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**THE CONVENTION ON THE RIGHTS OF THE
CHILD**

Introduction

As an introduction, we should point out that the protection of children in international law is articulated through different conventional texts, some specific and others general, among which the 1989 Convention on the Rights of the Child occupies a privileged position, both in terms of its content and its universal scope. The Convention and its Optional Protocols are the basic texts that currently structure the protection of children's rights at the universal level, without forgetting that they also enjoy the protection granted by all the human rights instruments that have been developed within the framework of the United Nations.

In any case, the protection afforded to children has evolved since its conception, hand in hand with the understanding and development of general human rights and the special circumstances



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surrounding this group, which by its nature is understood to be the most vulnerable.

Currently, child protection is included in the major proposal of the 2030 Agenda for Sustainable Development, setting ambitious goals in UNICEF's Strategic Plan for 2018-2021.

Specifically, five broad clusters of goals:

- Goal Cluster 1: Every child survives and thrives.
- Goal Cluster 2: Every Child Learns.
- Goal Group 3: Every child is protected from violence and exploitation.
- Goal Group 4: Every child lives in a safe and clean environment.
- Goal Group 5: Every child has an equal chance in life.

The Convention on the Rights of the Child. Characteristics and structure.

The Convention on the Rights of the Child was adopted and opened for signature and ratification by the United Nations General Assembly in its resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990.

It is currently the human rights convention with the largest state participation, with a total of 140 signatory states and 196 states parties.

It has three Optional Protocols:

- The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
- Optional Protocol to the Convention on the involvement of children in armed conflict;
- Optional Protocol on a communications procedure.

While its entry into force was not an arduous process, its drafting was. Problems arose, for example, with the definition of nationality between states that advocated the need to require a principle of concession based solely on *ius soli* and states that advocated the introduction of *ius sanguinii*. In the end, the Convention made progress in its drafting thanks to the commitment of its States and the work of the committee through the technique of consensus.

The main characteristics of the Convention are that it is a binding legal instrument, but most of the obligations assumed by the States Parties are somewhat vague, as the rights are guaranteed "to the extent possible" or "to the best of their ability". In addition, it is a Convention that establishes a broad power to make reservations, with the

problems that this entails for the effectiveness of rights.

With regard to its structure, we can distinguish a normative part (in which the rights, obligations and principles on which the protection of children's rights will be based are defined) and an institutional part, dedicated to the organisation of the Committee on the Rights of the Child.

The principles and rights recognised in the Convention

The normative part of the Convention therefore includes the rights to be protected, which can be grouped into four main groups: the guiding principles, the rights to survival and development, the rights to the protection of the child and, finally, the rights to participation.

The guiding principles of the Convention structure the legal text and support the rest of the recognised rights.

These principles are the principle of non-discrimination (Art. 2), the principle of the best interests of the child (Art. 3.1), the right to life, survival and development (Art. 6) and the right to be heard (Art. 12).

The best interests of the child is undoubtedly the key principle in the determination of children's rights. This principle encompasses a triple concept. It is a substantive right; a fundamental interpretative legal principle and, finally, a procedural rule.

In any case, the normative part recognises the following rights for all children under 18 years of age (unless they reach the age of majority earlier under their national law), all of them configured as a minimum to which a more benevolent and effective national law, or even the international law in force for each State party, may be superimposed:

1. The right to life (Art. 6).
2. The right to registration, to a name and to a nationality (art. 7).
3. The right to preserve their identity and nationality and their family relations (art. 8).
4. The right not to be separated from his or her parents, except when necessary for his or her best interests, in accordance with the law and established procedures (art. 9).
5. The right to have a request for family reunification granted in a positive, humane and expeditious manner (art. 10.1).

6. The right to leave the country for the purpose of maintaining personal relations and direct contacts with their parents, subject only to such limitations as are prescribed by law and are necessary for national security, public order, public health or morals, or the rights and freedoms of others, consistent with the Convention (at. 10.2).

7. The right to express his or her views freely in matters affecting him or her and to be heard in judicial or administrative proceedings, directly or through a representative (art. 12).

8. The right to freedom of expression, which shall include the right to seek, receive and impart information and ideas of all kinds (art. 13), subject to such limitations as are prescribed by law and are necessary.

9. The right to freedom of thought, conscience and religion, together with freedom of worship (art. 14).

10. The right to freedom of association and peaceful assembly (art. 15).

11. The right to privacy, family, correspondence, honour and honour (art. 16).

12. The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (art. 19).

13. The right to special protection and assistance from the State in specified cases (art. 20).

14. The right of disabled children to special care (art. 23).

15. The right to the enjoyment of the highest attainable standard of health and services for the treatment of illness and rehabilitation of health (art. 24), together with his or her right in the case of therapeutic placement to a periodic review of the placement and the circumstances of his or her placement (art. 25).

16. The right to social security (art. 26).

17. The right to a standard of living adequate for their physical, mental, spiritual, and social development (art. 27).

18. The right to education (art. 28).

19. The right of children of minorities to belong to and develop within minorities (art. 30).

20. The right to rest and leisure, play and recreational activities appropriate to their age (art. 31).

21. The right to be protected by the State against economic exploitation and against unemployment from work that is dangerous or harmful to their health or development (art. 32).

22. The right to be treated in a manner befitting his or her dignity and worth in criminal proceedings to which he or she is a party (art. 40).

Mechanisms or techniques for monitoring compliance with the Convention

The main monitoring technique will be the submission of reports by the States Parties. These reports will be submitted to a Committee, the Committee on the Rights of the Child, the main monitoring and implementation body for the Convention and its Optional Protocols.

The Committee (or CRC) is composed of 18 members, elected by the States parties for a term of four years and eligible for re-election. The Rules of Procedure provide for three annual sessions, with the possibility of convening as many extraordinary sessions as deemed appropriate.

These sessions will be public, unless otherwise decided by the Committee itself.

The CRC is joined by special rapporteurs and representatives on specific issues, who, through their reports, make it possible to broaden both the knowledge of the issues and the monitoring of compliance with the texts in the territory of the States. They are currently providing assistance:

- The Special Rapporteur on the sale and sexual exploitation of children,
- The Special Representative of the Secretary-General for Children and Armed Conflict

Along with the reception of reports, one of the Committee's most important tasks is the elaboration of so-called General Comments or General Observations, aimed at promoting the implementation of the Convention and its Protocols, and assisting States parties in fulfilling their reporting obligations. Currently, the Committee has issued twenty-five General Comments, on a variety of topics.

As noted above, the main method of monitoring is the submission of reports by each State party. Thus, each State party is obliged to submit an initial

report two years after the date of ratification of the Convention and every five years thereafter.

This mechanism has been extended through the Communications Protocol. The Protocol regulates the submission of communications by both states and individual victims of violations, and a special enquiry procedure for grave or systematic violations.

And although the Convention is criticised for its supposedly Westernised view of children and their problems, its great success was and still is that it was the first codification of these rights at the international level, opening the debate on these rights at both the state and international level.



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