| Chapter 1 |

The International Protection of Children's Rights: The United Nations Framework

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ABSTRACT

Children, as the youngest members in society, form a vulnerable group which requires special care and protection. Throughout history, they were considered as passive objects of law, with parents making all decisions on their behalf. In prehistoric times, ancient periods, and the Middle Ages, children were often abandoned, killed or exposed, and child-parent relationship was characterised by the child's subordination and obedience. However, during the Enlightenment, the situation began to improve, and the awareness of the special care and protection children need started to emerge. With the industrial revolutions the situation of children got worse, as they began working in factories, under poor conditions and for low wages. This led to new pieces of legislation regulating minimum age and working conditions. Finally, the 20th century was a turning point for children and their rights. It all started with non-binding documents, such as the Geneva Declaration (1924) and the UN Declaration on the Rights of the Child (1959) but culminated in the adoption of the UN Convention on the Rights of the Child (1989). The UNCRC today is a truly international treaty, ratified by all countries in the world, except the USA. In just 54 articles it defines the child and guarantees a wide scope of rights to all children, without discrimination of any kind. These rights can be classified into several categories, but the most common one is the 3P: provision, participation and protection. The UNCRC is accompanied by three optional protocols: Optional Protocol on the involvement of children in armed conflict, Optional Protocol on the sale of children, child prostitution and child pornography, and Optional Protocol on communications procedure. The UNCRC also established UN Committee on the Rights of the Child, a body with a key role in protecting children's rights, with several different functions, including deliberating individual and state complaints, inquiry procedures, issuing general comments, etc. The role of UNICEF and non-profit organisations, such as NGOs and NHRIs should not be omitted.

KEYWORDS

vulnerability, children's rights, UNCRC, OPAC, OPSC, OPIC, CRC Committee, General Comments, UNICEF, NGOs, NHRIs, BIC

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1. The Concept of Child's Vulnerability

Vulnerability can be defined, in simple terms, as a '*the lack of individuals' capacity to cope with future threats.*'[1] Although it derives from the Latin word *vulnerabilis,* which in turn comes from the word *vulnus* (Latin for "wound"), the term vulnerability is not exclusively linked to the harm done to the body and the individual, but also applies to the collective forms of vulnerability, such as those affecting the household, the community, society, institutions, the state, or the international community.[2] While anyone can be vulnerable – such as the elderly, women, young people, or people belonging to minorities, depending on the context and specific circumstances[3] – special attention must be given to the vulnerability of children, who '*share the universal vulnerability inherent in the human condition*'.[4]

As the youngest members of society, children are physically weaker (shorter and weigh less) than adults, possess less cognitive skills, knowledge, life experience and wisdom, and are not (fully) emotionally mature or socially skilled. They typically depend on adults, primarily their parents, and they often lack the capability to fully understand and reason.[5] Due to this – in the eyes of those who want to punish them, take advantage of them, or simply use them as a means to achieve their own interests – children become easier targets with little ability to resist.[6] They become victims of violence, abuse (including sexual abuse), economic exploitation (including sexual exploitation), trafficking, forced marriages, use of substances, involvement in armed conflicts, or other violations of their rights.

To avoid those violations, adults – whether parents, members of society, or the state – need to become fully aware of the vulnerable position children hold in society

1 Forbes-Mewett and Nguyen-Trung, 2020, p. 12.

2 Mayrhofer, 2025, p. 1.

3 Fineman offers a different perspective arguing that vulnerability '*is not a characteristic of only some individuals or groups, nor does it differ in quality or degree from one individual or group to another*' and that '*we are all always vulnerable – there is no position of invulnerability.*' Fineman, 2020 cited in Haugli and Martens, 2025, pp. 18–19.

4 In this regard, Sandberg argues that '*children's rights are a response to (their) inherent vulnerability and the various vulnerable situation(s) in which they may find themselves.*' She also states that '*without rights, children's vulnerability may be used as a reason to keep them down and provide them with goods as charity only, leaving them to the benevolence of others.*' Sandberg, 2025, p. 202.

5 Norozi and Moen, 2016, cited in Herring, 2022, p. 1512. Based on this, three types of vulnerability can be distinguished: physical, social and structural. Physical vulnerability refers to the fact that children are weaker than adults, they are smaller and weigh less, which makes them vulnerable. Social vulnerability means that children, due to the lack of social skills, experience, and wisdom, are easier target and accordingly, are in need of special protection. Structural vulnerability, however, relates to the fact that children cannot independently and unlimitedly access resources such as food, medical care, and transport, and they need adults to help them. Meyer, 2007, cited in Herring, 2022, p. 1512.

6 The same view was expressed by the CRC Committee, which stated that '*children's developmental state makes them particularly vulnerable to human rights violations*'. UN Committee on the Rights of the Child, 2002, pt. 15.

and acknowledge it. They must also undertake necessary actions to prevent such situations, and if they occur, they must act to protect the child. For example, parents need to be attentive, supervise and guide their children, and, when appropriate, inform them about the dangers they may face and protect them from those. Society needs to be more sensitive to children, offer help and protection, when necessary, report crimes committed against them, and provide support to the child victims. The state needs to adopt all the necessary measures: first, to prevent all acts that represent violation of children's rights, second, to protect children from such violations, and finally, to provide assistance and support to children victims of such violations. The role of the international community[7] must not be overlooked either, with the United Nations playing a particularly important role in ensuring the protection of children and their rights around the globe.[8]

Even though all children are vulnerable to some extent, they are not equally so. First, vulnerability differs depending on a child's age and maturity.[9] Second, some children, in addition to being vulnerable simply because they are children, are particularly vulnerable due to biological (e.g. chronic illness), cognitive (e.g. intellectual disabilities) or social factors (e.g. coming from violent or abusive environments, or from families affected by mental illnesses, where their well-being, safety and development are at significant risk due to inadequate care and protection).[10] These include children with disabilities, children in care or detention, children from minority and indigenous groups, children living in poverty, refugee and migrant children, street

7 Within the international community, international organisations hold a unique position in the protection and promotion of children's (and in general human) rights. They can be defined as '*formal, continuous structures established by agreement between members (governmental and/or nongovernmental) from two or more sovereign states with the aim of pursuing the common interest of the membership*'. (Archer, 2015, p. 31.) They have their own membership, defined scope of functions, main and subsidiary bodies, founding treaties, rules of procedure, and professional staff. They also play a threefold role: they serve as instruments of their members, function as arenas or forums where actions are taken, and act as independent actors on the international scene. (Ibid., pp. 114, 118, 123.) Their role and importance were most vividly illustrated by Henkin, who stated: '*[i]nternational organizations contribute to the ends which law pursues, building order and promoting the common interest. They also contribute to the law itself. They reflect and create an attitude that sees law as the fulfilment of their activities and the principal means of assuring their purposes. They promote, facilitate, expedite, and improve the making of law by bringing nations together and emphasizing their common interests; by identifying problems that might lend themselves to law and developing possible legal "solutions" for them; by providing personnel, machinery, and processes for the various stages of international legislation from conception to enactment. International organizations have helped make-and unmake and remake international law.*' (Henkin, 1969, p. 657.) Among them, the UN is the largest and the most far-reaching, comprising 193 Member States. Its establishment dates back to October 24, 1945, and its mission is to ensure peace, promote economic and social development and uphold human rights, within which are the rights of children. Almakky, 2023, p. 28.

8 In this context, some authors also highlight individual characteristics of the child that may contribute to the counterbalance of their vulnerability, such as intelligence, social competence, and belief in a higher power beyond oneself. Blum, McNeely and Nonnemaker, 2001, p. 51.

9 Sandberg, 2025, p. 202.

10 Blum, McNeely and Nonnemaker, 2001, p. 51.

children, children with special needs in areas such as culture, language, health, and education,[11] children directly affected by armed conflicts, children affected by HIV/AIDS, children engaged in the worst forms of labour, as well as children whose particular vulnerability stems from the region or country in which they live.[12] However, this list is not exhaustive and may expand/vary as new challenges that children face in the modern world, emerge.[13]

2. History of Children's Rights Until the 20th Century

Throughout history, up until the 20th century, the position of children – especially reflected in relationships with their parents – was nothing like the one they have today. In fact, '*the further back in history one goes, the lower the level of childcare, and the more likely children are to be killed, abandoned, beaten, terrorised, and sexually abused.*'[14]

In the earliest beginnings of humanity – as it is assumed – care for children existed primarily to ensure the survival of humankind. The parent-child relationship (more precisely, mother-child relationship, as it was the period of matriarchy) was mostly based on meeting the child's biological needs, rather than on affection and emotional bonding.[15] One of the oldest written documents, Code of Hammurabi, dating back to around 1700 BC, mentions children (and relationship with their parents) in several provisions – for example, it provides for the death for anyone who steals another's minor son, it prescribes that if a man adopts a child, gives his name and raises him, the son cannot later be reclaimed.[16] The relationship between parents and children at that time is also evidenced by the Old Testament, which stipulates that '*anyone who strikes their father or mother shall be put to death*' and in the Ten Commandments, where it is commanded: '*[h]onour your father and your mother, so that your days may be long in the land that the Lord your God is giving you.*'[17]

In Ancient times, with the development of the concept of private ownership, patriarchy developed as well.[18] In Athens, the child did not automatically become a member of the family, but instead, was decided by *kurios* – the head of the family. As a matter of fact, all the decisions about the child's future, that is, about the child's

11 UN Committee on the Rights of the Child, 2002, pt. 15.
12 According to research conducted by SOS Children's Villages International in 2015, the most vulnerable children were those living in Somalia, Mali, Mozambique, Liberia, Zambia, Côte d'Ivoire, and Tanzania. SOS Children's Villages International, 2015, p. 5.
13 See the document *Defining Child Vulnerability: Definitions, Frameworks and Groups*, in which the Children's Commissioner identified as many as 32 groups of vulnerable children, stating that even that list is not exhaustive.
14 De Mause, 1982, p. 1.
15 Hrabar, 1994, p. 25.
16 Turki and Cheik, 2006, p. 198.
17 Bible, Exodus, 20:12; 21:15, cited in Hrabar, 2024, p. 25.
18 Hrabar, 1994, p. 25.

life or death were made by *kurios*.[19] However, the child-parent relationship was also characterised by *filia*, '*an unconditional feeling of parental giving*'.[20] By reaching the age of attending school, children were also involved in other activities, such as studying literature, music and athletics.[21] On the other hand, in Ancient Sparta, the father was not allowed to decide about the child's admission into the family, but instead, it was decided by the board of elderly. If the child was born healthy, they ordered the father to rear him, but if the child was sick or with physical abnormalities, the father had to expose him/her at *Apotheatae* on the Mount Taygetus.[22] Male children were being trained to become soldiers, and female children prepared to bear offspring.[23] In Ancient Rome, one cannot speak of children's rights, as they were considered as *personae alieni iuris*.[24] The father, as a head of the family (*pater familias*), had absolute and lifelong power (*patria potestas*) over his children and other descendants, meaning that he could decide on the child's life and death (*ius vitae ac necis*),[25] sell the child (*ius vendendi*) and request the return of his child from persons who would detain the child (*ius vindicandi*).[26] These rights also encompassed the right to expose the child in infancy and to chastisement, to perform noxal surrender (to surrender the child to the person who was harmed by the wrongful act committed by the child), and to force the married child to divorce.[27]

In the Middle Ages, due to the influence of the Roman Catholic Church, the position of children slightly improved, as abortion, infanticide and child abandonment were condemned.[28] However, due to poor living conditions, many children died in early childhood.[29] Consequently, some historians argue that parents were emotionally distant and largely indifferent to the children below the age of seven – until it became likely the child would survive.[30] When reaching the age of seven, children were either becoming apprentices or working in the agrarian community. Education was reserved only for nobles or those who wanted to become clerics. At the same age, children could become betrothed, and at the age of 12 (for girls) and 14 (for boys), they could marry. Similarly, at these ages, they could be held criminally responsible. That said, it was argued that the concept of childhood did not exist before the period between 15th and the 17th centuries and that children were perceived and treated as

19 Cox, 1998, p. 134.
20 Hrabar, 1994, p. 17.
21 Sommerville, 1982, cited in Scott, 1993, p. 223.
22 Hrabar, 2024, p. 26.
23 Scott, 1993, p. 222.
24 Prokop, 1992, cited in Hrabar, 2024, p. 26.
25 The power of the *pater familias* to kill his child was legally banned in the imperial law, meaning that those who did so without due process, were punished. Kranjc, 2024, p. 51.
26 Petrak and Žiha, 2009, p. 13; Hrabar, 2024, p. 26.
27 Kranjc, 2024, p. 46.
28 Hrabar, 1994, p. 26.
29 Nikolić Jakus, 2015, p. 378.
30 Ariès, 1962, cited in Nikolić Jakus, 2015, p. 378.

"small adults".[31] However, opposing opinions have suggested that the idea of childhood did exist during the Middle ages.[32]

During the 17th and 18th centuries, in the period known as Enlightenment, childhood began to be perceived as a stage of life requiring special care and protection. Children were increasingly regarded as innocent creatures, not inherently morally corrupt, and even as '*potential savers of the future*'.[33] Following this shift, one can speak about one of the first documents recognising children's rights – the Massachusetts Body of Liberties (1641). Among other things, it included recommendations for parents not to arrange marriages for their children, not to be excessively strict with them, and the age of 17 was prescribed as the age before which children could not be executed if they did not respect their parents.[34] The child-parent relationship evolved, as children were expected to respect their parents, instead of being obedient and yielding.[35] Accordingly, corporal punishment and whipping were used less. Education became of a great importance for children of all classes, from an early age.[36] Enlightenment thinkers, John Locke and Jean-Jaques Rousseau, played an important role in shaping the perception of childhood, and the child-parent relationship. According to Locke, children are not '*the property of their parents, but of God*', and their parents need to '*preserve, nourish and educate*' them. He also argued about the difference in mental capabilities of children compared to adults, due to which one can talk about the inception of the child's right to express his or her opinion.[37] In contrast, Jean-Jaques Rousseau argued that '*the child was to be dependent on things rather than people, because things belong to nature and cannot corrupt*'.[38] In this period, one can also talk about Thomas Spence's pamphlet – The Rights of Infants – which set out initial steps for child protection. Protecting children from poverty and exploitation, and equalising the rights of legitimate and illegitimate children, were just some of its keys points.[39]

During the period of Industrial revolution, which began at the end of the 18th century, and lasted until 1850s,

> 'for many reasons, such as high child mortality, the acceptance of corporal education tools, the prevalence of child exploitation given the industrial revolution, and serious social problems (e.g., poor public safety, poverty, and civil war), society did not show special sensitivity to children's vulnerability.'[40]

31 Scott, 1993, p. 227.
32 Nikolić Jakus, 2015, p. 378.
33 Scott, 1993, p. 230.
34 Hrabar, 2024, p. 29.
35 Scott, 1993. p. 231.
36 Ibid., pp. 230–231.
37 Hrabar, 2024, p. 29.
38 Freeman, 2020, p. 21.
39 Hrabar, 2024, p. 30.
40 Váradi-Csema, 2022, p. 414.

Many children, mostly from lower classes, were (ab)used as working force in the factories and mines. Unlike earlier in history, where children began working at the age of seven in the countryside or as apprentices within their families, they now started working for strangers, earning certain wage.[41] Their working hours often reached 12 or even 16 hours per day, and their working conditions were mostly harsh and unsafe. The age at which they could start working, as well as issues related to their healthcare and night work, were regulated only in a few countries. In the second half of the 19th century, countries such as Prussia, Denmark, Germany, Italy, Belgium and the Netherlands, introduced protection measures of children between the ages of 9 and 16, excluding younger children. Changes occurred in other countries as well. In Great Britain, working conditions and minimum age were revised, resulting in a decrease in the number of working children. In France, in 1833 and 1840, education laws were passed in order to reduce child work. In 1841, the Child Labour Law was passed, which aimed to regulate child work by taking into account the child's age and working hours. In the United States of America, in Massachusetts, child labour was prohibited in 1837.[42]

3. The 20th Century as the Century of Children's Rights

The 20th century can, with full justification, be called the century of children's rights. First, in 1919, within the International Labour Organization (ILO), two significant conventions were adopted: Convention no. 5 on the minimum age of children for employment in industry and Convention no. 6 on the night work of young persons in industry.[43] In the same year, Eglantyne Jebb, after the World War I, founded the Save the Children Fund, aimed at helping hungry children in Austria and Germany. In 1920, under the patronage of the British Save the Children Fund, the Swedish Rädda Barnen and the International Committee of the Red Cross (hereinafter: ICRC), the International Save the Children Union was established. However, these were only the beginnings, as the second half of the 20th century brought a complete shift in the status of children and the protection of their rights.[44] This shift had its origins in the non-binding Geneva Declaration of 1924, followed by the (also non-binding) UN Declaration, but it culminated with the adoption of the UN Convention on the Rights of the Child (hereinafter: UNCRC), in 1989.

3.1. Geneva Declaration

Adopted within League of Nations in 1924, the Declaration on the Rights of the child, or commonly known as Geneva Declaration, was one of the first international

41 Ilias and Akter, 2017, p. 58.
42 Hrabar, 2024, pp. 28, 32, 33.
43 For more on these conventions, see Vinković, 2008, pp. 76–80.
44 Hrabar, 2024, pp. 33–34.

documents on the protection of children and their rights. Its text was drafted and presented by Eglantyne Jebb, at a meeting of the Save the Children Fund in Geneva.[45] In its introduction, the Declaration refers to the duty of '*men and women of all nations*', to give the child '*the best that they have to give*', regardless of '*race, nationality or creed*'. Subsequently, it set out the following principles: 1) The child must be given the means requisite for its normal development, both materially and spiritually. 2) The child that is hungry must be fed; the child that is sick must be helped; the child that is backword must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured. 3) The child must be first to receive relief in time of distress. 4) The child must be put in a position to earn a livelihood and must be protected against every form of exploitation. 5) The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.

These five principles can be seen as corresponding to the contemporary children's rights: principle 1 – the right to development, principle 2 – the right to survival, health, resocialisation and substitute care, principle 3 – the right to protection from economic exploitation and restricted work conditions, principle 4 – the right to upbringing and all-round development.[46] However, the fifth principle '*reflects the system of values and norms.*'[47]

3.2. United Nations Declaration on the Rights of the Child

Thirty-five years after the Geneva Declaration was adopted, within the successor of the League of Nations – United Nations, Declaration on the Rights of the Child was proclaimed. In the preamble, referring to the Universal Declaration of Human Rights, which proclaims that '*everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind*', and to the Geneva Declaration from 1924, the General Assembly calls upon '*parents, men and women as individuals, voluntary organizations, local authorities, and national governments to recognize the rights set out in the Declaration and to strive for their observance through legislative and other measures.*' Containing only ten principles, and being of non-binding nature, Declaration '*directs states towards desirable conduct*'[48] so the child '*may have a happy childhood and enjoy for his own good and for the good of society.*' (Preamble of the Declaration)

The first principle is in fact the principle of non-discrimination, which states that

> 'every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.'

45 Ibid.
46 Ibid., p. 36.
47 Veerman, 1992, cited in Hrabar, 2024, p. 36.
48 Hrabar, 1994, p. 31.

The second principle refers to the right of the child to special protection, opportunities and facilities to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner, and in conditions of freedom and dignity. It also encompasses the principle of the bests interests of the child (hereinafter: BIC) as a paramount consideration.

The third principle refers to the right of the child to identity, as it prescribes that the child has the right to name and nationality from his/her birth.

The fourth principle relates to the child's social security, stipulating that the child shall have the right to grow and develop in health, to special care and protection, adequate nutrition, housing, recreation and medical services.

The fifth principle refers to the right of children with disabilities, that is with physical, metal or social handicap, to special treatment, care and education in accordance with their condition.

The sixth principle stipulates that, in order for a child to have a full and harmonious development of his personality, he/she needs love and understanding, and, when possible, should grow under the care and responsibility of his/her parents, in an environment of affection, moral and material security. It also emphasises that the younger child should only be separated from his/her mother in exceptional circumstances, and that the state should care for children without a family or means of support, while financially supporting children from larger families.

The seventh principle implies the child's rights to education, play and recreation. It stipulates that education should be free and compulsory (at least at the elementary level), promoting the child's culture and enabling the child to develop his or her abilities, individual judgement, sense of moral and social responsibility, and to become a useful member of society. It also emphasises that the principle of the BIC shall be a guiding one for those responsible for the child's education and upbringing, primarily for the child's parents.

The eight principle emphasises that, under all circumstances, the child should be the first to receive protection and relief. However, this does not mean that other categories of vulnerable persons, such as persons with disabilities or pregnant women, are left out.[49]

The ninth principle encompasses the child's right to protection from all forms of neglect, cruelty and exploitation, including trafficking. Furthermore, it emphasises that the child must not be engaged in any employment or occupation that could jeopardise his/her health or education, or interfere with his physical, mental or moral development.

The tenth, and the last principle, provides that the child should be protected from any practices that may promote racial, religious or any other kind of discrimination. It also highlights the importance of an environment adequate for the child's upbringing, stipulating that it should be in a spirit of understanding, tolerance, friendship

49 Ibid., p. 38.

among people, peace and universal brotherhood, and with consciousness to direct his/her energy and talents to the service of his/her fellow men.

Being declarative in nature, that is, proclaiming principles without containing legally binding enforcement measures,[50] the UN Declaration has remained a list of good intentions and a compass for the future protection of children's rights.

3.3. Legislative Background of the United Nations Convention on the Rights of the Child (UNCRC)

On 21st December 1976, at its 106th session, the UN General Assembly unanimously adopted a resolution, planning to declare the year 1979 as the International Year of the Children – symbolically 20 years after the adoption of the Geneva Declaration. That same year, the Conference on the Legal Protection of the Rights of the Child was held at the Palace of Culture and Science in Warsaw. The conference was attended by representatives from nineteen Western and Eastern European countries, representatives of the UN Secretariat for the International Year of the Child, the UN Division of Human Rights and the UN High Commissioner for Refugees. Two resolutions were adopted: Resolution in Support of the Adoption of the International Convention on the Rights of The Child and Resolution in Support of the Implementation of the UN Declaration on the Preparation of Societies for Life in Peace. The plan was to adopt the final text of the Convention by the end of 1979.[51]

The work on the Convention began in 1978. The initial step was the proposal of the permanent representative of Poland to the UN Office – on the behalf of the Polish government[52] – to the Director of the Division of Human Rights, to include "The Question of the Rights of the Child" on the agenda of the session of the Commission on Human Rights. As the proposal was approved – on the 7th of February 1978, at the 34th session of the Commission on Human Rights – the Polish delegation submitted the Draft of the UNCRC.[53] Its author was Family Law Professor Tadeusz Smyczyński, who wrote it largely under the influence of the ideas of the '*icon of children's rights*',[54] '*father of the very idea that children also have rights*',[55] '*the creator of the notion of global child*',[56] and '*for many children, protector, faith and hope for better tomorrow*',[57]

50 Hrabar, 2021, p. 25.
51 Samardžić, 2024, pp. 44–47.
52 Some legal scholars argue that Poland stood out as an initiator of the adoption of the Convention not solely out of concern for the protection of children and their well-being, but also for political reasons. As at that time it was governed by the Communist Party – which presented the proposal of the Convention, only one year after ratifying the International Covenants on Human Rights under pressure from opposition movements – it has been argued that, through this, the Polish government sought to improve its reputation on the international stage. Wielec, 2024, p. 239; see also Andrzejewski, 2000, p. 4.
53 Ibid., p. 47.
54 Freeman, 2020, p. 27.
55 Hammaberg, 2009, p. 81.
56 Benyusz and Raisz, 2024, p. 16.
57 Samardžić, 2024, p. 42.

Janusz Korczak.[58] He considered that children's rights need to be mandatory immediately '*as children are not the people of tomorrow but are people of today*' and '*they have a right to be taken seriously, and to be treated with tenderness and respect.*'[59]

Even though it was largely welcomed with approval, this Draft also faced certain criticisms and objections. While some countries objected on its content, for others, its adoption was premature and should have been postponed.[60] Due to this, the Commission on Human Rights established a working group – comprised of the representatives from twenty-three countries (including the USA, Great Britain and the USSR) – to continue the work. In 1979 and 1980, the work on the Convention was progressing slowly due to several reasons: meetings were not held frequently, the states responded poorly because they did not consider this issue as urgent, the sessions of the Commission were held concurrently. Furthermore, Western countries were opposing the proposals coming from the East, Asians and Africans were expressing their concerns that the Convention will not cover all the issues they face, and UNICEF was passive. In contrast, representatives of the Holy See maintained a positive approach towards it.

In the 1980s things began to change as UNICEF, Islamic countries, and NGOs joined. In fact, in 1983, an *ad hoc* NGO was established, supported by Defence for Children International, and was composed of thirty international non-governmental organisations, including the World Health Organization (WHO), UNESCO, ICRC, and the International Labour Organization (ILO). The goal was to finalise the Convention by the 30th anniversary of the Declaration on the Rights of the Child.[61]

However, some controversial questions arose, such as: When does life begin? When does childhood end? Does a child have the right to choose or change religion? What is the minimum legal age for participation in armed conflicts? Additionally, cultural, traditional and religious differences became visible more than ever, and the matter of adoption was controversial as well, given the fact that it is prohibited under Shari'a law.[62]

Finally, an agreement was reached along the following lines: First, the solution which does not explicitly mention the protection of the unborn child was adopted: '*States Parties recognize that every child has inherent right to life*' (Article 6). Nevertheless,

58 Janusz Korczak was a paediatrician, educator, writer, thinker and publicist. His real name was Henryk Goldszmit, and he was born into a Jewish family in Warsaw in 1878. He is remembered for many things: he was the first to establish a children's parliament, develop the concept of children's courts, and set up a children's newspaper. He also wrote two significant texts for parents and teachers – The Child's Right to Respect and How to Love a Child. He died in 1942 at the extermination camp, Treblinka, to which he voluntarily accompanied 192 children taken by the Nazi. Freeman, 2020, p. 27; Samardžić, 2024, p. 42; Hrabar, 2024, p. 31.

59 See Freeman, 2020, pp. 437–439.

60 For more, see Samardžić, 2024, pp. 48–49.

61 Ibid., pp. 50–51.

62 Under Shari'a law, children without parental care cannot be adopted. Instead, they are put under a system of alternative care called kafalah. Children under kafalah cannot take the family name of the family that takes care of them, nor can they inherit from them. Langlaude Doné and Tobin, 2019, p. 766.

the Preamble indicates that '*the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth*'. The reason for this decision was that '*Member States were not ready to accept any type of phrasing which would include unborn children as well, fearing it may indirectly refer to the termination of pregnancy, which at that time was allowed in many countries.*'[63]

Second, childhood was determined as ending at the age of 18, unless the child had attained majority before the law applicable to him or her. Third, a concession was made to Islamic States. Even though Article 14, paragraph 1 guarantees the child the right to the freedom of thought, conscience and religion, first – it does not contain the content of this right, second – States Parties expressed reservations to this Article more than to any other.[64]

Fourth, even though many countries argued that the minimum legal age for participation in armed conflicts should be 18, the age of 15 was retained (Article 38), in accordance with Additional Protocols I and II to the Geneva Convention from 1977. This was particularly criticised as the Convention was expected to put an end to the forced recruitment of children and raise the minimum age for participation in armed conflicts to 18 years.[65] Fifth, the provision requiring all States '*to facilitate the process of adoption, where appropriate*', was revised due to opposition from Islamic States, and today Article 21 applies only to those states that recognise and/or permit adoption.[66]

Finally, on November 20, 1989, the final text of the Convention was adopted.

4. The UN Convention on the Rights of the Child (UNCRC)

The UNCRC – '*the clearest and the fullest statement of children's rights*'[67] today stands as a truly global international treaty, ratified by all countries of the world,[68] except

63 Samardžić, 2024, p. 53.
64 See Šimović, 2024, p. 151; Freeman, 2020, p. 186; Langlaude Doné and Tobin, 2019, pp. 477, 479, 489.
65 Samardžić, 2024, p. 55; Garayová, 2024, p. 209.
66 Langlaude Doné and Tobin, 2019, p. 766.
67 Freeman, 2020, p. 6.
68 In this regard Hrabar argues: '*[d]ue to the importance of having as many countries as possible bound by the principles and provisions of the Convention, it has been declared an open-type convention and allows for subsequent access by states, permits reservations at the time of accession, and the submission of amendments.*' Hrabar, 1994, p. 33.

for the United States of America.[69] *'It includes a recognition that children are "beings", and not merely pre-adult "becomings".'* As such, it guarantees a multitude of different rights, and sets up a minimum standard of protection for all children in the world, regardless of whether they live in developed, developing or undeveloped countries.[70] By placing children at the centre of life circumstances, and addressing their everyday and occasional needs, both material and non-material, as well as regular and extraordinary situations they may find themselves in, the UNCRC takes a holistic approach.[71] Its values are reflected in the fact that it has established general principles necessary for its application and interpretation, provided the definition of the child, recognised the child's needs as rights, emphasised parents as primary caregivers, unified children's rights, and finally, introduced the criteria of the BIC in decision-making regarding the child.[72]

In Article 1, for the purpose of its own application, the UNCRC defines a child as every human being under the age of 18, unless majority is attained earlier under the law applicable to the child. In the following articles it contains four principles necessary for its interpretation and implementation, among which, two are also rights: the principle of non-discrimination (Article 2), the principle of the BIC (Article 3), the right of the child to life, survival and development (Article 6), and the right of the child to express his or her views freely (Article 12).

4.1. General Principles

The principle of non-discrimination implies that all rights guaranteed by the Convention equally belong to every child, regardless of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Accordingly Article 2, paragraph 1, imposes an obligation on States Parties to respect and ensure those rights to each child under their jurisdiction without any kind of discrimination. To ensure that the child is protected from all forms of discrimination or punishment – on the basis of status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members – States Parties need to undertake all appropriate measures (Article 2, paragraph 2).

69 According to the legal literature, there were several reasons why the USA did not ratify the UNCRC. First, the UNCRC was perceived as anti-family (it might undermine home schooling), anti-religion, or even as a Communist conspiracy. While there was a belief that a comparable level of protection for children already existed in domestic law, at the same time there was concern that the Convention grants children "expansive autonomy rights" to exercise independently, even though they may not be fully capable of understanding them. Another major concern was that its ratification would require congressional powers exceeding the limits set by the Constitution and would pose an obstacle to the still-existing practice of executing the death penalty on minors – juvenile offenders convicted of capital crimes. Freeman, 2020, p. 85; Wilkins et al., 2003, pp. 412, 413, 434.

70 Hrabar, 2021, p. 25.

71 Hrabar et al., 2021, p. 199.

72 Ibid., p. 198.

The principle of the BIC is a legal standard applicable to all actions concerning the child, regardless of whether such actions are undertaken by public or private social welfare institutions, courts of law, administrative authorities, legislative bodies (Article 3, paragraph 1), or child's parents.[73] This legal standard has a threefold concept: a) it is a *substantive right*, meaning whenever different interests are being considered, the BIC must prevail over the interests of others; b) it is *a fundamental interpretative principle*, meaning whenever a legal provision can be interpreted in more than one way, the interpretation that favours the child's best interests must prevail; c) it is a *rule of procedure*, meaning when making a decision affecting a child, a group of children, or children in general, the possible (positive or negative) impact of the decision on the child/children must be assessed.[74] To determine what is the best interest of the child/group of children/children in general, different criteria can be applied: a) *the child's needs*, among which it has to be determined which ones have primacy; b) *the will of parents*, as they know their child better than anyone, and they are the first ones to take care of him or her (under the condition that they are capable of doing so); c) *the standard behaviour*, meaning that the norms accepted within a certain society or family are taken as a criterion for assessing the BIC.[75]

The right of the child to life is the only right in the UNCRC depicted as inherent, meaning it cannot be derogated – not even in cases of war or public emergencies – and meaning that the death penalty is prohibited.[76] It is protected under Article 6, which in paragraph 1 stipulates that '*States Parties recognize that every child has the inherent right to life.*' This provision imposes an obligation on States Parties to '*act on children in particularly vulnerable situations, including children with disabilities, any form of sickness, victims of violence, at risk of becoming victims of "honour killings", victims of female genital mutilation, or children from groups at risk of exclusion.*'[77] Paragraph 2, however refers to the right of the child to survival and development, placing an obligation on States Parties to ensure survival and development of the child to the maximum extent possible.

The right of the child to express his or her views is one of the fundamental rights of the child, as its exercise enables the child to fully realise some other rights, such as the right to education, the right to healthcare, the right to freedom of thought, conscience and religion, etc. It is protected under Article 12 of the UNCRC, which is guaranteed in paragraph 1: 1. to every child capable of forming his or her views (which needs to be assessed case-by-case); 2. freely, meaning it is a right and not obligation of the child, and the child should not be subject to manipulation, undue influence or pressure, nor should he/she express someone else's views; 3. in all matters affecting the child, meaning that the child needs to be heard whenever some proceeding or decision might concern him/her, 4. that views need to be given due weight in accordance

73 See UN Committee on the Rights of the Child, 2013, pt. 25. See also Freeman, 2020, pp. 98–109.
74 UN Committee on the Rights of the Child, 2013, pt. 6.
75 Hrabar et al., 2021, p. 209.
76 Freeman, 2020, p. 116.
77 Nowak, 2005, cited in Wedeł-Domaradzka, 2024, p. 75.

with child's age and maturity, taking into account that all children are not equally mature at the same age. Paragraph 2 refers to the right of the child to be heard in any judicial or administrative proceedings affecting him or her, either directly or through a representative.[78]

4.2. The 3Ps: Provision, Protection and Participation

In 54 articles, the UNCRC guarantees children a wide spectrum of rights – from personal, societal, educational, and health – to social, economic, judicial-protective, and, finally, cultural rights.[79] These rights are universal, indivisible, interrelated, interdependent and inalienable.[80] The Family law theory classifies these into different categories: inherent rights,[81] the "4P", positive and negative rights,[82] etc. However, the most commonly used is still the "3P" classification, which encompasses the provision, protection and participation rights of the child.

4.2.1. Provision

Provision rights of the child are rights to services, skills and resources that are necessary for a child's growth and development,[83] such as the right to healthcare, the right to education, the right to benefit from social security, and the right to rest and leisure.

The right to healthcare, in the UNCRC, is referred to as the *right to the enjoyment of the highest attainable standard of health,* which takes into account both the child's biological, social, cultural and economic preconditions on the one hand, and the state's available sources on the other.[84] Paragraph 1 of Article 24 requires States Parties to recognise this right of the child and to '*strive to ensure that no child is deprived of his or her right of access to such healthcare services*', and paragraph 2 calls upon them to fully implement it by undertaking the said appropriate measures. Subsequently, paragraph 3 addresses the abolition of traditional practices which are prejudicial to the health of children, leaving open questions such as whether it applies only to, for example,

78 For a more detailed interpretation of art. 12, see UN Committee on the Rights of the Child, 2009.

79 On these groups of rights, see Hrabar et al., 2021, pp. 201–203.

80 Garayová, 2023, p. 61.

81 Inherent rights of the child '*are innate specifically to children in order to ensure their survival as human individuals during their growth, and not as adult persons.*' They include the right of the child to life and health, the right to live with his or her parents, the right to upbringing and education, the right to know his or her origin, and the right to physical, mental, and emotional development. Hrabar, 2021, p. 27.

82 Positive and negative rights differ in whether the provision refers directly to the child and guarantees him or her a right – positive rights (right to life, right to honour and reputation), or whether it obliges the States Party to undertake specific measures to promote, respect, and protect that right – negative rights (the right to protection from the imposition of the death penalty, the right to protection from the use of narcotics). Hrabar, 2021, p. 27; Hrabar et al., 2021, p. 200.

83 Sadowska, 2024, p. 120.

84 UN Committee on the Rights of the Child, 2013, pt. 23.

female genital mutilation, or also to male circumcision.[85] The child's right to health is also protected under other provisions, such as Article 6, which safeguards the child's right to life.[86]

The right to education is one of the most essential rights of the child, as its realisation enables the child not only to acquire knowledge but also to develop different social, emotional, creative and cognitive skills necessary for the adult life.[87] The UNCRC protects it under two articles – Articles 28 and 29. While Article 28 mainly deals with access to education and differentiates three levels: primary, secondary, and higher or vocational, Article 29 sets out the direction in which education should be aimed for.[88]

The right to benefit from social security '*is premised on poverty and poverty impacts on other guaranteed rights, such as the right to education and the right to the highest attainable standard of health.*'[89] The UNCRC acknowledges this right in Article 26, which binds States Parties to recognise the right of the child to benefit from social security to every child, including social insurance (paragraph 1). In doing so, States Parties must take into account the resources and circumstances of the child and persons having responsibility for the child's maintenance, as well as any other considerations relevant to an application for benefits made by or on behalf of the child (paragraph 2).[90]

The right to play enables the child to truly experience childhood, and to develop creativity, as well as some important life skills. This is recognised by the UNCRC in Article 31, which in paragraph 1 stipulates that '*States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts*', while paragraph 2 requires States Parties to respect and promote the right of the child to participate fully in artistic and cultural life.[91] Being '*often overlooked and constantly undervalued*', this right has rightly been described as '*the red-headed stepchild of the Convention*'.[92]

4.2.2. Protection

Protection rights of the child aim to ensure that the child is protected from all forms of violence, exploitation (including economic exploitation) and other actions – carried out either by adults or institutions – that jeopardise the child's dignity, integrity, survival and development. They include, for example, the right of the child to be protected from abuse and neglect, the right to be protected from economic exploitation

85 Šimović and Kokić, 2025, p. 313.
86 See Sadowska, 2024, pp. 120–124.
87 For more on this right, see Freeman, 2020, pp. 189–193.
88 Freeman, 2020, p. 189.
89 Nkosi, 2015, p. 490.
90 For more on this right, see Sadowska, 2024, pp. 132–133. On the development of this right in international law, see Nkosi, 2015, pp. 404–503.
91 For more on this right, see Garayová, 2023; Mrnjaus, 2014; UN Committee on the Rights of the Child, 2013.
92 Garayová, 2023, p. 47.

and hazardous work, the right to be protected from all forms of sexual exploitation and sexual abuse, and the right to protection and care in the child's best interests.

The right to be protected from all forms of violence – enshrined in Article 19 – encompasses protection from all forms of physical or mental violence, injury, abuse (including sexual abuse), neglect, negligent treatment, maltreatment or exploitation, regardless of whether they are carried out by child's parents, legal guardians, or other persons who have the care of the child.[93] Given that it involves safeguarding the child from '*exploitation of one's advantages over a child*',[94] this right aims to preserve the child's health, development, and behaviour and to prevent any negative consequence for the same.

The right to be protected from economic exploitation and hazardous work – safeguarded under Article 32 – seeks to protect the child from economic exploitation and from any work that is likely to be hazardous or to interfere with child's education, or to be harmful to the child's health, physical, moral, spiritual, or social development. To implement this right, paragraph 2 of this Article stipulates that States Parties need to undertake educational and other measures, particularly those involving minimum age, working conditions and hours, as well as appropriate penalties.[95]

The right to be protected from all forms of sexual exploitation and sexual abuse – which, even though differ in that the sexual exploitation is for commercial purposes, both '*violate the dignity of the child and represent a flagrant breach of several fundamental rights essential for the child's healthy development and survival*'[96] – is protected under Article 34. As such, it encompasses protection from: the inducement or coercion of a child to engage in any unlawful or psychologically harmful social activity; the use of children in commercial sexual exploitation; the use of children in audio or visual images of child sexual abuse; child prostitution, child slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and the sale of children for sexual purposes and forced marriages.[97]

4.2.3. Participation

Participation rights of the child are to be said as '*one of the most profound transformations in moving towards a culture of respect for children's rights, for their dignity and citizenship, and for their capacities to contribute significantly towards their own well-being.*'[98] Accordingly, they can be defined as a group of rights, that, when exercised, allow children to engage in processes, which lead to the realisation of their other rights

93 For more on this right, see Lis, 2024, pp. 98–105; UN Committee on the Rights of the Child, 2011.

94 Lis, 2024, p. 99.

95 Vinković criticises the fact that the Convention failed to specify a minimum working age, but instead left it to the discretion of States Parties. Referring to its '*recognition of other international instruments*', Vinković argues that this has undermined the protection of children in countries that have not ratified the relevant labour conventions. See Vinković, 2008, p. 128.

96 Van Bueren, 1994, cited in Vinković, 2008, p. 129.

97 UN Committee on the Rights of the Child, 2011, pt. 25.

98 Lansdown, Jimerson, and Shahroozi, 2014, cited in Burger, 2018, p. 66.

and enable them to become active participants in society.[99] By '*regulating children's relationships with family members and, more broadly, with all individuals and institutions with whom they come into contact*',[100] participation rights enable the child to be seen, noticed and acknowledged in society. They include: *the right of the child to express his or her views freely in all matters affecting him or her* (Article 12); *the right to freedom of expression*, which includes the freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media of child's choice (Article 13);[101] *the right to freedom of thought, conscience and religion* (Article 14), which encompasses both the right of the child to manifest his or her beliefs, and obligation of the state to respect, protect and promote this right;[102] *the right to free association and peaceful assembly* (Article 15).[103]

Being of a relative nature, these rights can be subject to certain restrictions, which, in order to be legitimate, need to be necessary and provided by law – for the protection of national security, public order, public health, morals, or the rights or reputations of others.[104]

99 Burger, 2018, p. 66.

100 Šimović, 2024, p. 138.

101 The implementation of this right may face certain challenges, particularly in the context of the digital environment. Children, by expressing their views on politics or other topics, or by revealing their identity online, may be exposed to criticism, hostility, threats, or punishment. They may become victims of cyberaggression and threats, censorship, data breaches and digital surveillance. (UN Committee on the Rights of the Child, 2021, para. 60) Exposure to hate speech, racist or violent content, Internet propaganda, misinformation, fake news, and influencers may negatively affect the formation of their opinions. The same is with content personalisation, which may result in limited exposure to diverse information. Challenges can also arise with children being not only Internet users, but also creators and distributors of online content (e.g. photos, videos, texts), which may lead them to breaking the law by inciting hatred or violence against others. (Lievens et al., 2018, p. 4) To combat these challenges, States Parties should undertake several actions. First, they need to '*protect children and young people from any act by private persons or entities that would impair the enjoyment of their rights to freedom of expression, within the limits of the Convention*'. (*Vandenhole et al., 2019, p. 178)* Any restriction on this right (e.g. filters) needs to be lawful, proportionate and necessary. (UN Committee on the Rights of the Child, 2021, para. 59) Second, they should ensure that '*uses of automated processes of information filtering, profiling, marketing and decision-making do not supplant, manipulate or interfere with children's ability to form and express their opinions in the digital environment*'. (Ibid., para. 61) Finally, they should promote children's awareness of how to create and share digital content safely, while not violating the law and at the same respecting rights and dignity of others. UN Committee on the Rights of the Child, 2021. See Guštin, 2022, pp. 472–475.

102 For more on this right see Šimović and Kokić, 2025.

103 For more on these rights, see Šimović, 2024, pp. 137–159. For a detailed analysis of arts. 12–15, see Langlaude Doné and Tobin, 2019, pp. 397–550.

104 See Šimović, 2024, p. 138.

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

The UNCRC decided to follow the path laid out by Additional Protocols I and II to the Geneva Convention from 1977, which prohibited military recruitment and direct participation in hostilities of children under the age of 15. However, this meant that children over the age of 15 could still be recruited and that indirect involvement of children under the age of 15 was still possible. Thus, children could serve as spies, scouts, cooks, porters, informants, or messengers.[105] This provoked both criticism and disappointment among those who had expected the Convention to finally put an end to the involvement of children in war. Finally, as a result of this dissatisfaction and a global campaign – led by human rights activists and certain governments – in 1994, the Commission on Human Rights established a working group for the enactment of the new document which would regulate these issues.[106]

The working group – consisting of representatives of different states, non-governmental organizations, UN bodies and agencies, and independent experts – worked on the text for the next six years, led by the "straight-18" principle.[107] The aim was to abolish the child's involvement in war in any way. The work was challenging as some countries – Bangladesh, Cuba, Israel, South Korea, Kuwait, Pakistan, the United Kingdom, and the United States – had opposing views. Finally, on 25th May 2000, the UN General Assembly, at its 54th session, adopted the Optional Protocol to the UNCRC on the involvement of children in armed conflict (hereinafter: OPAC). After being ratified by the required number of states (ten) the Protocol became legally binding on 12 February 2002.[108]

The OPAC applies to both national and international armed conflicts, and prohibits recruitment or use of children both by state and non-state armed groups.[109] In its introduction, the States Parties '*reaffirm that the rights of children require special protection and calling for continuous improvement of the situation of children without distinction*', and '*condemn with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State*'. Furthermore, they express their belief that the adoption of this Protocol – which raises the age for recruitment of children into armed forces and participation in hostilities – will contribute to the full implementation of the pivotal principle of the BIC. Unlike the UNCRC and Additional Protocols I and II to the Geneva Convention – which prohibit recruitment only of children under the age of 15, this

105 Garayová, 2024, pp. 212–213.
106 Ibid.
107 Ibid., p. 214, Fabijanić Gagro, 2017, p. 448; Langlaude Doné and Tobin, 2019, p. 1667.
108 Garayová, 2024, pp. 213–215. As of today, 173 countries have ratified the Protocol, 17 have neither signed nor ratified it, and 7 countries have signed but have yet to ratify it. See UN, no date.
109 Langlaude Doné and Tobin, 2019, p. 1668.

Protocol raises that age and prohibits compulsory recruitment into armed forces and direct participation in hostilities for all children under the age of 18.

From Article 1, it arises that '*States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.*' This provision has been criticised for two reasons: 1. unlike the Rome Statute of the International Criminal Court, which contains a clear prohibition on the involvement of children under the age of 18 in armed conflicts, ('*children shall not be used [...] to actively take part in hostilities*'), the Protocol states that states should take '*all feasible measures to ensure*' it, 2. this wording does not include indirect involvement in hostilities – unlike in the Additional Protocol II to the Geneva, which prohibits any participation – leaving open the possibility for children being engaged as spies, porters, messengers (etc.), or even being used for forced marriages and sexual exploitation.[110]

Article 2 requires States Parties '*to ensure that persons who have not attained the age of 18 years are not compulsorily recruited into armed forces*'. This provision represents "a long-awaited step forward" compared to UNCRC and other international treaties, as it raised the minimum age for the recruitment from 15 to 18 years. Unlike Article 1, it does not refer to the mere use of '*all feasible measures*', but contains an absolute obligation aimed at achieving a certain goal.[111] The term recruitment '*differs from participation in hostilities and implies the registration, examination, and classification of children for armed conflicts.*'[112] As it involves the inclusion of children into the military system, recruitment does not, however, encompass the mere listing of future conscripts.[113]

Article 3 imposes an obligation on States Parties to raise the minimum age for voluntary recruitment above the age of 15. Even though it does not specify the exact age, it is clear that it cannot be below 16, and that leaves States Parties to determine it. This solution deviates from the "18-straight" principle, supported by representatives of many countries, but also by the UN Committee on the Rights of the Child (hereinafter: CRC Committee), which, in its Concluding Observations of the report, supported by New Zealand under Article 8(1) of the Protocol, recommended New Zealand to consider to raise the minimum age for voluntary recruitment to 18.

However, if the state allows the voluntary recruitment of children, it needs to respect certain rules: 1. it needs to ensure that such recruitment is genuinely voluntary, 2. it needs to make sure that it is done with the informed consent of the child's parents, or legal guardians, 3. it needs to make sure that such persons are entirely informed and aware of duties once being involved in military service, 4. it needs to ensure that such persons submit reliable proof on the child's age before the acceptance into military service. This solution has been criticised for several reasons: 1. it does not provide a definition of the terms "voluntary" and "recruitment";

110 Garayová, pp. 220–221.
111 Ibid., p. 223.
112 Fabijanić Gagro, 2008, p. 754.
113 Ibid.

2. it overlooks the fact that in war-affected areas, parents may be financially motivated to send their child to war; 3. proving a child's age can be difficult and challenging in countries that do not have a developed birth registration system, 4. children may lie about their age (as it happened in Libya when some joined armed groups opposing Muammar Qaddafi's dictatorship).[114]

The OPAC also forbids *armed groups different from the armed forces of the State*[115] to use or recruit in hostilities persons under the age of 18. Accordingly, it requires from States Parties to '*take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.*'[116] States Parties also need to provide information regarding armed groups operating within their territories or originating from that territory.

Even twenty-five years after the adoption of the OPAC, this provision remains of a great importance, as the use or recruitment of children by non-state armed forces continues to be widespread.[117]

6. Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

At the same session at which it adopted the Optional Protocol on the Involvement of Children in Armed Conflict, the UN General Assembly also adopted the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (hereinafter: OPSC). Entered into force on 18th January 2002, it is now the most widely ratified of the three Protocols, with 178 states having ratified it and 7 having signed but not yet ratified it. Unlike the OPIC, which came from certain pressures and dissatisfaction with the solutions provided in the Convention, the OPSC emerged at the initiative of the Commission on Human Rights. It all started in 1990, when the Commission appointed a special rapporteur to consider issues related to the sale of children, children prostitution and pornography. As its reports drew attention to these problems, in 1992, the Commission adopted a Programme of Action for Prevention of the Sale of Children, Child Prostitution and Child Pornography. Finally, in 1994, the UN General Assembly was introduced to these issues. Acting upon its request, the Commission established a working group with the aim of drafting a new document, which would extend the existing measures for combatting the sale of children, child prostitution and child pornography.[118]

114 Garayová, 2024, p. 225; Langlaude Doné and Tobin, 2019, p. 1685.
115 Armed groups different from the armed forces of the state are non-state armed groups, such as rebel movements, dissident factions, and insurgents. Ibid., p. 1690.
116 OPAC, art. 4.
117 Garayová, 2024, p. 226.
118 Langlaude Doné and Tobin, 2019, pp. 1713–1714, 1716–1717; Fetai and Stajnko, 2024, pp. 182–183.

Over the next six years, the group – consisting of the representatives from nearly 100 states, UN bodies, international organisations, and NGOs – worked on this document through six sessions, each held once a year.[119] Even though there were opposing views – that there was no need for a new document since the UNCRC already provided necessary legal framework and that it would cause '*duplication of efforts and proliferation of international instruments, (which) should be avoided*'– many countries continued to advocate for its adoption stating that it would not be amiss to impose additional obligations on states in order to address existing issues.[120] Finally, in 2000, the OPSC was adopted.

In its introduction, the States Parties express their deep concern '*at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography*', '*at the widespread and continuing practice of sex tourism, to which children are especially vulnerable*' and at the '*growing availability of child pornography on the Internet and other evolving technologies*'. Being of the belief that these issues can be eliminated by using a holistic approach, addressing the contributing factors (e.g., poverty, lack of education, economic disparities, armful conflicts, harmful traditional practices), and by raising public awareness, States Parties have agreed on the following provisions.

In Article 1, the Protocol imposes an obligation on States Parties to prohibit sale of children, child prostitution and child pornography. Unlike Articles 34 and 35 of the UNCRC, which stipulate that States Parties '*shall take all appropriate [...] measures to prevent*' child prostitution, pornography and sale, Article 1 uses a stronger term "prohibit" and does not leave States Parties the possibility to invoke a lack of resources as a reason for their failure to combat the aforementioned issues.[121] To ensure the proper application of the Protocol, as well as of the relevant provisions of the UNCRC, Article 2 defines what is meant by sale of children, child prostitution and child pornography.

Sale of children, as defined in Article 2, is '*any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration*'. This definition does not specify what do '*acts or transactions, whereby a child is transferred*' include, but the answer could be found in Article 3, which enlists the acts – related to the sale of the child – that need to be criminalised: delivering or accepting, by whatever means, a child for the purpose of sexual exploitation of the child, transfer of organs of the child for profit, engagement of the child in forced labour, improper inducement of the consent for the adoption of the child by intermediary.[122] Some legal scholars argue that commercial surrogacy may also fall within the scope of this definition, as it fails to specify who the persons or group of persons involved in the transaction are, and whether they have a biological connection to the child, and what the purpose of the transaction is.[123]

119 For more on these sessions, see Langlaude Doné and Tobin, pp. 1719–1726.
120 Ibid., pp. 1714, 1726.
121 Ibid., p. 1727.
122 Fetai and Stajnko, 2024, p. 183.
123 Langlaude Doné and Tobin, 2019, p. 1731.

The sale of children needs to be distinguished from child trafficking, which refers to the

> 'recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, or the abuse of power or of a position of vulnerability or of the giving or receiving payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.'[124]

While the sale of children involves payment or other forms of remuneration and does not require any form of exploitation, child trafficking does not involve payment or any other form of remuneration, but entails child exploitation.[125]

Child prostitution, as defined in Article 2, '*means the use of a child in sexual activities for remuneration or any other form of consideration*'. On that note, three things need to be observed. First, the term "use of a child" '*is not qualified by any requirement that the use be exploitative or unlawful*', unlike in Articles 34 of the UNCRC.[126] Article 3 – which provides for its criminalisation – suggests that it encompasses the '*offering, obtaining, procuring or providing a child for child prostitution*' and similarly, the legal literature suggests that it pertains to the '*acts of obtaining, coercing, procuring, facilitating, or offering the service of a child or inducing a child to perform sexual acts*'.[127] Second, the term "sexual activities" is not defined. For that reason, in its Guidelines regarding the implementation of the OPSC, the CRC Committee provided a non-binding definition, according to which, sexual activities

> 'should include, at a minimum and whether real or simulated, all forms of sexual intercourse and intentional sexual touching involving a child, independent of the sex of all involved persons, and any lascivious exhibition of the genitals or the pubic area of a child'.[128]

Third, it must be noted that the

> '[p]rotocol must not be understood as suggesting the child could consent to the sexual activities in exchange for remuneration or any other form of consideration, or that the child is necessarily the recipient of money or other form of consideration [...] such remuneration or consideration may be paid or given to any third person, and the child often does not receive anything directly, or the "consideration" is provided in the form of basic survival needs such as food or shelter.'

124 OPSC, art. 3.
125 UN CRC, *Guidelines on Optional Protocol*, 2019, CRC/C/156, pt. 7.
126 Langlaude Doné and Tobin, 2019, p. 1734.
127 Ibid.
128 UN CRC, *Guidelines*, 2019, CRC/C/156, pt. 53.

In fact, 'a child under the age of 18 can never consent to any form of their own sale, sexual exploitation or sexual abuse, and that States parties must criminalize all the offences covered by the Optional Protocol, committed against any child up to the age of 18',[129] even if their national legal systems sets a lower minimum age for sexual consent.

Child pornography, as defined in the Protocol, '*means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.*' As with the definition of child prostitution, there is an inconsistency between the UNCRC (Article 34 (c)) and the OPSC, as the latter does not require representation to be exploitative.[130] However, it distinguishes and prohibits engagement of the child in both real and simulated explicit activities. The latter include '*any material, online or offline that depicts or otherwise represents a child appearing to engage in sexually explicit conduct.*'[131]

Moreover, the OPSC prohibits representation of sexual parts of a child but imposes a condition: it must be primarily for sexual purposes. Therefore, the parental possession of photos of their naked child, kept for sentimental reasons, does not fall under this Protocol. Similarly, possession of photos of someone else's children by paedophile that do not explicitly display their sexual parts, does not fall under the scope of this Protocol. On the other hand, a situation involving a person keeping photos of naked children where their sexual parts are explicit and for sexual purposes will indeed fall under this Protocol.

Any act or action involving the production, distribution, dissemination, import, export, offering, sale, or possession of child pornography, needs to be fully covered under criminal or penal law of the States Parties (Article 3(c)).

7. Optional Protocol on a Communications Procedure

The Optional Protocol on a communications procedure (hereinafter: OPIC) – adopted on December 19, 2011 – is the youngest and the newest protocol among the three. Its primary objective was to ensure that, in cases of alleged violations at the national level, children have access to legal remedies at the international level, too. Even though the idea to establish communication procedure already existed during the negotiations on UNCRC, it was not carried out for several reasons. First, there was a hesitation regarding the justiciability of the economic, social and cultural rights, contained in the UNCRC.[132] Second, the States Parties were not willing to empower the CRC Committee – a non-judicial body – with competences of receiving and deciding on violations of child's rights.[133]

129 Ibid., pts. 54 and 72.
130 Langlaude Doné and Tobin, 2019, p. 1735.
131 UN CRC, *Guidelines*, 2019, CRC/C/156, pt. 62.
132 UN Human Rights Council, 2009.
133 Benyusz, 2024a, p. 242.

The idea was brought up again in 2007, as the UNCRC was one of the few international treaties without a communications procedure and its monitoring mechanism apparently had certain deficiencies. The first proposal appeared in 2008 at the 47th session of the CRC Committee, however, it was in 2009 when the drafting process started, with the establishment of the Open-Ended Working Group. The states were expressing their concerns mainly about the impact on their national sovereignty, but also about issues such as the scope of the Protocol, the additional work for the Committee, its lack of legal expertise, the legal capacity of the child, his or her capability to communicate on his or her own behalf, or through a representative, and the duration of the procedure.[134]

In its Preamble, among other things, by '*reaffirming the status of the child as a subject of rights and as a human being with evolving capacities*'[135] *and by 'recognizing that children's special and dependant status may create real difficulties for them in pursuing remedies for violations of their rights*', States Parties agreed to entrust the Committee with functions provided for in the text of the Protocol. Following the Preamble, the OPIC contains four separate parts: 1. General Provisions (Articles 1–4), 2. Communications Procedure (Articles 5–12), 3. Inquiry Procedure (Articles 13–14), and 4. Final Provisions (Articles 15–22).

In the first part, the OPIC states that the competences of the Committee, arising from this Protocol, are reserved solely for the States Parties to the Protocol, and the Committee shall not act upon violation committed by a States Party concerning violation of a right protected under a document to which the state is not a party, nor shall it receive communications if the violation concerns a non-Party State.[136] While exercising those competences, the Committee needs to be guided by two principles: the principle of the BIC and the respect for the child's rights and views, with due weight given in accordance with the child's age and maturity.[137] In the same part, the Protocol further imposes an obligation on the Committee to adopt procedural rules for responding to the child's submissions and to include in those rules safeguards to prevent any manipulation of the child by those who act on the child's behalf.[138] It also allows the Committee to decline any communication that it considers to be against the principle of the BIC.[139]

In the second part, the OPIC regulates the first way for children to challenge their rights violated by a States Party – a *communication procedure*. Communications can

134 Ibid., pp. 242–243.
135 In this regard Hrabar states that the child '*as subject of rights*' with '*evolving capacities*' faces obstacles in protecting his or her rights, and that '*it is for this reason that the Protocol opens a new door for children, claiming that it will enable national legislatures and regional organisations to submit complaints in the event of violations of their rights*.' Hrabar, 2017, p. 19.
136 OPIC, art. 1.
137 Ibid., art. 2.
138 The Committee adopted these rules on April 8, 2013. See more on them in: Benyusz, 2024a, pp. 245–250, 252–253.
139 OPIC, art. 3.

be submitted either on behalf of an individual child, or a group of children,[140] if they claim to be victims of violation committed by a States Party to the Protocol of rights protected under the UNCRC, the OPAC or the OPSC.[141] The OPIC also prescribes that at any time after receiving the communication, and before making a decision, the Committee can request urgent consideration from the States Party in question to undertake interim measures necessary in exceptional circumstances to prevent possible irreparable damage to the victim or to the victims of alleged violation.[142]

To be considered as admissible, a communication needs to meet certain criteria: it shall not be anonymous; it shall be in written form; it shall not constitute abuse of the right of submission of the communications, nor shall it be incompatible with the UNCRC and/or Protocols; the same matter must not have already been examined by the Committee nor be under examination by another procedure of international investigation or settlement; all available domestic remedies must be exhausted; the communication should not be manifestly ill-founded and should be sufficiently substantiated; the facts of the communication must not have occurred before the entry into force of this Protocol for the States Party in question; and it must be submitted within the period of one year after the exhaustion of domestic legal remedies, unless the author can prove it was impossible to submit it within the timeframe.[143]

After receiving the communication and determining it to be admissible, the Committee needs to introduce the States Party in question with it – confidentially and as soon as possible. The concerned States Party then needs to respond within the following six months with written explanations or statements clarifying the situation.[144] After considering the communication, the Committee will share its views and recommendations with the concerned States Party. The state must then respond and provide information on actions taken in light of those views and recommendations,

140 See about the legal representation and the legal capacity of the child during the proceedings: Benyusz, 2024a, pp. 253–254.

141 OPIC, art. 5. During the reporting period (2020–2022) the CRC Committee received over 200 individual complaints, adopted decisions in 62 cases, and found violations in 19 of them: eight against Spain, three against France and Switzerland, two against Belgium and Denmark and one against Finland. The majority of cases related to migration issues, in particular non-refoulment cases, age determination and administrative detention of migrant children. Others included issues of education, climate change, repatriation of children detained in the Syrian Arab Republic, and the right of children to maintain contact with both parents. The cases concerned mostly European States, but also some from Latin America. Report of the Committee on the Rights of the Child, 2022, paras. 46, 49. During the reporting period (2022–2024) the CRC Committee received over 200 individual communications, adopted decisions in 45 cases, and found violations in 14 of them: three against Denmark; two against Spain; and one each against Argentina, Chile, Czechia, France, Finland, Georgia, Paraguay, and Peru. The cases involved issues such as non-refoulment, education, international child abduction, the institutionalisation of children, the child justice system, the repatriation of children from refugee camps, reproductive rights, corporal punishment, and an adequate standard of living. Report of the Committee on the Rights of the Child, 2024, paras. 40, 43.

142 OPIC, art. 6.

143 OPIC, art. 7.

144 OPIC, art. 8.

also within six months.[145] Meanwhile, during the proceedings, the Committee must offer its good offices to the parties in question in order for them to reach a friendly agreement. In case they do so, the Committee will close the case.[146]

In the same part, the OPIC also provides for an option for states to report alleged violation of the rights guaranteed under the UNCR, or under the Protocols, committed by another state. However, as of today, no inter-state communication has been initiated before the Committee.[147]

In the third part, the OPIC regulates the second way for children to challenge violations of their rights committed by a States Party – an *inquiry procedure*. If the Committee receives credible information that there is a systematic and grave violation of children's rights by some States Party, the Committee needs to invite that state to cooperate and to submit observations regarding those issues without delay. The Committee may also appoint one or two members to conduct a confidential inquiry – which may include the visit of that country, and to report the Committee about it. After receiving the report, the Committee must examine it, and without any delay, inform the state in question about it, but also provide it with its views and recommendations. The state must then respond to those observations in the following six months.[148]

In the last part, the OPIC sets out provisions concerning international assistance and cooperation with UN specialised agencies, funds, programmes and other bodies; reporting to the General Assembly; dissemination of and information on the Protocol; procedures for signature, ratification and accession; its entry into force; violations after the entry into force; provisions for amendments and denunciation; the role of the Secretary General as depositary of the Protocol; and official languages of the Protocol.[149]

As of today, the OPIC has the lowest rate of ratification, having been ratified by only 52 states. Even though at the time of its adoption it was considered '*a huge step towards promoting children's rights*'[150] and '*a good idea how to overcome the obstacle of the impossibility to punish states pursuant to the Convention on the Rights of the Child and its two Protocols*',[151] it is clear that the OPIC has not reached its full potential. Many states are still hesitating to sign or to ratify it, and the reasons vary from the impact of the

145 OPIC, arts. 10–11.
146 OPIC, art. 9.
147 See OPIC, art. 12. See also Benyusz, 2024a, p. 251.
148 OPIC, art. 13. During the reporting period (2020–2022), the CRC Committee received four requests to open an inquiry. With respect to three of them, it decided to launch an inquiry and informed the states in question accordingly. Report of the Committee on the Rights of the Child, 2022, paras. 52–57. During the reporting period (2022–2024), the CRC Committee received four requests to open an inquiry. Three of them were dismissed, as the States Parties to the UNCRC were not parties to the OPIC. Regarding the fourth, the Committee requested additional information and eventually decided not to launch an inquiry. Report of the Committee on the Rights of the Child, 2024, para. 46.
149 OPIC, arts. 15–22.
150 Benyusz, 2024a, p. 254.
151 Hrabar, 2017, p. 22.

Protocol on national sovereignty, the Committee's non-judicial nature and a lack of legal expertise, capability of children to bring complaints on their own behalf, the lack of clarity in situations of manipulation and conflict of interests between the child and his or her representative.

However, what is concerning is that many of these states are those where the protection of children and their rights remains inadequate.[152]

8. The Role of the Committee on the Rights of the Child

The CRC Committee – established under Article 43 of the UNCRC – is a treaty body with the role of examining the progress made by States Parties in fulfilling the obligations undertaken under the UNCRC. It consists of 18 members, elected by States Parties – from among their nationals, with due consideration to equitable geographical distribution and principal legal systems. These members – despite being elected based on geographical distribution – serve in their personal capacity, and not as representatives of the states they come from. Another requirement is that they are experts of high moral standing and recognised competence in the field of children's rights.[153]

The members of the Committee are elected by secret ballot from a list of persons nominated by the States Parties, with each state being able to select one individual from among its nationals.[154] Elections are held every two years, but the entire preparation procedure begins at least four months before each selection. Namely, the procedure's initial step is undertaken by the Secretary General of the UN who needs to send a letter to the States Parties within this timeframe, requesting States Parties to submit their nominations in the following two months. After receiving nominations from the states, the Secretary General needs to prepare a list of the nominated persons – in alphabetical order and indicating the states that nominated them.[155] The elections are held at the meeting of States Parties – convened by the Secretary General – at the United Nations headquarters. Two procedural conditions must be met: 1. at least two-thirds of the representatives need to be present in order to form a quorum necessary for voting; 2. members will become those with the largest number of votes and an absolute majority of the votes of States Parties that are present and voting.[156]

The members' term of office is four years, and they may be re-elected if re-nominated. In case a member dies, resigns, or declares – for any other reason – that he or she can no longer perform this function, the state that appointed him/her needs

152 Notably, less than 20% of the States Parties to OPIC are from Sub-Saharan Africa, the Middle East and North Africa, and South Asia. See *Ratification Status*, no date.
153 UNCRC, art. 43(2).
154 UNCRC, art. 43(3).
155 UNCRC, art. 43(4).
156 UNCRC, art. 43(5).

to appoint another one from among its nationals – to perform for the remainder of the term.[157]

For its proper functioning, the Committee needs to adopt its own rules of procedure and elect its officers for a period of two years. Its meetings are held every year at the Headquarters of the United Nations or at some other place determined by the Committee itself.[158]

Even though its role is not authoritative, the significance of the Committee in the protection and advancement of children's rights is not to be underestimated.[159] The Committee has a broad mandate, which includes a range of working methods: it reviews States Parties' reports submitted every five years, considers individual and inter-state complaints, and conducts inquiries (under OPIC), issues General Comments (which is one of its most important roles), prepares open letters and statements, organises conferences and discussions, and lastly, cooperates with non-governmental organisations.[160]

State reports are submitted by the States Parties to the Committee through the Secretary-General of the United Nations. In these reports, the states need to indicate any factors and difficulties they face in fulfilling obligations arising from the Convention, as well as provide a full picture on the implementation of the Convention in the concerned state.[161] These reports need to be made publicly available within their own countries. The Committee, however, may ask the state to provide further information in this regard. After considering the report, the Committee will issue suggestions and recommendations and communicate them to the state and the General Assembly.[162]

General Comments – even though non-binding – offer detailed explanation, clarification, guidance and direction for the proper implementation of the rights contained in the UNCRC and its Optional Protocols. In them, the Committee expresses its position on various issues: the aims of education (No. 1, 2001), the role of independent national human rights institutions (No. 2, 2002), HIV/AIDS and the rights of the child (No. 3, 2003), adolescent health and development (No. 4, 2003), general measures of implementation (No. 5, 2003), treatment of unaccompanied and separated children (No. 6, 2005), implementing child rights in early childhood (No. 7, 2005), protection from corporal punishment (No. 8, 2006), the rights of children with disabilities (No. 9, 2006), children's rights in juvenile justice (No. 10, 2007), indigenous children and their rights (No. 11, 2009), the right of the child to be heard (No. 12, 2009), freedom from all forms of violence (No. 13, 2011), best interests of the child (No. 14, 2013), the right to the highest attainable standard of health (No. 15, 2013), impact of the business sector on children's rights (No. 16, 2013), the right to rest, leisure, play, recreational activities,

157 UNCRC, arts. 43(6) and (7).
158 UNCRC, arts. (8), (9) and (10).
159 Grabowski, 2024, p. 174.
160 Ibid., p. 165.
161 The Committee has adopted principles regarding these reports and their content. For more, see Ibid., p. 164.
162 Ibid.

cultural life and the arts (No. 17, 2013), harmful practices (No. 18, 2014), public budgeting for the realisation of children's rights (No. 19, 2016), the rights of the child during adolescence (No. 20, 2016), children in street situations (No. 21, 2017), general principles in the context of migration (No. 22, 2017), state obligations regarding children in migration (No. 23, 2017), children's rights in the child justice system (No. 24, 2019), children's rights in relation to the digital environment (No. 25, 2021), children's rights and the environment, with a focus on climate change (No. 26, 2023).[163]

The open letters serve the Committee to publicly call for the respect of children's rights, and through *statements*, it expresses its standpoint on various issues concerning children. The thematic discussions and conferences, in particular – *Day of general discussion* – is organised every two years, addressing current issues that children face, such as international migration, digital environment, armed conflicts, indigenous children, children without parental care, domestic and peer violence, etc.[164]

Overseeing the work of states, open to cooperation with non-governmental organisations and even children, and addressing an increasing number of various and crucial issues regarding the protection of children, the CRC Committee can be seen both as a "driving force" and "rejuvenator" of the UNCRC and its supporting Protocols.

9. The Role of UNICEF and Non-Profit Organisations at the Universal Level

The United Nations Children's Fund (UNICEF) – originally known as the United Nations International Children's Emergency Fund – is an international humanitarian organisation established by the UN General Assembly on 11 December 1946.[165] Founded as a successor to the United Nations Relief and Rehabilitation Administration (UNRRA), which was established on 9 November 1943, its primary aim was to provide food and healthcare to mothers and children in areas affected by World War II. After the situation began to improve in the 1950s, some Western countries advocated for its dissolution. However, in 1953, a resolution was adopted – on the 8th Plenary session of the United Nations held in New York – which transformed the "Fund" into a permanent body with the primary function to provide help in those parts of the world where it is needed. It also changed its name into United Nations Children's Fund, or as we know it, UNICEF.[166]

Today, as a part of United Nations, UNICEF has a semi-autonomous status and is present in 192 countries around the world. It has a governing body – the Executive Board consisting of 36 members from five main regional areas of Member States – and a Bureau, comprising a President and Vice Presidents, each from one of the five

163 For more on these comments, see ibid., pp.167–173.
164 Ibid., p. 173.
165 Benyusz, 2024b, p. 268; Klinčić, 2007, p. 51.
166 Ibid., pp. 51–52.

regional areas. The Board meets three times a year (at two regular and one annual session) at the UN Headquarters. The work of the Executive Board it supported and serviced by the Office of the Secretary, which organises its field visits and communicates with UNICEF Secretariat.[167]

As of today, UNICEF has been working and continues to work in the fields of child protection, child survival, education, social policy, emergency intervention, gender equality, innovation, supply and logistics, and evidence-based research and analysis.[168] In 1965, it received the Nobel Peace Prize, '*as a true advocate for children's rights and their dignified position in society [...] without which, the world would undoubtedly be a sadder and more uncertain place.*'[169]

Alongside UNICEF, the role of non-governmental organisations (NGOs) and National Human Rights Institutions (NHRIs) shall not be omitted. *NGOs* are government-independent – mostly non-profit – organisations established by group of individuals and representing specialist expertise. In regard to the UNCRC, their role has been twofold: they played an important role in its drafting and adoption, and they continue to do so in its monitoring and implementation. Their influence on the UNCRC goes back to the Geneva Declaration in 1924 – one of the two UNCRC's predecessors, when the International Save the Children Fund, the British Save the Children Fund and the Swedish Rädda Barnen were established, and their importance continues to this day. NGO's organised activity started in 1983, when the Informal Ad Hoc Group for the Convention on the Rights of the Child was founded.[170]

During the drafting of the Convention, NGOs had a significant impact on regulating matters such as the protection of children against sexual exploitation, trafficking, torture, and armed conflict with special focus on reintegration and promotion of physical and psychological recovery measures for children victims of these violations. They also sought to influence matters such as rights of the unborn child, and the minimum legal age for involving children into armed conflict, though with less success.

Regarding the second role – the implementing and monitoring of the Convention, the UNCRC was the first among human rights treaties to involve NGOs in these processes. Article 45 foresees this role both for UNICEF and other competent bodies, including NGOs and special agencies. To carry out this function, NGOs can organise activities to raise awareness on certain issues, to educate different groups and provide platforms for professional discussions, share information and enhance cooperation, and enhance visibility through collaboration with the media.

National Human Rights Institutions (NHRIs) are independent, state-mandate and state-financed institutions, established to promote and protect human rights at the national level. Unlike NGOs, NHRIs are public institutions, which appear in different

167 See UNICEF, no date.
168 Benyusz, 2024b, p. 268.
169 Klinčić, 2007, p. 64.
170 Ibid., 263.

forms, such as ombudsman offices, councils, commissions. They deal with a wide scope of rights – from civil and political, to social, economic and cultural rights – and are accountable to the public for their work.

The idea for the establishment of the NHRIs emerged in the mid-20th century, two years before the adoption of the Universal Declaration on Human Rights. Subsequently, in 1978, draft guidelines concerning the role and functioning of NHRIs were adopted.[171] However, the key step came fifteen years later, with the adoption of the Paris Principles – '*a guiding threshold for the credibility and legitimacy of these institutions*'.[172] Adopted by the UN General Assembly in 1993, the Paris Principles '*called for the establishment of NHRIs that meet the requirements of a broad mandate, effective functioning, pluralism, independence from the government, adequate powers and resources, cooperative practices, and international engagement.*'[173]

Today, the establishment of the NHRIs is referenced in many international documents, including the UN Declaration on the Rights of Persons with Disabilities (UNCRPD), UN Guidelines on Alternative Care, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Rules for the Protection of Juveniles Deprived of their Liberty (so-called *Havana Rules*), and the Lanzarote Convention.[174] Notably, the UNCRC is not among them, as it contains no provision which directly refers to the establishment of the NHRIs. Nonetheless, in its (even though non-binding) General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, the CRC Committee '*considers the establishment of such bodies to fall within the commitment made by States Parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children's rights*'[175] and derives the obligation of States Parties to establish NHRIs from Articles 4 of the UNCRC, which stipulates that '*the States Parties undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention*'.

Once established, the NHRIs specialised in children's rights have multifaceted functions: they promote and monitor the implementation of the UNCRC, they may propose legislative reforms or provide input to those initiated by the government, they promote children's rights and participation in legislative procedures, play important role in monitoring and evaluating implementation of children's rights legislation, and they may also be mandated to receive complaints from children when their rights

171 Benyusz, 2024b, p. 270.
172 Ibid.
173 Ibid.
174 For more on this, see Benyusz, 2024b, pp. 272–273.
175 UN Committee on the Rights of the Child, 2002, pt. 1. In the same document, the Committee provides guidance on establishment, mandate and powers, resources, pluralistic representation, provision of remedies for breaches of children's rights, as well as accessibility and participation. See Ibid; see also Benyusz, 2024b, pp. 273–275.

are violated, and provide remedies – such as advocacy, independent advice and complaints procedures.[176]

10. Concluding Remarks

The idea that children are legal subjects, particularly vulnerable, who should enjoy different rights, was not fully recognised by adults until the 20th century. In fact, throughout history, the position of children has often been far from enviable, as they were subjected to corporal punishment, abandonment, abuse, or even death. Regarded as the property of their parents, in some historical periods, children could even be sold or killed by their father.

The 20th century brought significant changes and marked a renaissance for children and their rights. The adoption of the UNCRC was a major step taken by the international community, which had to find compromise and invest considerable efforts to ensure that every child in the world would be protected. Taking into account geographical, political, social and cultural differences of the states, as well as the challenges of reaching an agreement, the significance of the adoption of the UNCRC becomes even more pronounced.

Today, despite those efforts, and despite being positioned and protected as subjects of law, children are unfortunately still facing various challenges, living in poor conditions, and having their rights violated.

Unlike the history which has shown its ugly side towards children, and the present, which carries both the burden from the past and challenges that emerge, the opportunity for improvement lies in the hands of the future, which should be more prudent and proactive in safeguarding the rights of those who need it the most.

176 See *Independent child rights institutions and national human rights institutions*, no date.

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