

THE UNITED NATIONS CONVENTION ON
THE RIGHTS OF THE CHILD:
BETWEEN UNIVERSALITY AND
DIVERSITY

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Abbreviations:

CR	Children’s Rights
FGM	Female Genital Mutilation
HR	Human Rights
NGO	Non-Governmental Organization
UNCRC	United Nations Convention on the Rights of the Child
UDHR	Universal Declaration of Human Rights

I. Introduction

Today, we witness a certain conflict between HR in theory (wide consensus and basic acknowledgement that HR are inherent to every human being; all the States on the international scene actually endorse HR treaties) and the implementation of these rights in practice (where we are confronted with resistances and great difficulties, with arguments of cultural relativism, so called “Asian” or “Islamic values”, reservations to HR treaties etc.).

The universality of HR is still put into question by some societies and States, but a broad international consensus on HR is undeniable. As Ramcharan puts it: There is an “irrefutable democratic test that confirms the universality of human rights”: “Just ask any human being: Would you like to live or be killed? Would you like to be tortured or enslaved? Would you like to live freely or in bondage? Would you like to have a say in how you are governed?” (Ramcharan, 1994: 106). Conceived in this manner, the universality of HR is hard to deny. It is true that today and throughout the world, such rights as the right to life or the right to physical integrity are hardly contested by anyone. But what about other rights? What about rights that dig deeply into the private sphere and family life?

The discussion on the universality of HR goes on and is not likely to end in the near future. However, I will not tackle this subject as it would go beyond the limits of this paper. Instead, I shall look at a more specific case: the problematic of the universality of CR. The UN Convention on the Rights of the Child of 1989 is symptomatic for this dilemma. It is the most widely accepted international document (with only two States not having ratified it) and thus, almost universally applied, but flawed by far-reaching reservations made by many States and great difficulties concerning the implementation of the rights enshrined in it. Some people see the rights set in the UNCRC as even more problematic than other HR norms because they go much further and because they interfere much more with the private sphere and family life, areas in which, as Cerna puts it “the most serious challenges to the universality of human rights arise” (Cerna, 1994: 746).

There are various examples concerning CR that highlight the dilemma “text-implementation”. As we will see with the example of child prostitution, there clearly are difficulties as well as dangers of realizing the rights set in the UNCRC.

However, before turning to the question of universality, the difficulties of implementation and to this specific example, I shall give a quick overview of the UNCRC, how it came into being and what its main features and its specificities are.

II. International Children's Rights: A Universal Concept?

1. The UNCRC: An Overview

The UNCRC surely had a difficult birth. After a long drafting process of more than ten years, which included government delegations, NGOs and UN special agencies, the Convention was eventually concluded on November 20th, 1989, and entered into force on September 2nd, 1990. For the first time in history, children are considered as persons having specific rights under international law. It affirms that children are born with fundamental freedoms and the inherent rights of all human beings. The Convention marks the passage from the needs-discussion – where children are reduced to the role of objects – to the rights-discussion – where children are considered as active subjects, as right bearers (Cremer, 2005: 526).

The extensive drafting process “turned out to be a global consciousness raising process that would not have taken place without sufficient time to disseminate new ideas and elaborate the understanding of children's needs and proper interests” (Miljeteig-Olssen, 1990: 151). It seems to have been necessary to create a global support for the Convention and its innovative ideas behind it. On the other hand, it also shows that a consensus on many issues was hard to reach and that the discussions went on for a very long time. Due to the consensus principle, the Working Group which was entrusted with the drafting of the Convention had to work so long on formulations until every participant was satisfied. A good example for this quest for consensus was the intense debate between the USA and Senegal regarding the issue of FGM (see Harris-Short, 2003). Whereas the former wanted to explicitly include the practice of FGM in the Convention, the latter did not want to mention it in specific. Article 24§3 is the result of this debate.¹

Other discussions were fervent regarding the question of the beginning of childhood (before or after birth)², on the question of freedom of religion (a draft provision that would have granted children the right to choose their own religion was dropped on the insistence of several Islamic countries)³, on the question of adoption (the conditions referring to it are

¹ “States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”

² Art. 1 of the UNCRC has been the result: “[...] a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

³ Art. 14 of the UNCRC, 1989

binding only to States that “recognize and/or permit the system of adoption”⁴ and on the question of child soldiers (recruiting is allowed from 15 years on)⁵.

2. The Specificities of Children’s Rights

The UNCRC contains, to a large extent, the same rights as the UDHR, except that they were cut out and complemented for the specific needs of children. It comprises a Preamble and fifty-four articles, roughly forty of which proclaim rights of children for States Parties to respect and ensure (see Balton, 1990: 121). These provisions can be classified as protection rights (protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, drug abuse, all forms of sexual exploitation and sexual abuse, abduction, sale or trafficking in children, special attention and protection to children in times of war and refugee children, respect of minority children and prohibition of the death penalty for children)⁶, provision rights (all the rights regarding healthcare, education, adequate standard of living, nutrition and clothing, adequate housing, social security, the right to have a name, a nationality and an identity)⁷ and participation rights (right to freedom of expression, thought, conscience, religion, association, peaceful assembly, access to information, right to privacy, rest and leisure and to participate in cultural and artistic life).⁸

The central idea of the UNCRC is the “best interests of the child” principle⁹ which has to be taken into consideration whenever a decision affecting a child is taken. This principle is closely linked to the respect for the views of the child and the “right to express those views freely”.¹⁰ As right bearers, children are not only seen as objects of protection and care, but also as subjects of their own lives and development in which they can and shall have a say (Liebel, 2007: 42).

Moreover, the provisions of the UNCRC have the particularity to integrate both civil and political rights, such as the freedoms of expression and association, as well as economic, social, and cultural rights, such as the rights to education and to health care. It is the first international HR document that combines these two categories and as such, very innovative.

⁴ Art. 21 op. cit.

⁵ Art. 38, *ibid.*

⁶ Arts 19-22, 30, 32-38, *ibid.*

⁷ Arts 7-8, 23-29, *ibid.*

⁸ Arts 12-17, 31, *ibid.*

⁹ Art. 3, *ibid.*

¹⁰ Art. 12, *ibid.*

Through this feature, it also recognizes the indivisibility and interdependence of all HR (Liebel, 2007: 43).

However, these rights also reach deeply into the private sphere and family life, an area which is difficultly penetrated and usually very resistant to change, especially when coming from an international treaty. As Cerna suggests, “[the] private sphere, which deals with issues such as religion, culture, the status of women, the right to marry and to divorce and to remarry, the protection of children, the question of choice as regards family planning, and the like, is a domain in which the most serious challenges to the universality of human rights arise” (Cerna, 1994: 746). Whereas “[i]nternational human rights law has, in some sense, become the substitute for religion in secular societies [and] aims to establish a minimum standard of decency, a common denominator of what is morally acceptable in a civilized society”, many societies throughout the world, especially in remote and rural areas, still have other guiding standards and values (Cerna, 1994: 749). In addition, the informal context in which children of the poor are raised can make the introduction of formal rules and regulations by States largely irrelevant (see Nieuwenhuys, 1998).

What is also interesting to note is the fact that the language of the UNCRC tends to be rather normative, leaving ample ground for varying interpretations. “A “right” in the Convention, then, may reflect an aspiration without indicating who is obliged to perform the duties that correspond to the right in question, or it may state a desideratum accompanied by permissive qualifications and escape clauses” (Population and Development Review, 1989: 779). Accordingly, a statement such as: “children of working parents have the right to benefit from child-care services and facilities” is weakened by the clause: “for which they are eligible”, and by the stipulation that States Parties “shall take all appropriate measures” to ensure that right.¹¹ On some occasions, the UNCRC explicitly declares that there are certain rights which are not yet realizable. For instance, to make “primary education compulsory and available free to all” is a right that is to be achieved “progressively”.¹² On other occasions, the obligations of States Parties are categorical but unspecified (see Population and Development Review, 1989: 780). The UNCRC provides, for instance, that “a minimum age or minimum ages for admission to employment” must be specified, but, further than a remark that States Parties should have “regard to the relevant provisions of other international instruments”, no specific age is fixed.¹³

¹¹ Art. 18§3, *op. cit.*

¹² Art. 28§1a, *ibid.*

¹³ Art. 32§2a, *ibid.*

To sum up in a nutshell: The UNCRC indeed is a very innovative and far-reaching document, gathering both civil and political rights (also called first generation rights) and economic, social and cultural rights (second generation rights). Furthermore, the Convention reaches deeply into the private sphere and family life, which are not easily penetrated by an international treaty. In addition, the UNCRC has a rather normative language which leaves ample ground for interpretation.

3. A Universal Character?

The UNCRC has become the most important HR document for children. Even though far from being perfect and with flaws, we cannot contest that this international treaty constitutes a big step forward in the realization of CR. The Convention quickly became one of the most widely ratified treaties in existence and thus, almost universal, with all States but two having ratified it.

However, the reasons for the ratification of the UNCRC presumably were not always the expression of child-concern. Some States did not care much about a convention on child concerns, paying lip service to the issue, but considering the implementation of these rights a low priority issue, others (after having been criticized for their miserable HR record) hoped for a refurbishment of their international image, whereas poorer nations just hoped for financial aid in return (Liebel, 2007: 44). “A state's ratification of an international human rights instrument is not sufficient evidence that the state, in fact, observes the provisions of that instrument. [...] Nonetheless, becoming party to an international human rights treaty is evidence of a state's intent to be legally bound by the provisions of that instrument” (Cerna, 1994: 748).

This dilemma is especially made clear by the number and nature of reservations made to the UNCRC.¹⁴ International law allows reservations to treaties within the conditions specified by each treaty, yet it forbids as a general rule reservations that are incompatible with the object and purpose of a treaty.¹⁵ This condition is also repeated in article 51§2 of the UNCRC. It expresses the ambiguous role of reservations in the field of universality. Up to a certain point, reservations may have a positive effect on the universality of HR by enabling States that would otherwise stay outside a convention to access it. Yet if the reservations are too far-reaching and too numerous, they risk to undermine universal standards (Brems, 2001: 267).

¹⁴ To date, 74 reservations still stand (see <http://www2.ohchr.org/english/bodies/ratification/11.htm>).

¹⁵ Art. 19§c of the Vienna Convention on the Law of Treaties, 1969

Regarding the UNCRC, the number and nature of reservations made by some States Parties is so serious that the Committee on the Rights of the Child invites States Parties to review or even withdraw their reservations.¹⁶ Indeed, some of them are so extensive that the very sense of the Convention is put into question.

In this context, it is interesting to look at the surprisingly large number of Asian and African States that have made reservations to the UNCRC. Kuwait, for example, reserved “on all provisions of the Convention that [were] incompatible with the laws of Islamic Shari’a and the local statutes in effect.”¹⁷ Similarly, Afghanistan, Iran, Iraq, Jordan, the Maldives, Oman, Qatar, Saudi Arabia, Syria and the United Arab Emirates all invoked Islamic law as an obstacle to the full implementation of the provisions of the Convention.¹⁸

Several States seem to be unwilling to assume international HR obligations in the private sphere. They argue that their own internal code of conduct (religious and traditional law) already covers this field. “This tension between the universality of norms in the private sphere and the competing religious/traditional law renders all international human rights norms which have not become part of *jus cogens* suspect” (Cerna, 1994: 749).

Moreover, there is neither a universal consensus on the meaning and content of the concept of CR nor sufficient reasons for us to be satisfied with the current status of CR in the world (see Fernando, 2001: 8). As Miljeteig-Olssen suggests, “[t]he elaboration of the concept of children’s rights has not come to an end. Nor does the final Convention mean that we have a unanimous understanding of what the concept of children’s rights implies” (Miljeteig-Olssen, 1990: 150).

“It is becoming increasingly clear that there is no real consensus on what the term “children’s rights” actually means because the very concept, as it exists, is embedded in the Western tradition of political philosophy upon which the UN Charter on human rights is based and, as such, is far from being an abstract, universal given. The assumption that childhood constitutes a coherent group or a state defined by identical needs and desires, regardless of class, ethnic, or racial differences, lies behind a universalist notion of children’s rights.” (Fernando, 2001: 18).

It seems clear that a sound CR perspective needs, by definition, to be rooted in a wider understanding of the political, social and economic order (Fernando, 2001: 9).

¹⁶ General Comment N° 5, 2003

¹⁷ <http://www2.ohchr.org/english/bodies/ratification/11.htm#reservations>

¹⁸ Ibid.

Olga Nieuwenhuys goes as far as to argue that the UNCRC “is not culturally neutral but is grounded in the assumption both of the superiority of the childhood model as it has evolved in the North and of the need to impose this model on a global scale. As this global project not only denies the possibility of diverse childhoods, it not only underscores the superiority of the Northern ideal but also condemns “other” styles of upbringing as a “lack” or, to use the popular expression, of being “outside childhood” (Nieuwenhuys, 1998: 270). According to her, “[t]oday’s dominant valuation of childhood as a global cultural good is based on paradigms that are historically traceable to the ideological underpinning of Western industrial society”, such as the sacralization of the child and its removal from the workspace through compulsory schooling (Nieuwenhuys, 1998: 270).

As we can gather from the above, the UNCRC’s universal standards do have trouble to be accepted since they are frequently perceived (by important parts of the world community) as Western and hence not applicable to societies with different cultural understandings and systems. Biological determinism, for instance, does not take into account the cultural diversity of the meaning of childhood and hence of CR in different cultures (Fernando, 2001: 18). The competencies of children of the same age vary across cultures and according to the different contexts they grow up in. Seen in this way, childhood is relative and cannot be seen as a “universal given”.

4. The Difficulties of Implementation

We witness today a near-universal ratification of the UNCRC. However, very few of the 193 States Parties¹⁹ have developed an integrated strategy for its implementation (Fernando, 2001: 11). Governmental bureaucracy and lack of coordination between the international community, the private sector, international organizations, NGOs, and civil society at large have retarded the progress of the UNCRC (in Fernando, 2001: 11). We witness today a chronic lack of substantive commitment to the issue of CR in the world.

Let us take a closer look at the different reasons why, even though the UNCRC is so widely recognized and ratified, implementation remains such a difficult task:

¹⁹ State in February 2008 (see <http://www2.ohchr.org/english/bodies/ratification/11.htm>)

Paulo David mentions six reasons (in addition to considerations to human and financial resources) why the implementation of the UNCRC remains such a difficult challenge.

First, the UNCRC recognizes the “child as a human being entitled to a full array of rights” (David, 2002: 259). With this new HR approach, the (beforehand dominant) welfare approach to children has been put into question. Now, public authorities dealing with child issues should not anymore base their policies and services merely on political will, humanitarian charity and emotional generosity but instead, they have a legal obligation to do so (Hammarberg and Santos Pais in David, 2002). The State’s measures are no longer supposed to be based on “needs” but on the “rights” of children (Cantwell in David, 2002). From a legal perspective, this entails that children have access to remedy procedures and can obtain compensation or rehabilitation. This new approach calls for a fundamental change of legislation, policies, programs and institutions as well as a shift in values and mentalities (David, 2002: 260) which implies great efforts and, above all, time.

The second reason is due to the specificity of the UNCRC which groups comprehensively civil and political rights with economic, social and cultural ones, strongly reasserting the indivisibility and interdependence of all rights and proposing a holistic approach to CR (UNCRC Committee, 1996). This multi-disciplinary, all-encompassing vision of the child implies improved interaction and coordination between state departments and ministries, which is not an easy task.

Third, the civil rights provisions mentioned in the UNCRC, especially the right of children to express their opinions freely²⁰ and the right to freedom of expression²¹, thought, conscience religion²² and association²³, are far reaching and challenging. The “right of the child to participation requires deep social changes in attitudes, behavior and values to be properly implemented as it means that children should not be kept invisible in all decision-making processes” (David, 2002: 260). It is a sound principle, but its implementation remains extremely difficult and complex. As David recalls, “paternalism, lip-service, manipulation and tokenism can completely distort this principle” (David, 2002: 261).

The forth reason is that traditional child-related issues (e.g. education or health) have received new dimensions with the UNCRC. These issues are now recognized as HR, which substantially changes and widens their scope. It goes without saying that public authorities find it difficult to accommodate to this new approach.

²⁰ Art. 12 of the UNCRC, 1989

²¹ Art. 13, *ibid.*

²² Art. 14, *ibid.*

²³ Art. 15, *ibid.*

The fifth reason is the fact that “innovations usually generate fears” (David, 2002: 261). Many people fear that recognizing CR will encroach on their own rights and therefore resist to this idea.

The last reason, which I already mentioned above and which I will not discuss further, is the problematic of the manifold and far-reaching reservations made by various States Parties to the Convention.

Moreover, as with all HR treaties, no sanction mechanism has been put in place. The UNCRC merely establishes a Committee of independent experts under article 43 to which States Parties must submit periodic reports on the measures adopted to give effect to the rights recognized in the UNCRC.²⁴ Based on these reports, the Committee may make suggestions and recommendations to the reporting States. Consequently, its powers are circumscribed since the implementation mechanism created by the UNCRC does not establish any concrete means of enforcement at the international level (see Balton, 1990: 127).

Furthermore, the prospects for domestic enforcement of the UNCRC are more promising but still lacking. The ratifying States must “respect and ensure the rights set forth in the [...] Convention to each child within their jurisdiction”²⁵ and take “all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the [...] Convention”.²⁶ Consequently, each Member State must establish and maintain enough administrative and judicial mechanisms to ensure domestic enforcement of the standards established in the UNCRC. However, the weakness of many States in the world and different local conditions make progress in this respect very lengthy; and as Balton rightly puts: “[P]rogress in the enforcement of human rights should not [...] rely so heavily on domestic procedures” (Balton, 1990: 129).

We gather from this that the effective implementation of such a complex and far-reaching Convention as the UNCRC is and remains an extremely challenging task which will require time and great efforts by all parties involved.

Let us now consider a specific example which highlights the difficulties of implementing the rights set in the UNCRC.

²⁴ Art. 44, op. cit.

²⁵ Article 2§1 *ibid.*

²⁶ Article 4, *ibid.*

5. An Example from the Field: Child Prostitution in Thailand

The case study conducted by Heather Montgomery in the early 1990s on child prostitution in Thailand is a good example for the dilemma between global theory (UNCRC) and local reality (effective implementation on the ground). Issues such as child prostitution are rarely as simple as they are portrayed and we realize that there clearly are difficulties and even dangers of fulfilling rights, even those – as in the case of child prostitution – that seem the most justified.

Montgomery conducted her research in a slum community based on the edge of a large tourist resort by the sea in Thailand. What characterizes the people there is their rootlessness, the absence of men (on leave for seasonal work), the importance of kinship, social obligations, gratitude and obedience towards parents (especially mothers) and the fact that children are seen as parental investment with an anticipated return. Consequently, children are expected to work for the family as soon as they can. Given the grinding poverty of the community, the wages of children often make the difference between survival and going under, and are the means by which the community remains intact. Prostitution, especially with foreign clients, is a job that brings in relatively large amounts of money. As everyone in the community does it, the children do not know any other way of life and simply do what is expected of them. They see their clients as friends and do not talk of prostitution and exploitation. Inside the community, there are no discussions as to the effects of prostitution. The children construct their own view of the world and see the benefits rather than the losses. They use drugs to repress tension, unease and anxieties arising from the way of life they are subjected to.

The UNCRC implies that every child has a right to a childhood that is free from responsibilities of work, money and sex (see Montgomery, 2001). Article 34 of the UNCRC runs: “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.” This seems rather straightforward and unambiguous. However, something which is often overlooked is the fact that the boundaries between child-and adulthood are, in many cultures, blurred and vague and that children already need to work at early ages in order to contribute to their family’s survival. The western concept of individualism also may seem less relevant in other cultures where the community is far more important. In the absence of a social state that backs families in precarious situations (which is the case of most countries in the world) the community is most important for their survival strategies.

In this specific case, we clearly have a dilemma: article 12 of the UNCRC demands us to respect children's views. The children of the slum community in Thailand deny being sexually exploited and say that they are only earning money for their families (cultural belief in supporting their parents and sense of filial duty) and that their clients are their friends because they are nice to them, pay them and give them gifts. On the other hand, we need to act in the best interest of the child and we clearly see that this way of life is not acceptable for small children. The physical violence involved in the sexual exploitation of children results in pain, injuries and fear, not to mention acute psychological distress resulting in guilt, low self-esteem and depression (see ECPAT, 2008).²⁷

As Montgomery sees it, the children undoubtedly gained satisfaction from being able to support their families and fulfill their kinship obligations, yet their agency was minimal and they remained socially and economically marginal. She concludes that the Convention allows for no cultural specificity; in contrast, the people of the slum community in question allow for no wider moral or political understanding. Whatever the children said about sex work, they did not have the complete knowledge to make a fully informed decision (see Montgomery, 1998).

Here, there clearly is a need for a dialogue between the two positions. As Judith Ennew says: "While cultural context must be respected, it is important to note that culture is not a "trump card" in international human rights" (Ennew in Montgomery, 2001: 96).

Besides, culture on its own does not cause or sustain child prostitution. Child prostitution is, obviously, not an intrinsic part of Thai culture but is triggered through much more complex factors such as sex tourism, poverty, low educational attainment, rootlessness, discrimination and marginalization.²⁸

²⁷ http://www.ecpat.net/EI/PDF/CST/CST_FAQ_ENG.pdf

²⁸ Ibid.

III. Conclusion

Despite compromises and ambiguities, “the Convention represents an important advance toward the goal of setting universally accepted standards for the protection of children. Undoubtedly, it [...] also provide[s] a valuable framework for advocacy on behalf of children in every country in the world” (Population and Development Review, 1989: 780). The Convention is a starting point and a reference for all the States Parties and as such, invaluable in its potential to improve the lives of all children in the world.

However, “what is [still] required today is a constructive dialogue on the issue of childhood and children’s rights that does not fall into the twin traps of relativism and universalism, that does not ignore the heterogeneity of children’s lives or obscure the commonality of ways in which economic and political forces in an increasingly unstable and polarized world have affected the lives and experiences of these children.” (Fernando, 2001: 20). What we urgently need are “approaches which involve neither the embrace of an artificial and sterile universalism nor the acceptance of an ultimately self-defeating cultural relativism” (see Alston, 1994).

The polarization of the debate seems to lose sight of the actual problem, namely the immediate needs of the children. Now the debates “appear to include everything but children” (Fernando, 2001: 11). What is important, rather than argue between universalism and cultural relativism, is to find out what is best for children given the unique cultural and economic circumstances of their lives. Fernando proposes three conditions which are paramount to bringing children back to the center of society’s efforts to improve their situation: First, we should avoid excesses of both universalism and relativism in the current theoretical debates and policy practices concerned with CR. Second, CR should not be separated from other issues such as class, gender, and race. Third, we should work towards a “comprehensive system of distributive justice that would guarantee the basic economic needs of children so that the formal equalities granted for them in the political domain will not be undermined by the inequalities of the economic domain” (Fernando, 2001: 23).

As the world is organized today, decisions are made by adults. However, we also need to find appropriate ways of including children (through spokespersons, ombudsmen etc.). It is important to introduce procedures that assure that children’s interests are taken into account when decisions are made (Miljeteig-Olssen, 1990: 154).

Moreover, we should not forget that the excessive emphasis on relativism can encourage various religious, political and cultural ideologies and practices which are fundamentally detrimental to CR. “What might transpire from such demands for the preservation of traditional culture is the reproduction and legitimization of those cultural forms and values that are detrimental to children’s rights” (Fernando, 2001: 17). Instead, we should emphasize on the factors that are leading to the detrimental welfare situation of children in the world (see Fernando, 2001: 13).

Nonetheless, we have to be realistic. Change and acceptance of HR norms is a lingering process that must ultimately come from within the States and which cannot be imposed by outside forces. “The international supervisory bodies must realize that the international norms dealing with rights that affect the private sphere of human activity will take the longest time to achieve universal acceptance” (Cerna, 1994: 752).

There always remains a danger to preach and be moralistic. What is important is that we create a dialogue between different cultures. HR have to be “home-grown” in order to be accepted by the local population. “For those who have experienced colonial rule and interventions under such [...] slogans as “humanity” and “civilization”, the term “human rights” looks like nothing more than another beautiful slogan by which great powers rationalize their interventionist policies” (Onuma, 1999: 103).

The good thing about culture, though, is that it is not definite. Cultures are not determinate things. The fact is that cultural life is a structure of change and that cultures must be grasped not as static objects, but as extremely complex historical processes, with cultural forms often emerging and reconfiguring discontinuously, as circumstances allow (see Marks and Clapham, 2005). In addition, cultures are not autonomous wholes. Cultures rarely exist as unified orders, but rather as contradictory assemblages of experiences and ideas. They are linked through circuits of borrowing, indigenisation, re-export, imposition, subversion, and so on (Marks and Clapham, 2005: 35). In any case, which country can truly claim to be following its “traditional culture” in a pure form? (see Tharoor, 1999/2000)

Universal HR also have a philosophical explanation and justification: As Etienne Barilier suggests, human diversity is undeniable, but we all have something in common: Human suffering is universal; it is something that is refused and at the same time experienced by all human beings; it makes a bridge between the *self* and the *other*. The existential conscience of human suffering evokes compassion and unites all human beings. HR respond to our body

which fundamentally resists against all forms of suffering, and ultimately, death. HR merely claim the universal respect of this reality (see Barilier, 1991).²⁹

The Indian author and former senior UN official Shashi Tharoor suggests another criteria, the criteria of coercion. For him, not culture, but coercion is the test. Where coercion exists, rights are violated and these violations have to be condemned, whatever the traditional justification. Of course, universality does not presuppose uniformity. But in his opinion, HR (and with it also CR) derive from the mere fact of being human. They are not the gift of a specific government or legal code. They simply reflect our common humanity. “The challenge of HR is to identify the common denominators rather than to throw up one's hands at the impossibility of universalism” (see Tharoor, 1999/2000). As he finally suggests:

“For the standards being proclaimed internationally to become reality we have to work towards their 'indigenization' - their assertion within each country's traditions and history. If different approaches are welcomed within the human-rights consensus, this can guarantee universality, enrich the intellectual and philosophical debate and so complement, rather than undermine, the concept of worldwide human rights. Human rights can keep the world safe for diversity.”

²⁹ « La douleur est une valeur universelle » ; « elle est à la fois refusée et subie » ; « elle fait d'autrui le Même ».

IV. Bibliography

- ALSTON, Philip (ed. 1994), *“The Best Interests of the Child: Reconcile Culture and Human Rights”*, Oxford: Clarendon
- BALTON, David. A. (Feb. 1990), *“The Convention on the Rights of the Child: Prospects for International Enforcement”* in: *Human Rights Quarterly*, Vol 12, No. 1: 120-129
- BARILIER, Etienne (1991), *“La Ressemblance Humaine”*, Editions l’Age d’Homme, Lausanne
- BREMS, Eva (2001) *“Human Rights: Universality and Diversity”*, Kluwer Law International: The Hague
- CERNA, Christina M. (Nov. 1994), *“Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts”* in: *Human Rights Quarterly*, Vol. 16, No. 4: 740-752
- CREMER, H. (2005), *“Das Übereinkommen über die Rechte des Kindes”* in: *DIM*: 525-537
- DAVID, Paulo (July 2002), *“Implementing the Rights of the Child: Six Reasons for Why the Human Rights of Children Remain a Constant Challenge”* in: *International Review of Education*, Vol. 48, No. 3/4, Education and Human Rights: 259-263
- FERNANDO, Jude L. (May 2001), *“Children’s Rights: Beyond the Impasse”* in: *Annals of the American Academy of Political and Social Science*, Vol. 575, Children’s Rights: 8-24
- HARRIS-SHORT, Sonia (2003) *“International Human Rights Law: Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child”* in: *Human Rights Quarterly* 25 (1): 130-181
- LIEBEL, Manfred (2007) *“Wozu Kinderrechte – Grundlagen und Perspektiven”*, Juventa Verlag Weinheim und München
- MARKS, Susan and CLAPHAM, Andrew (2005) *“International Human Rights Lexicon”*, Oxford University Press, New York
- MILJETEIG-OLSSSEN, Per (Feb. 1990), *“Advocacy of Children’s Rights – The Convention as More than a Legal Document”* in: *Human Rights Quarterly*, Vol. 12, No.1: 148-155

- MONTGOMERY, Heather (2001) *“Imposing Rights? A Case Study of Child Prostitution in Thailand”*, in: Jane K. Cowan, Marie-Bénédicte Dembour and Richard A. Wilson (eds), *Culture and Rights. Anthropological Perspectives*: 80-101. Cambridge: University Press
- NIEUWENHUYS, Olga (1998) *“Global Childhood and the Politics of Contempt”*, *Alternatives* 23 (3): 267-289
- ONUMA, Yasuaki (1999), *“Toward an Intercivilizational Approach to Human Rights”* in: *The East Asian Challenge for Human Rights*, Cambridge: Cambridge University Press: 103-115
- RAMCHARAN, Bertrand G. (1994), *“The Universality of Human Rights”* in: *International Commission of Jurists Review*: 105-117
- THAROOR, Shashi (Winter 1999/2000), *“Are Human Rights Universal?”* in: *World Policy Journal*, Vol. 16, No. 4: 1-4

International Conventions and Documents:

- Vienna Convention on the Law of Treaties, 1969
- UN Convention on the Rights of the Child, 1989
- Convention on the Rights of the Child (Dec. 1989) in: *Population and Development Review*, Vol. 15, No. 4: 779-783
- Committee on the Rights of the Child (1996), *General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted by the States Parties Under Article 44§1b of the Convention*, U.N. Doc. CRC/C/58, Geneva: United Nations
- Committee on the Rights of the Child (2003), *General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, U.N. Doc. CRC/GC/2003/5, Geneva: United Nations

Internet Sources:

- <http://www2.ohchr.org/english/bodies/ratification/11.htm#reservations>
- <http://www2.ohchr.org/english/bodies/ratification/11.htm>
- http://www.ecpat.net/EI/PDF/CST/CST_FAQ_ENG.pdf