diversity. According to article 4, states parties shall take ‘all appropriate ... measures for the implementation of the rights recognized’ in the CRC. However, as regards economic, social and cultural rights, states shall do so ‘to the maximum extent of their available resources, and, where needed, within the framework of international cooperation’. Care for disabled children is also to be provided subject to available resources, and state support for an adequate standard of living is subject to ‘national conditions and ... means’. Higher education, in turn, is supposed to be made available on the basis of ‘capacity by every appropriate means’ (see arts. 23(2), 27(3) and 28(1)).

This proposition of considering ‘available means and resources’ acknowledges the stark differences between states in implementation capacity, often related to their level of (economic) development, without abandoning the imposition of state obligations to mobilize resources for realizing children’s rights. For example, the UN Committee on the Rights of the Child, in its practice of scrutinizing state parties’ reports and engaging in a dialogue with the reporting government, has developed the notion of what one could call the ‘best available budget’ as a test for government commitment and determination (see e.g. Hodgkin and Newell, 2007: 61-63, and Robinson and Coetzee, 2005). Accordingly, in order to be seen to be meeting their CRC obligations, all governments will have to provide credible arguments substantiating that they have mobilized the best available budget within their circumstances.

Other CRC provisions refer to realizing child rights ‘to the maximum extent possible’, for example in relation to a child’s right to survival and development – addressed in article 6(2) – 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. The CRC articles on disabled children, health care and education – contained respectively in articles 23(4), 24(4) and 28(3) – prescribe that particular account shall be taken of the needs of developing countries. In the context of health and education, the obligation to promote and encourage international cooperation is also specified. The implication of these references to the needs of developing countries and to international cooperation is that, as a consequence of the CRC, those states that are in the position to assist others through international cooperation should do so (see also Vandenhoe, 2009 and Wabwile, 2010). According to the UN Committee on the Rights of the Child (2003: 14 para. 61) in its General Comment No. 5:

the Convention should form the framework for international development assistance related directly or indirectly to children and ... programmes of donor States should be rights-based. The Committee urges States to meet internationally agreed targets, including the United Nations target for international development assistance of 0.7 per cent of gross domestic product.

In the past, certain countries that used to be forerunners in the field of development cooperation, such as the Netherlands, indeed developed initial policies on CRC related international cooperation (Netherlands Ministry of Foreign Affairs, 1994). Unfortunately these efforts largely withered away over time.<sup>20</sup>

A further indication that the CRC seeks to engage with diversity and context is related to both the composition and the mandate of the UN Committee on the Rights of the Child, the body charged with monitoring the implementation records of states parties to the Convention. According to article 43(2) of the CRC, the Committee's membership shall display an 'equitable geographical distribution' and consideration of 'the principal legal systems'. According to article 45, the Committee has procedural means to encourage international cooperation in the form of liaising between actors that could support a particular state's implementation efforts. In the regular consideration of state reports, the Committee has developed a practice of emphasizing the identification of obstacles to the full realization of children's rights and of ways to overcome them. Again, all these measures open the door to full contextualization.

*Pros and Cons of Accommodating Diversity in the Convention on the Rights of the Child*  
All in all, the Convention on the Rights of the Child provides many entry points for a contextual application of its provisions. This makes it a global human rights instrument that can have, and has, relevance across many diverse situations and countries. The down-side to this openness and flexibility is that a fair amount of interpretation and expert knowledge of the countries involved may be required in order to apply the Convention to concrete situations. This may lead states to regarding these flexible features of the Convention as open-ended escape clauses. In relation to the non-specificity of article 32 on child

labour, Kristina Bentley (2005: 111) remarked that ‘the problem is the hugely relative nature of this, and other provisions of the CRC, and it is this inability to lay down any standards at all that I would argue undermine the relevance of their inclusion in the CRC as universal children’s rights’. Similarly, the deliberate indeterminate nature of general CRC principles such as that of the best interests of the child, could, according to Philip Alston (1996:2), be seen by some ‘as a potential “Trojan horse” which will enable cultural considerations to be smuggled into the children’s rights domain and will subsequently undermine the basic consensus that the Convention reflects.’ According to Abdullahi An-Na’im (in Alston 1994: 63): ‘It could be argued ... that flexibility and recognition of diversity may either hide an unbridgeable normative schism or lead to a slippery slope of persistent indecision and confusion.’ However, as addressed earlier, despite the risks involved, it is very clear that contextual implementation and accommodation of, especially, cultural and economic diversity is an unavoidable feature of the Convention and even holds the key to a feasible and constructive implementation of the Convention on the Rights of the Child.

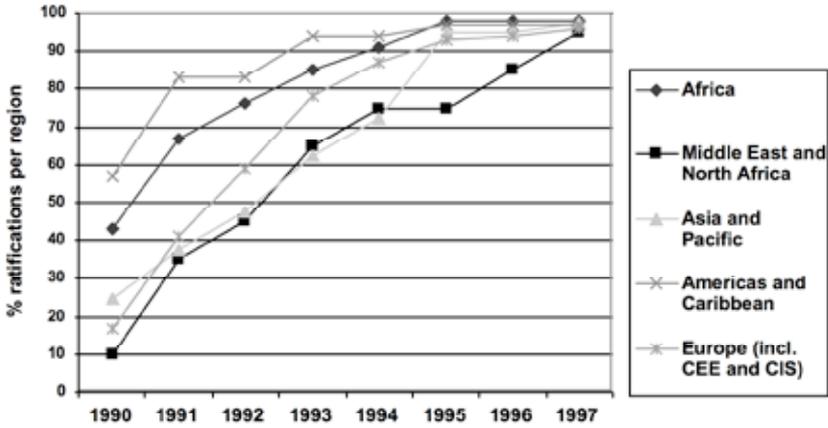
*The Empirical Record of Commitment to the Convention on the Rights of the Child*

The relevance of the contents of the CRC across diverse contexts is underlined by the empirical record of nearly universal ratification, by all states except Somalia and the United States of America. This record was achieved in the relatively short time-span of less than a decade. By any standard of global human rights treaty ratification this is certainly impressive. In the context of the above-mentioned criticisms of alleged western and/or cultural biases in the Convention, it is interesting to explore the regional trends that have emerged in relation to ratification of both the Convention itself and the two additional protocols, usually referred to as ‘Optional Protocols’, that were adopted in 2000 and expand or tighten the CRC regime in relation to issues concerning the sale of children, child prostitution and pornography, and children affected by armed conflict. Obviously one should realize that ratifications as such, even if registered without any reservations whatsoever, are not necessarily a reliable indicator of full state support for the treaty involved. Further, ratifications do not necessarily improve the child rights records of the states involved. Certainly, many serious violations and instances of non-fulfilment of children’s rights persist across the large majority, if not all, states that have ratified the Convention. These legitimate concerns notwithstanding, the very fact that the Convention, with 193 ratifications, is the most widely ratified human rights treaty in the world remains a major achievement.

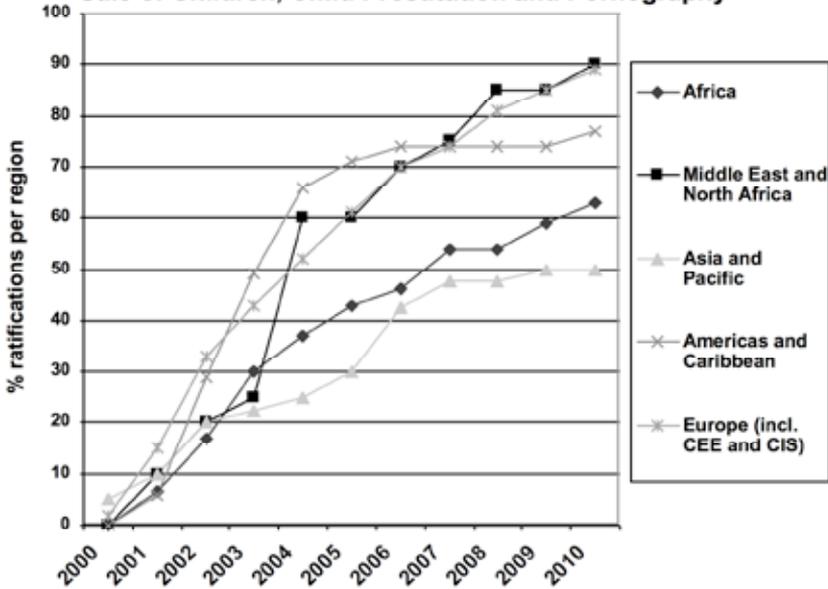
Chart 1<sup>21</sup> presents the trends in ratification per centages among the various regions of the world in the first seven years of the CRC’s existence. Statistically, the Americas and the Caribbean, and Africa consistently scored higher in terms of CRC ratification per centages than Europe did.<sup>22</sup> 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.

**Chart 1: Ratification Trends CRC**



**Chart 2: Ratification Trends CRC Optional Protocol Sale of Children, Child Prostitution and Pornography**



Charts 2<sup>23</sup> and 3 reveal the trends in the Optional Protocols' ratification per cent-ages among the various regions of the world in the period 2000-2010. Here, a dif-ferent picture emerges than that of the ratifications of the Convention itself. In re-lation to the Optional Protocol on the Sale of Children, Child Prostitution and Pornography, the European region and the Middle East/North African region both show a steadily upward trend and on 15 October 2010 had achieved ratification rates of, respectively, 89 and 90 per cent. Africa's ratifications steadily in-creased to a level of 63 per cent, whereas in the course of the second half of the decade the ratifications of Asia and the Pacific and of the Americas and the Caribbean levelled off at rates of, respectively, 50 and 77 per cent.

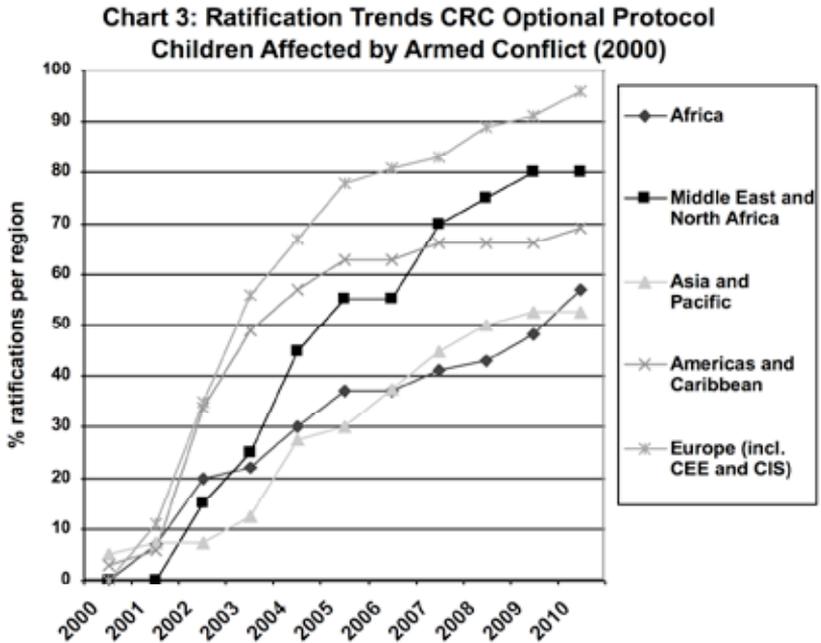


Chart 3<sup>24</sup> reveals that, as regards the ratification trends concerning the Optional Protocol on Children Affected by Armed Conflict, the picture is similar to that of the other Optional Protocol. Europe and the Middle-East/North African region top the list with ratification rates of, respectively, 96 and 80 per cent. Africa's ratifications steadily increased to a level of 57 per cent whereas in the course of the second half of the decade the ratifications of Asia and the Pacific and of the Americas and the Caribbean stabilized at rates of, respectively, 52.5 and 69 per cent.

It is nearly impossible to explain the differences in the above-mentioned trends in the ratification of CRC and its Optional Protocols in detail. However, the empirical record on ratification of the CRC itself does show very clearly that, on the whole, there is not much evidence to suggest that non-western or developing states would necessarily have greater hesitations in committing to the Convention than western or developed states. By 1997 all five regions had achieved ratification rates of 95 up to 98 per cent. For the Optional Protocols, however, it is clear that Africa and the Asia-Pacific region lag behind the rest of the world.

The numerical CRC ratification record has to be qualified for the extent to which states that ratified the Convention have registered reservations that annul the application of certain of its provisions. A large number of states indeed recorded reservations. Carvalho (2008: 546) counted 64 of them in May 2006. These reservations either meant to exclude the application of specific CRC articles to specific states,<sup>25</sup> or registered very broad escape clauses from the Convention altogether. Examples of the latter consisted of statements that the state involved considered itself not bound by CRC articles 'incompatible with its religion and its traditional values' (Djibouti); 'inconsistent with the Islamic sharia' (Qatar); or conflicting with its Constitution (Tunisia and Indonesia). Such reservations are so broad that they in fact provide full space for the state concerned to opt out of any provision of the CRC whenever it deems fit. This exceeds the acceptable margins for accommodation of diversity and raised questions about the extent to which the states involved really intended to commit to the CRC when ratifying it. Following exposure and discussion of the problematic nature of such reservations and numerous calls to withdraw them by the UN Committee on the Rights of the Child and others, in recent years several reservations, both specific and generic ones, were indeed withdrawn.<sup>26</sup> According to UNICEF (2007c: 9), in some cases this happened 'because new legislation complying with the CRC has been adopted, and in others because of a changed understanding of what the CRC actually requires.'

Finally, it is also interesting to note that most states that ratified the Convention on the Rights of the Child have thereafter engaged with the state reporting monitoring procedure which requires the governments involved to submit periodic reports to the UN Committee on the Rights of the Child on the progress made, or lack thereof, in realizing children's rights. Until July 2010, the CRC Committee had received initial reports on the implementation of the Convention from all states parties, and (out of 193 potential submissions) 141 second, 77 third and 58 fourth periodic reports. Likewise, in relation to the Optional Protocol on Children in Armed Conflict, 78 out of 139 states parties had submitted initial reports. Under the Optional Protocol on the Sale of Children, Child Prostitution and Pornography, of 141 potential submissions, 67 initial reports and one second periodic report were placed on record (UN Committee on the Rights of the Child, 2010: 1-2) .

*Other Indications of Broad-Based Support for and Action on the CRC*

An area in which the CRC has turned out to trigger tremendously dynamic and widespread practice is that of law reform resulting from efforts to fully incorporate the content of the CRC into national legal systems, also referred to as 'domestication'. Here again, a wealth of empirical evidence of world-wide engagement with, and action on, the CRC is found. A UNICEF study (2007c) of law reform concerning children in 52 countries all over the world during the period 1989 to 2007 presented a wealth of information on the adoption of CRC-related national legislation, in the form of Constitutional provisions,<sup>27</sup> comprehensive children's laws or sectoral legislation. It found that '[n]early all the countries studied have made substantial changes in their legislation to better protect the rights of children' (ibid.: 17; see also UNICEF 2007b). The general principles of the Convention on the Rights of the Child – the best interests of the child, non-discrimination and participation – increasingly found their way into national law.

Jurisprudence that applies the many CRC-inspired new laws relevant to children is growing, both in quantity and quality, in many countries as well. In South Africa, for example, the judiciary increasingly refers directly to the CRC and applies constitutional and other national legal provisions on children's rights. Child participation via legal representation has been stepped up significantly (Sloth-Nielsen and Mezmar, 2008: 21). While these developments are by no means perfect, especially not in relation to socioeconomic rights (ibid.: 4 and Rosa and Dutschke, 2006), Sloth-Nielsen and Mezmar (2008: 27) nevertheless observed, in relation to the impact of the CRC on South African jurisprudence of the period 2002-2006, that:

the total is more than the sum of its parts. For it is not only the individual victories in cases like *Khosa* and *TAC*, or the insertion of children's voices in *Soller* and *Reardon*, nor the elaboration of a new sentencing principle for convicted children alone which sufficiently explain CRC's influence. Rather, it has become an essential frame of reference in the South African legal system, a foundation underpinning the building of our human rights system.

Such developments clearly are ways for the Convention on the Rights of the Child to help making a difference through legal measures. However, in other countries, and apparently especially in those countries that have not (yet) adopted comprehensive children's laws – such as the Netherlands – the impact of the CRC on national legislation and jurisprudence has still been too small (Arts, 2010).

Finally, the very fact that so many international – but especially also national and local – non-state or civil society actors have also committed themselves to the Convention on the Rights of the Child, and seek for ways to develop and

operationalize CRC-based approaches to their daily work relating to child and youth affairs (see e.g. International Save the Children Alliance, 2007; Sloth-Nielsen, 2008: 68; Arts, 2009a), is also a significant indicator of the broad base of support for the Convention and its mission.

## **5. Has the CRC Come of Age? A Few Concluding Remarks**

The above account has shown that UNICEF's observation (2009a) that the Convention on the Rights of the Child is a 'revolutionary treaty that gave rights to all children everywhere' is fully justified. The experience of the CRC is, indeed, a very good example of the 'human rights revolution' described by Michael Ignatieff (1999: 10-11) as extending to standard-setting, the monitoring of the implementation of those standards and the ability to expose state failure to meet human rights obligations, albeit with varying degrees of success.

The content of the CRC and the practice of its implementation is especially relevant to finding ways for accommodating the greatly diverse circumstances and contexts in which the Convention is applied and, hopefully, realized in a locally-relevant manner. The multiple entry-points for accommodating diversity that the CRC provides for probably partly explain its nearly universal ratification record. From here, a fascinating research agenda unfolds. More information and analysis about the extent to which the Convention on the Rights of the Child accommodates cultural, economic and other forms of diversity in practice would be extremely useful, for academics and practitioners alike. How does such accommodation take place and why? What are the outcomes? What stimuli and constraints for realizing children rights have been revealed in the process? Generating rigorously documented, clearly annotated and critically analyzed evidence of good and bad practice in the field would make a welcome contribution to the, still mostly experimental, theoretical and field work done on the accommodation of diversity when implementing the Convention on the Rights of the Child.

In the first two decades of its existence, the CRC has had a major impact on legal systems across the globe, not least through stimulating law reform and broader so-called domestication efforts to incorporate the Convention into national legal orders. In addition, according to Murray (2010: 402): 'the Convention has been influential in an unprecedented way in highlighting, monitoring and reviewing children's rights in many countries.' Such assessments are, in themselves, strong indicators that the CRC has come of age as a highly relevant and mature human rights instrument.

Obviously, all of this praise by no means implies that the Convention on the Rights of the Child is perfect. First of all, despite the Convention's bold aspirations, the situation of children in many countries is still characterized by violence, deprivation, neglect or other violations of child rights. Some of these

problems are due to the fact that child rights issues are all too often pursued sectorally instead of being mainstreamed. Across all policy fields, for example trade and climate change (Arts, 2009), the child rights implications of measures taken by governments should be considered. A further problem is the limited extent of child rights situational analysis and implementation capacity. More data, of higher quality; better knowledge and technical capacity both among key implementing government agencies and relevant non-governmental actors; and more resources, including the best available national budgets and international assistance, are required. In short, interventions ought to be more informed, localized, tailor-made and better equipped.

Second, not all children's rights are adequately covered in the CRC. Certain political rights of children, such as the freedom of association, are insufficiently elaborated and various civil rights of children, including property rights, are hardly addressed at all (Bentley: 119; DeGabriele and Handmaker, 2005). Partly as a consequence of these normative gaps, implementation practice in the realms of children's civil and political rights, including child participation in all matters affecting the child (CRC art. 12), often lags behind such practice in the fields of health or education (see e.g. UNICEF, 2007c: 35-37; Habashi et. al, 2010:279). An inconsistency in the CRC regime is that it failed to establish a complaints procedure. Most other global UN human rights treaties have a complaints procedure through which persons, who are of the opinion that a state has violated her or his rights as protected under the treaty, can bring their cases to the attention of the UN Committee established to monitor implementation of the treaty. The fact that the CRC did not create this procedure is at odds with its emphasis on the agency and participation of children. This omission is likely to be remedied in the future, given the progress made in the ongoing campaign for adopting a third Optional Protocol to the CRC which would establish such a complaints procedure.<sup>28</sup>

Finally, as referred to several times in this lecture, the Convention on the Rights of the Child clearly acknowledges that the level of development achieved by states co-determines their capacity to implement children's rights. The Convention is clear that the needs of developing countries require special consideration and that international cooperation is an important prerequisite. The CRC Committee has been unambiguous about the obligation of states that can afford to provide assistance, including the Netherlands, to contribute actively to international cooperation, through various forms of development cooperation. However, far too little of this assistance has been realized. Against this background, both the content and the implications of international cooperation obligations in the framework of the CRC also pose pertinent questions for both research and activism.

## Words of Thanks

An inaugural address also is an occasion to publicly thank some people and organizations that have played a key role in one's academic formation and professional and personal development. While many deserve — and have — my gratitude for being great partners in academic and other work, or in other aspects of life, only a few can be mentioned here.

I thank the Executive Board and the Board of Deans of Erasmus University Rotterdam for their decision to appoint me Professor of International Law and Development. I am grateful to the *Vereniging Trustfonds Erasmus Universiteit Rotterdam* for its contribution to the creation of my Chair. A big thank you is also due to former ISS Rector Louk de la Rive Box who has been a crucial facilitator of the process of establishing endowed professorial chairs at the Institute. In relation to some of my personal academic work, on Western Sahara and Palestine, Louk has stood up for academic freedom in a remarkable way which I will never forget.

When thinking about my formation as a public international lawyer, three people immediately come to my mind. Professor Peter Kooijmans supervised my LLM thesis at Leiden University and guided me towards obtaining my first academic degrees. Professors Paul de Waart and Nico Schrijver in combination were the best and most critical and inspiring team of promoters at the Vrije Universiteit Amsterdam that I could hope for. In addition, Nico was instrumental in introducing me to the pleasures and pains of academia and in putting me on the path of studying international law and development.

It is probably no coincidence that all three of these people are men, as the percentage of women professors in the Netherlands is still shamefully low. I sincerely hope that this situation will change for the better, and that many more women will climb to the highest academic rank in the years to come. Whenever possible, I will certainly do my share in trying to bring this about.

The ISS has been a great professional environment for me since I first joined it as an intern. I am deeply grateful for all the opportunities that the Institute gave me to develop myself and to discover my talents and priorities. The ISS students especially have been a joy to work with. Throughout, your eagerness to learn and your willingness to share experiences and to celebrate diversity have been extremely motivating and rewarding for me. I look forward to having many more critical debates and exchanges of arguments and views with you on issues in the realm of international law and development, including human and children's rights. Through the years I have come to know many ISS staff — technical, administrative and academic — as fine colleagues. The core team that has been involved in developing the MA Specialization in Human Rights, Development and Social Justice — Josée Haanappel, Jeff Handmaker, Helen Hintjens, Karin Hirdes and Rachel Kurian — should be mentioned here in the

first place. Staff Group 2, studying ‘States, Societies and World Development’, has been a good intellectual home for me. I appreciate the good working relations that we have managed to keep up despite the differences that sometimes occur. Professors Mohamed Salih and Bas de Gaay Fortman have been long-standing sources of support. Irene Lopez, Joop de Wit and Kees Biekart, it is a pleasure to be on the SG2 Board with you. Then, there is the team involved in Child and Youth Studies at ISS, with whom I hope to continue working on children’s rights and development: Sharmini Bissessar, Kristen Cheney, Linda Herrera, Loes Keyzers, Auma Okwany and Ben White.

Since the incorporation of the Institute into Erasmus University Rotterdam, Professor Ellen Hey has made serious endeavours to forge collaboration between the Erasmus School of Law and the ISS. In the process she has introduced me, and some of my ISS colleagues, to new colleagues in Rotterdam. I thank her very much for her efforts.

Obviously I would not be able to deliver this inaugural address without my parents, Toon and Nel Arts. They are always ready to support me and my family and they are great grandparents for my children. I also cherish the good relationship with my siblings, Manon and Jeroen Arts, and their families.

However, the final and absolutely biggest thank yous are for my husband Aart Biondina – for his caring attitude and for the enormous space that he has created for me to grow professionally and to become the person that I am today – and for my two sons. Fabian and Ramon, thank you for being the lovely children that you are. You both challenge and deepen my understandings of, and commitment to, children’s rights everyday.

*Ik heb gezegd.*

## Notes

1. The author thanks Jeff Handmaker for his critical comments on an earlier draft of this text, Jane Pocock for proofreading, Karen Shaw for formatting the manuscript and designing the cover, and Mohammed Omer for making available the cover pictures.
2. In most cases fixed age limits are fairly arbitrary and narrow chronological indicators of the capacity of children. While formal fixed age limits are required for the functioning of law and legal interventions in children's rights issues, there is a wide variety in the actual ages applied for different purposes across international and national law. While in most countries 18 is the general age of majority, in some countries a lower limit is set (e.g. Iran, where reportedly according to art. 1210 of the Civil Code the age of majority for boys is set at 15 and for girls at 9). In other countries majority is automatically obtained upon marriage, also if below 18 (e.g. in Indonesia). In yet other countries (such as, at least until recently, Namibia) majority is only obtained at the age of 21, or a special category of 18 to 21 year olds 'adult-minors' was created (e.g. Honduras). For specific purposes, such as voting, working, marrying, joining the armed forces or being criminally responsible, across countries age limits also differ dramatically. In non-legal practices and more broadly in the perceptions of people, age limits are yet more diverse, contextual and contested. Applying different age limits or other majority criteria to boys and girls is still widespread although such gender-based distinction often will amount to discrimination. A wealth of fascinating information on many of these issues is found in the reports submitted by states parties to the UN Convention on the Rights of the Child, in the standard item III 'Definition of the Child'. These reports and the reaction of the CRC Committee to issues concerning the definition of childhood are all accessible through the Treaty Bodies Database of the UN Office of the High Commissioner for Human Rights, <<http://tb.ohchr.org/default.aspx>>.
3. Such exercises may include situational analyses, development programme and project evaluations, human rights impact assessments. The time constraint problem even applies to many development interventions at large.
4. An example of a veiled mixing up of children's rights and children's needs is found in Lieten (2009: 31) who wrote: 'Is there a difference between needs and rights? Not really. The need for education is equivalent to the right to education, the need for proper health care is equivalent to the right to good health. The end result, if implemented, will be the same.' The table on the differences between rights and needs-based approaches to children's development in International Save the Children Alliance (2002: 22) convincingly shows that, both in terms of the intend-

ed final results and in terms of the process involved in realizing them, there are major qualitative, quantitative and methodological differences between rights and needs-based approaches. See also UNICEF (2007c: 23).

5. Examples of the latter include the state reporting guidelines and concluding observations of the United Nations Committee on the Rights of the Child; UNICEF's annual *State of the World's Children* reports; the checklists in the UNICEF Implementation Handbook (Hodgkin and Newell, 2007); Plan International's annual reports (2007-2010) *Because I am a Girl: The State of the World's Girls*; Save the Children UK's (2008) child development index; the African Child Policy Forum's (2008) assessment of the child-friendliness of African governments; or more academic tools such as the children's rights index presented by Gran (2010).
6. While this fatwa by itself will not end the practice of female genital cutting (FGC) in Mauritania, it does decouple it from Islam and thus takes away scope for using religious justifications for the practice. Such justifications, although according to many unfounded, do play a strong role in keeping up the practice, along-side other social and cultural factors (IRIN, 2010). The 2010 fatwa certainly reinforces the Mauritanian law that formally banned FGC in 2005.
7. Changes have been proposed to the basic health care package which will require adjustment of bilateral agreements with Turkey, Morocco, Tunisia, Cape Verde, Croatia, Bosnia and Herzegovina and Macedonia. This can only be done with the consent of those countries. The Coalition Agreement specified that where no such consent will be given, "the desired policy will be implemented through the termination of the treaty" (VVD-CDA, 2010: 22). The 11 references to renegotiation or amendment of international obligations are found at pp. 4, 22, 28 (2x), 29, 30, 31, 32 (2x), 34 and 35 (ibid.).
8. This sentence was partly paraphrased and partly cited from Abdullahi An-Na'im in Alston (1994: 79).
9. Many of the issues involved here have been eloquently theorized by eminent Southern scholars such as Francis Deng, Abdullahi An-Na'im and Yash Gai. For synthesized versions of some of their arguments see Twining (2009).
10. Valentin and Meinert (2009: 24) referred to approaching 'children's rights as a social process'.
11. As has happened e.g. in Kenya (Chege et al., 2001; Winterbottom et al., 2009: 64), Senegal and Guinea (TOSTAN, 2010). But, see also

Winterbottom et al. (2009) who strongly emphasized the need for addressing the local context of female genital cutting (FGC) respectfully. They present examples of anti-FGC interventions in Tanzania that failed to respect local traditions and culture, and as a result failed overall.

12. Thompson (1992: 433) even referred to the CRC as a 'major catalyst' in this regard. Amanda Lloyd (in Sloth-Nielsen, 2008: 34) drew attention to the fact that already in 1979 the Organization of African Union had adopted a non-binding Declaration on the Rights and Welfare of the African Child. In her reading: '[i]n order for the CRC to satisfy the culturally diverse international community that participated during the drafting and adoption process, some substantive provisions are rather vague. This is one of the reasons for the drafting and subsequent adoption of the ACRWC'. See also Valentin and Meinert 2009: 25. The ACRWC was adopted on 11 July 1990, entered into force on 29 November 1999 and on 15 October 2010 had over 40 ratifications.
13. The CRC in article 51 allows reservations made 'at the time of ratification or accession' which are not 'incompatible with the object and purpose' of the Convention. In rare cases international treaties specifically rule out reservations. An example of major significance is the 1998 Rome Statute establishing the International Criminal Court which in its article 120 specifies that '[n]o reservations may be made'.
14. Besides, or as part of, the allegations of western bias, the CRC is often misinterpreted or even ridiculed for bringing about imbalances between children's rights and children's responsibilities and between children's rights and parental rights. The latter aspect has been one of the core concerns of the United States of America and is one of several principled reasons for which it has not yet ratified the Convention. When discussing this particular issue, Philips (as cited in Ruck and Horn, 2008: 693) argued that US ratification of the CRC would lead to a 'state guaranteed license for children to rebel'.
15. According to CRC article 3(1): 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.' For an in-depth analysis of the best interests principle, see Alston and Gilmour-Walsh (1996); Alston (ed.) (1994); and Breen (2002).
16. For additional source material that confirms this reading of the CRC negotiation process, see Detrick (1992) and Office of the High Commissioner for Human Rights (2007).

17. See footnote 2.
18. Appropriateness is among others, called for in relation to state measures on: assistance of parents and legal guardians in child-rearing; child care; protecting children against violence, abuse, exploitation, sale and traffic; avoiding improper financial gain from intercountry adoption and promoting the objectives of the CRC's adoption article; protection of refugee children; information on preventive health care and treatment of disabled children; pre-natal and post-natal health care for mothers; abolishing traditional practices with harmful health effects for children; social security benefits; assisting caretakers of children in realizing an adequate standard of living; achieving the right to education; opportunities for cultural, artistic, recreational and leisure activities; regulation of working hours and conditions, and penalties to ensure implementation of the CRC articles on child work; juvenile justice measures. The full range of CRC articles that include an appropriateness element extends to articles 17(e), 18 (2 and 3), 19(1 and 2), 21(e and f), 22, 23(4), 24(2d and 3), 26(2), 27(2), 27(4), 28(1b), 28(2), 31(2), 32(2b and c), 33, 34, 35, 37(d), 39 and 40.
19. These include the articles: 1 on the definition of child; 7(2) on birth registration, the right to a name and nationality and to know and be cared for by her/his parents; 9(1) on separation from parents; 12(2) on the right to be heard; 15(2) on restrictions of the freedoms of association and assembly; 20 on alternative care; 26 on social security; 37(b) on child detention; 40 on juvenile justice. According to article 41(1) national law can always formulate more stringent provisions than the CRC does.
20. An exception is Norway which has more actively shaped and pursued an international child rights and development policy. See e.g. Norwegian Ministry of Foreign Affairs, 2005.
21. The UN Convention on the Rights of the Child proper was adopted on 20 November 1989 and entered into force on 2 September 1990. The regional classification of countries used in Chart 1 was based on the one used by UNICEF (as e.g. in UNICEF, 2010: 88). All ratification dates were gathered from the United Nations treaty database, <<http://treaties.un.org>>, as at 15 October 2010 when there were 193 states parties. The full datasheet is on file with the author. Chart 1 represents 95 up to 98 per cent of all ratifications per regional grouping. While grossly accurate, strictly speaking the per centages for Asia and Europe require slight adjustment for the fact that in the period 1990-1997 East Timor, Serbia and Montenegro did not yet exist. These states came into being respectively in 2002 and 2006. As they joined the CRC later and also appear in Charts 2 and 3 on the Optional Protocols, it was decided not to correct the results in Chart 1 so

that a 100 per cent ratification score represents exactly the same situation across the 3 Charts.

22. The trends in Europe's ratification record were determined more or less equally by western, central and eastern European states.
23. The CRC Optional Protocol on the Sale of Children, Child Prostitution and Pornography was adopted on 25 May 2000 and entered into force on 18 January 2002. Chart 2 presents the trends in ratification percentages among the various regions of the world in the period 2000-2010. See *ibid.* for information about the regional classification and data source used and for a remark on the non-existence of certain states in part of the period covered. The full datasheet is on file with the author. On 15 October 2010 there were 141 states parties, including the United States of America. Chart 2 represents 50 up to 90 per cent of all ratifications per regional grouping.
24. The CRC Optional Protocol on Children affected by Armed Conflict was adopted on 25 May 2000 and entered into force on 12 February 2002. Chart 3 presents the trends in ratification percentages among the various regions of the world in the period 2000-2010. See *ibid.* for information about the regional classification and data source used and for a remark on the non-existence of certain states in part of the period covered. The full datasheet is on file with the author. On 15 October 2010 there were 139 states parties, including the United States of America. Chart 3 represents 50 up to 90 per cent of all ratifications per regional grouping.
25. The Netherlands, for example, registered reservations in relation to: CRC article 26, to rule out 'an independent entitlement of children to social security, including insurance'; CRC article 37(c), so as to keep space for applying adult penal law to children of sixteen years and older and for temporarily detaining children together with adults, should an 'unexpectedly large' number of children have to be detained; and CRC article 40, to keep open the option of not providing legal assistance in penal trials relating to minor offences and not allowing for 'a review of the facts or of any measures imposed as a consequence'.
26. Between February 2005 and December 2009 Indonesia, Tunisia, Qatar, and Djibouti all withdrew their broad reservations. All information about reservations and withdrawals is available through <http://treaties.un.org>. According to UNICEF (2007c: 10) the withdrawal of Indonesia's reservation was due to the adoption of the Child Act 2002. For an account specifically on CRC reservations by ASEAN states, see Linton (2008, 436-479).

27. For an interesting child rights analysis of constitutional documents of 179 states, see Habashi et. al. (2010). For a review of some of the 34 African constitutions that feature children's rights, see Sloth-Nielsen, 2008: 57-64). See also Theytaz-Bergman, 2009.
28. For a comprehensive collection of material on the campaign and the draft optional protocol, see <<http://www.crin.org/petitions/petition.asp?petid=1007>>.
29. All internet resources in this list were last visited on 1 November 2010.

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