Economic, Social and Cultural Rights in the CRC: Is There a Legal Obligation to Cooperate Internationally for Development?*

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Abstract
Several provisions of the Convention on the Rights of the Child contain references to international cooperation, sometimes in combination with a reference to the needs of developing countries. This article explores whether these references, in light of the interpretation given by the Committee on the Rights of the Child and of other human rights treaties which contain similar wording (in particular the International Covenant on Economic, Social and Cultural Rights and the Disability Convention), amount to a legal obligation to cooperate internationally for development in the field of economic, social and cultural rights. While it is not possible to establish the existence of a legal obligation to provide development assistance in general – which would amount to an extraterritorial obligation to fulfil – legal obligations to respect and protect economic, social and cultural rights of children in third countries do apply. Moreover, the CRC Committee has clarified some specific obligations of fulfilment for donor countries, such as, amongst others, the allocation of 0.7 per cent of GDP to development assistance, and the adoption of a rights-based approach to development cooperation, in which children's rights are mainstreamed.

Keywords
Convention on the Rights of the Child; international cooperation; economic, social and cultural rights; extra-territorial obligations

Introduction
The preamble and article 4 of the Convention on the Rights of the Child (CRC), among other provisions, refer to international cooperation for the realization of economic, social and cultural rights. Whether this reference amounts to a legal obligation, in particular for States in the North, to respect, protect and fulfil economic, social and cultural rights also extraterritorially, and particularly in the South, is a matter of debate. This question is not only of scholarly relevance, but

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also and mainly of practical importance: individual and collective actions of Northern States in the field of, for example, trade, agriculture or development cooperation may have tremendous effects on the enjoyment of human rights by individuals in the South. Export subsidies for agricultural products lead to dumping of these products in Southern and third markets, to the detriment of small local farmers. The imposition of user fees for education or health care as a condition for development assistance has impacted negatively on the right to education and health of children and adults in many developing countries.

Though the issue of extraterritorial or third State human rights obligations (i.e. obligations for other States parties than the domestic State party) with regard to economic, social and cultural rights has generated significant academic, NGO and UN interest in recent years, there are still more questions than answers. The debate on the existence, the nature and the extent of such obligations has only started. Disproportionate attention has been paid to the third State obligation to fulfil (i.e. to provide development assistance, through the transfer of resources from North to South), which is politically the most contentious one and legally the most difficult one to prove, while third State obligations to respect and to protect have been relatively neglected. The latter can be argued to be already part of hard law. This excessive focus on the third State obligation to fulfil has arisen from the conflation of international cooperation with international development assistance and cooperation. While international cooperation includes development cooperation, it is a much broader term. In this contribution, while not ignoring the third State obligation to fulfil (for the CRC Committee has carved out some specific legally binding obligations of fulfilment for donor States parties), we will mainly focus on third State obligations to respect and to protect under the CRC, namely the obligation respectively to abstain from interference with economic, social and cultural rights in other countries, and to prevent third parties under a State’s control to interfere with these rights. In order to avoid the reductionist approach and terminology in which attention is only paid to development assistance (corresponding to a third State obligation to fulfil), to the detriment of the third State obligations to respect and to protect, the term “international cooperation for development” will be used.

Two other issues require clarification. The first one has also to do with terminology. The more commonly used expression is “extraterritorial obligations”. The perspective then taken is that of a State, often in the North, whose human rights obligations also apply outside its own territory. The term “third State obligations” is more apt from the perspective of individuals in the South, with regard to whom both the own State and third States have certain obligations under the CRC.

As illustrated for example by the ICESCR Committee’s concluding observations on Norway: “The Committee appreciates the State party’s commitment to international cooperation as reflected in the volume of official development assistance”. (E/C.12/1/Add.109, para. 3).
In principle, the term third State obligations is to be preferred from a human rights point of view, for it takes the perspective of the rights holders as a starting point. Nevertheless, both terms will be used interchangeably in what follows, for the term extraterritorial obligations has generally been used in literature so far. A second issue concerns the relationship between domestic and third State obligations. The existence of third State obligations does not exempt in any way domestic States from their own human rights obligations. In that sense, third State obligations are always complementary to domestic State obligations. Notwithstanding this fundamentally complementary character, they are not necessarily secondary or subsidiary obligations. Third State obligations to respect and to protect apply simultaneously with the obligations of the domestic State. Only the third State obligation to fulfil is to be considered secondary or subsidiary, in that it only applies if the domestic State for reasons beyond its control fails to fulfil economic, social and cultural rights, notwithstanding the use of the maximum available resources in the domestic realm.

In what follows, the references to international cooperation in the CRC and the two optional protocols will be scrutinized. Secondly, the preparatory documents and the views of the CRC Committee will be examined. What was international cooperation intended to mean by the drafters? And how has it been interpreted, in particular by the CRC Committee? Thirdly, the reference to international cooperation in the CRC and in the two optional protocols will be contextualised, by looking at the way in which the reference to international cooperation in the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) has been understood. Attention will also be paid to the extensive discussion of international cooperation in the recent negotiations on a new human rights treaty, the Convention on the Rights of Persons with Disabilities (Disability Convention). As the CRC was drafted many years after the ICESCR, and drafting of the Disability Convention again came about 15 years after the adoption of the CRC, comparison of the wording and nature of the references to international cooperation may reveal progress in the extent to which international cooperation is considered to be a legal obligation. Moreover, at least as a working hypothesis, broadly similar terms in two core UN human rights treaties can be expected to be interpreted similarly by their respective supervisory bodies, particularly now that much more attention is being paid to harmonisation and convergent interpretation of congruent provisions.  

2) For an updated account of the reform of the treaty body system of the UN, and proposals for harmonization, see http://www.ohchr.org/english/bodies/treaty/reform.htm. See also our casestudies on harmonization of procedures and the interpretation of equality and non-discrimination: W. Vandenhole (2005, 2004).
The argument central to this article is the following: no general legal obligation exists under the CRC to cooperate internationally for development, or to provide development assistance for the realisation of economic, social and cultural rights of children in developing countries, commensurate with need. Nevertheless, the CRC Committee’s interpretation teaches that there is a shared responsibility for development, and that States parties are not only to implement the CRC within their own jurisdiction, but are also to contribute to global implementation, through international cooperation. In its concluding observations, the CRC Committee has emphasized some specific obligations under the CRC with regard to development cooperation: donor countries are to adopt a rights-based approach to development, and to mainstream children’s rights therein, and they should meet as quickly as possible the internationally agreed target of spending 0.7 per cent of their gross domestic product on official development assistance. The CRC Committee has largely neglected third State obligations to respect and to protect economic, social and cultural rights of children in developing countries. Inspiration for a better understanding of these obligations could be sought in the decisions of the ICESCR Committee. Finally, the references to international cooperation as included in the Disability Convention may well reinforce the interpretation of references to international cooperation in the CRC (and the ICESCR) as a legally binding obligation for States to respect, to protect and (in specific circumstances) to fulfil economic, social and cultural rights extraterritorially, and in particular in developing countries.

I. The Convention on the Rights of the Child and Its Two Optional Protocols

Quite a number of articles of the Convention on the Rights of the Child (CRC) relate to international cooperation: articles 4, 7 (2), 11 (2), 17 (b), 21 (e), 22 (2), 23 (4), 24 (4), 27 (4), 28 (3), 34, 35 and 45. The meaning of the term differs however, in that it sometimes clearly does not intend to refer to cooperation for development, sometimes may or may not encompass cooperation for development, and in still other instances most likely has cooperation for development at its core. To the latter category belong the references to international cooperation in the final but one preambular paragraph,\(^3\) art. 4 (general obligation), art. 23 (4) (disability), art. 24 (4) (health) and art. 28 (3) (education).

\(^3\) The final preambular paragraph of the CRC reads: “Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries”.
Article 4 CRC reads:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 23 (4) CRC reads:

States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24 (4) CRC reads:

States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Art. 28 (3) CRC reads:

States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

The latter three provisions refer explicitly to the “needs of developing countries”. The preamble mentions developing countries, and art. 4 provides for measures within the framework of international cooperation “where needed”.

Procedural article 45 CRC too refers to international cooperation. Art. 45 allows the CRC Committee to seek expert advice from the United Nations Children’s Fund (UNICEF) and the specialized agencies, and to point out to inter alia this organ and these agencies a country’s need for technical advice or assistance. It reads:

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children’s Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of
such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications.

The CRC Committee makes consistent use of these powers, and benefits in particular from a strong relationship with UNICEF. UNICEF uses the concluding comments of the Committee as a programming tool, and “approaches the reporting exercise as dynamic occasion for assessment and dialogue with States, United Nations entities and NGOs which results in a framework for State accountability for implementation of their treaty obligations”. (HRI/MC/2006/2, para. 14).

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-SC) refers in its article 10 to international cooperation, not only for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism, and to assist child victims in their physical and psychological recovery, social reintegration and repatriation, but also “in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism” (Art. 10 (3) OP-SC). In accordance with art. 10 (4) OP-SC, States parties in a position to do so are to provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP-AC) contains one reference to international cooperation and one to technical cooperation and financial assistance. In its preamble, the need “to strengthen international cooperation in the implementation of the (...) Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict” is highlighted. Article 7 OP-AC reads:

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.
2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

In this paper, the focus will be on international cooperation in a North-South or development context. The key question is whether the references to international cooperation in a North-South context amount to a legal obligation for States parties in the North to respect, to protect and to fulfil the rights of children in the South. In what follows, this question will be addressed from three perspectives: that of the drafters of the CRC, that of the CRC Committee and that of other instruments which refer explicitly to international cooperation in a development context – in particular the ICESCR and the Disability Convention.

II. Travaux Préparatoires

A. Convention on the Rights of the Child

The initiative to draft a Convention on children’s rights was taken by Poland in 1978. The initial Polish draft did not contain any reference to international cooperation. An open-ended Working Group on the Question of a Convention on the Rights of the Child (the Working Group) was established by the Commission on Human Rights in 1979. During the general discussion at the first session of the Working Group in 1979, attention was asked for the first time for “the status of children in developing countries suffering from malnutrition, hunger or poverty”. (Report open-ended working group 1979, as contained in chapter XI of the report of the Commission on Human Rights on its thirty-fifth session, para. 6). While there was some mention of international cooperation in the subsequent 1980 revised draft proposal, it was only during the discussions and negotiations of the draft that the idea of international cooperation for development began to permeate the whole document, and was explicitly introduced in the preamble and some of the articles on economic, social and cultural rights.

In what follows, the drafting history of the main provisions of the CRC in which references to international cooperation for development feature, will be examined. Attention will be paid to the preamble and to the articles on general measures for implementation, the rights of disabled children, the right to health and the right to education.

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1. The Preamble
In the last but one preambular paragraph of the CRC, the “importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries” is recognized. No similar reference featured in the Polish drafts. Neither was it included in the text as adopted by the 1980 Working Group (E/CN.4/L.1542, Annex). Following Italy’s proposal to specifically mention “children living in exceptionally difficult conditions which do not correspond to those generally obtaining in their country” and the ensuing discussion thereof, a drafting group proposed the following paragraph for inclusion in the preamble: “Recognizing that, in rich as well as in poor countries, there are children living in exceptionally difficult conditions (…)”. The Working Group replaced the reference to rich and poor countries to “all countries in the world” (E/CN.4/1988/28, paras. 9-13).

During the 1989 session of the Working Group, a new paragraph was proposed, which read: “Recognizing the importance of international co-operation and assistance for the developing countries in order to improve the living conditions of children in those countries with serious economic and social difficulties”. The reaction of the United States is highly interesting for our purposes. It argued that “the Convention will primarily create obligations for ratifying governments to respect the rights of, and to render assistance to, their own citizens”. (our emphasis). The US delegate added that “while governments should co-operate with each other in this regard, the Working Group should let other legal instruments and other fora deal with the subject of international assistance”. So while obligations to cooperate internationally, in particular for development, were not entirely rejected, there was some hesitance to have them included in the CRC, because of the fact that it was a human rights instrument. The preambular paragraph on international cooperation as it now reads resulted from a compromise text as prepared by six countries from different regions of the world (Senegal, the United States, Morocco, Canada, Norway and the Philippines) (E/CN.4/1989/48, paras. 64-74).

2. Article 4 – General Measures of Implementation
The reference to international cooperation in article 4 appeared for the first time in October 1979, in the second draft submitted by Poland (E/CN.4/1349). The basic working text of article 4 (2) as adopted by the 1980 Working Group on the Convention of the Rights of the Child read (E/CN.4/1349, p. 3):

The States Parties to the present Convention shall undertake appropriate measures individually and within the framework of international cooperation, particularly in the areas of economy, health and education for the implementation of the rights recognized in this Convention.

Due to new language and the insertion of an additional paragraph on non-discrimination, the text of article 4 (2) was moved to a new article 5. After some
discussion, the following text, at the proposal of Brazil, was adopted by consensus in the 1981 Working Group (E/CN.4/L.1575, paras. 57-61):

The States Parties to the present Convention shall undertake all appropriate administrative and legislative measures, in accordance with their available resources, and, where needed, within the framework of international co-operation, for the implementation of the rights recognized in this Convention.

At the 1989 Working Group, some revisions were suggested by the United States. The proposed revisions did not question the need for international cooperation, but mainly focused on the reference to available resources, which is unusual for the implementation of civil and political rights. A working group composed of the United States, Senegal, India and Sweden was established to come up with a unified proposal, which was subsequently adopted by the 1989 Working Group (E/CN.4/1989/48, paras. 171-177). It read:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in this Convention. In regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

As Skogly has pointed out, the reference to international cooperation in final article 4 CRC was never questioned during the drafting history. The wording of the article did not change between the discussions in the Working Group in 1981 and the adoption in 1988 (Skogly, 2006: 102). The limitation of the reference to international cooperation to economic, social and cultural rights was inserted during the technical review stage (Skogly, 2006: 104), and mainly inspired by the move to confine the reference to availability of resources to economic, social and cultural rights.

3. Article 23 – Disabled Child
The reference to international cooperation for the exchange of information with regard to preventive health care and treatment of disabled children in art. 23 (4) is the result of a proposal of Iran in 1983. While the importance of the proposal was recognized, doubts were expressed “about the advisability of imposing on States the obligation to exchange information”. (E/CN.4/1983/62, para. 83). The final text, as adopted by the Working Group in 1983 with only one small addition, was proposed by States with different regional backgrounds, i.e. Algeria, Iran, the Netherlands, Morocco, Sweden and the United Kingdom (E/CN.4/1983/62, para. 86).

4. Article 24 – Health and Access to Care
Article 24 (4) CRC contains an undertaking to promote and encourage international cooperation for the progressive achievement of the full realization of
the right to the highest attainable standard of health. The first reference to international cooperation in this article appeared in a proposal of Iran, which was however not considered by the 1984 Working Group. The proposed provision read (E/CN.4/1984/71, Annex II, p. 1):

States Parties to the Convention, in a spirit of international co-operation, undertake to support programmes of action to be prepared periodically, in particular by the United Nations Children’s Fund, the World Health Organization and the World Food Programme, in order to lower the infant mortality and to improve substantially health care systems for the benefit of children, especially in developing countries and with particular regard to nutritional problems.

During the consideration by the 1985 Working Group, and following a Senegalese proposal to include the need to pay attention to children in developing countries in particular, and an undertaking to promote and participate in international cooperation to this end, a discussion took place as to whether a reference to international cooperation was to be included in this specific article, or whether it should be the subject of a general article. No opposition was however voiced to the basic principle of the special situation of children in developing countries and the need for international cooperation as such. An informal open-ended working party prepared a draft which was then adopted by the Working Group (E/CN.4/1985/64, paras. 34-38). The text was not debated further later on, except for the question whether or not to refer to “progressive achievement” (E/CN.4/1989/48, paras. 412 and 432), and became the final text.

5. Article 28 – Education

The Polish draft articles on the right to education did not refer to international cooperation. In 1985, the Algerian proposal on paragraph 4 of the article on the right to education was only briefly debated. While Algeria proposed to include a reference to the implementation of the programmes of action adopted by the competent international organizations, France and the United States suggested the deletion of a reference to programmes of action, “as those programmes might not be binding upon States”. (E/CN.4/1985/64, paras. 84-87, emphasis added). So no objection was voiced against the inclusion of a reference to international cooperation and developing countries as such. Moreover, the argument used to delete a reference to programmes of action adopted by competent international organizations, i.e. that they might not be binding upon States, leads to the conclusion that the remaining part of the text – and in particular the obligation to promote and encourage international cooperation – was believed to be binding upon States. With some further minor adaptations, the text as proposed by Algeria was adopted by the Working Group, and not further discussed or changed.
6. Article 45 – Methods of Work of the Committee

Discussion on the supervision of the implementation of the CRC and on the establishment of a monitoring mechanism took only place in the latter half of the 1980s. The 1987 Working Group regretted that it did not have time to consider proposals on international cooperation. In these proposals, UNICEF was identified as the “lead agency on children”, and was to receive State reports and concluding observations from the Committee. The Committee was to draw UNICEF’s attention to requests for technical assistance, and UNICEF’s programmes of action were to give special attention to requests for assistance (E/CN.4/1987/25, para. 155).

The issue was taken up by the 1988 Working Group. States representatives expressed some reticence at involving UNICEF and other UN bodies too much in the monitoring procedure (E/CN.4/1988/28, para. 170). A new proposal was drafted by Brazil, the German Democratic Republic, India, the Netherlands, Norway, the United Kingdom and UNICEF. According to Norway, two main principles governed the text proposal: the importance of the UN organs and NGOs, and the need to stress international cooperation in the implementation of the Convention (E/CN.4/1988/28, para. 174). No substantive discussion took place on a new consolidated text introduced by Canada with regard to the issue of technical advice or assistance (E/CN.4/1988/28, paras. 189-192). This text was not changed later.

7. Conclusion

References to international cooperation and to the particular needs of developing countries gradually trickled into the text of the CRC: first with regard to general measures of implementation (1980 revised Polish draft and 1981 sub Working Group), subsequently in the provisions on the disabled child (1983 Working Group) and on the rights to health and education (1985 Working Group), and finally in the preamble (1988 and 1989 Working Group). The reference to international cooperation was never the subject of huge controversy as a matter of principle, although some discomfort was expressed by the United States with regard to the mentioning of international cooperation in the Preamble. Moreover, the repeated references to international cooperation and the needs of developing countries in a significant number of provisions testify to the uncontested nature. No declarations and reservations have been made on international cooperation, which may be interpreted as additional evidence of the fact that the references to international cooperation were not objected to by any of the States parties. There were 192 States parties as of 1 November 2006.

The absence of objection in principle to inclusion of references to international cooperation in the text of the CRC does not mean in itself that a general and undifferentiated legal obligation to cooperate internationally for development (in particular with regard to children) can be deducted from the CRC. Rather,
a literal reading of the text of article 4 learns that all States parties undertake to take all kinds of measures, and with regard to economic, social and cultural rights, where needed, within the framework of international cooperation. This provision has been given more precise meaning by the CRC Committee. Taking into account the needs of developing countries, States also undertake to promote “in the spirit of international cooperation” the exchange of information in the field of preventive health care and treatment of disabled children, and to promote and encourage international cooperation in relation to the rights to health and education. While the final aim in the field of health is to achieve progressively the full realization of the right to the highest attainable standard of health, it is less couched in human rights language in the field of education, where the objective of international cooperation is to contribute to the elimination of illiteracy and to facilitate access to scientific and technical knowledge and modern teaching methods. On the other hand, the travaux préparatoires contain strong indications of the fact that States considered their specific undertakings to promote and encourage international cooperation for development with regard to the exchange of information on preventive health care and treatment of disabled children, the right to the highest attainable standard of health and the right to education to be binding obligations.

No specific group(s) of duty-bearers is identified in the CRC with regard to international cooperation for development. The operationalization of these obligations seems to be entrusted primarily to the United Nations, i.e. UNICEF, the specialised agencies and other UN organs (see article 45 CRC). In the OP-SC, the duty-bearers are more clearly identified. To the travaux préparatoires of the two protocols to the CRC we now turn.


Art. 10 (4) OP-SC comes close to establishing specific obligations for countries in the North, as it requires States parties “in a position to do so” to provide financial, technical or other assistance. This assistance may be provided multilaterally, regionally or bilaterally. The question arises whether the drafters wanted to create legal obligations for countries “in a position to do so”, to respect, protect and fulfil children’s rights in the field of the sale of children, child prostitution and child pornography.

During the drafting process, the term “international cooperation” was used in a double sense, i.e. to refer to international cooperation in a general and broad way, or to international cooperation for development more specifically. While an obligation of international cooperation in the broad sense minimally requires compliance by third States with the obligations of respect and protection,
references to international cooperation for development clearly add also an obligation of fulfilment. References to development cooperation focus exclusively on the latter obligation.

Already in the general discussion during the first session of the working group held in November 1994, the need for international development cooperation was emphasized (E/CN.4/1995/95). The chairman-rapporteur of the working group too referred to the variety of causes that contribute to the development and persistence of the sale of children, child prostitution and child pornography, and pointed out the necessity arising therefrom to increase international cooperation. He argued that the consumer market that nurtured the sale of children, child prostitution and child pornography was to be eliminated “on the basis of the principle of collective responsibility” (E/CN.4/1995/95). The latter idea was taken up by Iran in its proposed new text, in addition to the original chapter on international cooperation (E/CN.4/1995/95, para. 108).

Texts submitted by Western countries attempted to reconcile references to international cooperation in the broad and more restrictive sense. So did, e.g., the proposed Australian compromise text, in referring both to cooperation of police forces, judicial cooperation and exchange of information, and to poverty, hunger and underdevelopment (E/CN.4/1995/95, paras. 113 and 120). A debate took place along North-South lines whether or not to delete, or to put between brackets, the paragraphs invoking a collective responsibility and the root causes of poverty, hunger and underdevelopment (E/CN.4/1995/95, paras. 115-119 and 122-125). Finally, the working group ad referendum approved a text at its first session in which the words “the principle of collective responsibility” were replaced by the words “concerted international efforts” (E/CN.4/1995/95, paras. 124-127). In subsequent sessions, the need to strengthen international cooperation to eradicate the sexual exploitation of children was emphasized, for it was believed that the latter depended on the elimination of poverty, hunger and underdevelopment (E/CN.4/1996/101, paras. 38 and 55).

During the second session, the representative of Australia, acting as coordinator for the chapter on international cooperation and coordination, submitted a text proposal on international cooperation in the broad sense of the term, referring to arrangements for the prevention, detection, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution and child pornography, and to assistance in criminal procedures. Iran reiterated its proposal to add an article on international cooperation on the basis of the principle of collective responsibility for the eradication of consumer markets for the exploitation of children (E/CN.4/1996/101, para. 117). Nigeria proposed to add a new article based on a preambular paragraph submitted earlier by Australia, in which States committed themselves to “promote and strengthen international cooperation in the elimination of poverty, hunger and underdevelopment, all of which create an environment which may lead to the exploitation of children,
particularly in developing countries, with a view to contributing to the elimination of sale of children, child prostitution and child pornography” (E/CN.4/1996/101, para. 125). In weaker alternative text versions, it was proposed that States would promote and strengthen international cooperation in the field of social development, paying particular attention to the needs of developing countries (E/CN.4/1996/101, para. 128), or that States would “undertake measures to promote international cooperation to eliminate the root causes contributing to the vulnerability of children to the sale of children, child prostitution and child pornography, including poverty and underdevelopment” (E/CN.4/1996/101, para. 129). In reaction to this, Germany proposed in a rather confrontational attitude an alternative article in which States committed themselves to refrain from using poverty and underdevelopment as a justification for child exploitation, sale of children, child prostitution and child pornography (E/CN.4/1996/101, para. 127). Belgium took a more moderate stance, and proposed a soft reference to the root causes of child exploitation by introducing a text in which States parties committed themselves to implementing relevant international legal documents in order to eliminate the root causes contributing to the vulnerability of children, including poverty and underdevelopment (E/CN.4/1996/101, para. 130). The text proposal of the second session of the working group on the issue of international cooperation was a mix of references to international cooperation in the broad sense, and in the more restrictive sense (i.e. focusing on development cooperation).

The wording of the preambular paragraph on international cooperation was left for a next session, on the basis of two text proposals. The United States of America, acting as overall coordinator, proposed a text in which international cooperation was understood in the broad sense of penalization, prevention, detection, prosecution and punishment of those responsible for acts involving child exploitation. Australia, acting as a coordinator for the chapter on international cooperation in particular, suggested several preambular paragraphs on international cooperation and coordination, among which one in which reference was made to international cooperation for development (E/CN.4/1996/101, Annex, part 2):

Encouraging States Parties to promote and strengthen international cooperation in the elimination of poverty, hunger and underdevelopment, all of which create an environment which may lead to the exploitation of children, particularly in developing countries, with a view to contributing to the elimination of sale of children, child prostitution and child pornography.

The divergent interpretations of international cooperation, on one hand in the general sense of judicial and administrative cooperation, and on the other hand of cooperation for development, re-emerged during the third session of the working group (E/CN.4/1997/97, paras. 18, 22 and 76). The text proposal at the end of the discussions carries evidence of this. While some articles were deleted from
chapter V on international cooperation, among the retained ones featured both references to international cooperation in the administrative and judicial spheres (i.e. articles, A, C and G) and to cooperation for development (i.e. articles E, F and H) (E/CN.4/1997/97, Annex).

At the fifth session of the working group in Spring 1999, the question was discussed whether the provisions on international cooperation were to be kept in the operative part of the Protocol, or rather to be included in the preamble, as had been proposed by Australia (E/CN.4/1999/74, para. 7). During the sixth and final session, a separate operative article on international cooperation, i.e. article 10, was adopted for inclusion in the Protocol (E/CN.4/2000/75, Annex). Article 10 refers to both administrative, police and judicial international cooperation and to international cooperation for development, i.e. “in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the practices of sale, prostitution, pornography and child sex tourism”. Moreover, States “in a position to do so” commit themselves to the provision of financial, technical or other assistance.” (Article 10 (4) OP-SA).

Reference to international cooperation was also made in the chapter on assistance, rehabilitation and compensation of child victims of sale, prostitution and pornography (E/CN.4/1995/95, paras. 132-137). During the third session, a discussion took place on the question whether the reference to international cooperation was to be deleted in this chapter or not. Canada, Australia, Italy, France, the Netherlands, New Zealand and the United States were in favour of deletion, while China, Egypt, Brazil, Costa Rica, the Russian Federation, Uruguay, Nigeria and Syria objected to this (E/CN.4/1998/103, para. 76).

Furthermore, the working group initially had been mandated also to elaborate “the basic measures needed for prevention and eradication of the sale of children, child prostitution and child pornography”, other than the Optional Protocol (E/CN.4/1998/103, para. 189). It was suggested that the working group request “that all the necessary means (were) immediately made available, at a national and international level, and through international cooperation, for the prevention and eradication of the sale of children, child prostitution and on child pornography”. (E/CN.4/1998/103, para. 203). Later on in the process, the focus was exclusively on the Optional Protocol.

The call for “international cooperation or assistance in the efforts to make its provisions really applied including support for social and economic development, poverty eradication and education” in the OP was hailed by the ILO “(a)s one of its innovative features” (E/CN.4/2000/WG.14/2). In any event, the OP clearly testifies to the recognition of a shared responsibility for development, in that the strengthening of international cooperation for addressing the root causes of the exploitation of children (i.e. poverty and underdevelopment) is to be promoted. Although a strongly worded obligation (“to promote the strengthening”) is conspicuous by its absence, the fact that Northern States eventually accepted this obligation to be included, and in the operative part of the Protocol,
is highly significant. Moreover, the specific obligation incumbent on States “in a position to do so”, aiming obviously at Northern States, is to “provide financial, technical and other assistance through existing multilateral, regional, bilateral or other programmes”.

As of 1 November 2006, the OP-SC had been ratified by 110 States. An important number of Northern States has signed but not yet ratified the Protocol. Reservations and declarations pertaining to international cooperation have not been made.

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

The preamble and art. 7 OP-AC refer to international cooperation in the implementation of the Protocol. Art. 7 (2) OP-AC provides that States parties “in a position to do so” should provide financial assistance through existing programmes or through a voluntary fund established for that purpose.

International cooperation and assistance was one of the nine main issues a coordinator was appointed for during the drafting stage. Following the proposal for a new article on the rehabilitation and reintegration of children who were victims of armed conflicts, and the need for international cooperation thereto, a discussion took place on where to include a reference to international cooperation.

In October 1994, Cuba proposed a new article on the rehabilitation and reintegration of child victims of armed conflict. El Salvador proposed to draft a new paragraph on the importance of international cooperation, and Cuba submitted at the same meeting a second paragraph in which the need to strengthen international cooperation on these issues was emphasized (E/CN.4/1995/96, paras. 147-148 and 151). In 1996, on the proposal of the Netherlands, and after consideration by the informal drafting group, the working group deleted the whole new article on rehabilitation and reintegration. It was replaced by a new preambular paragraph (E/CN.4/1996/102, paras. 129-130), on a proposal of Australia and Cameroon, which read: “Convinced of the need to strengthen international cooperation regarding the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflicts” (E/CN.4/1996/102, para. 89). In the final text, the need to strengthen international cooperation pertains to the implementation of the Protocol as a whole, as well as to the rehabilitation and reintegration of child victims of armed conflict. The operative provisions (now in art. 7 OP-AC) on technical cooperation and financial assistance were only discussed and included at the final stages of the discussion in the working group, i.e. during the final 2000 session, on a proposal of the United States and a joint proposal of Canada and Norway (E/CN.4/2000/74, paras. 52-53).

During the initial general discussion of the sixth session, a reference to international cooperation was believed by the Latin American and Caribbean Group
to be required in order to mobilize resources for the rehabilitation and social integration of children involved in armed conflicts (E/CN.4/2000/74, para. 21). In the view of the delegation of the United States, as expressed following the adoption of the text in the working group (E/CN.4/2000/74, para. 132),

The provisions in the protocol promoting international cooperation and international assistance in the areas of rehabilitation and social reintegration of children who had been victimized by acts contrary to the protocol were particularly useful. The United States had contributed more than $20 million per year in recent years to programmes for children affected by war. It would continue to put a high priority on such programmes.

Earlier, the United States had submitted that States could and “should assist in bringing an end to this tragedy (the use of young children as soldiers in armed conflict) through international cooperation and assistance”. (E/CN.4/2000/WG.13/2/Add.1, para. 18). It therefore proposed that States parties would “undertake to cooperate to facilitate the elimination of the use of children as soldiers in violation of the protocol and to assist in the rehabilitation and social reintegration of children who have been victims of armed conflicts in violation of international law.” (E/CN.4/2000/WG.13/2/Add.1, para. 19). By proposing this undertaking of cooperation and by recalling the amount of resources spent on child soldier rehabilitation and reintegration in the specific framework of a human rights treaty (E/CN.4/2000/WG.13/2/Add.1, para. 20), the United States clearly seem to accept that there is a human rights obligation to cooperate for the rehabilitation and reintegration of child soldiers. In the view of the Indian delegation, the text of the Protocol even raised standards “in a real and substantive manner over the existing norms in its various provisions including those on international cooperation”. (E/CN.4/2000/74, para. 145).

In sum, no reference to international cooperation was envisaged initially in the OP-AC. It was then first proposed to be included in an article devoted to integration and rehabilitation of child victims of armed conflict. In the end, a reference to international cooperation was included in the preamble, with reference to the implementation of the Protocol. A new article was inserted on technical cooperation and financial assistance, on the basis of text proposals of some Northern countries (i.e. Canada, Norway and the United States). States “in a position to do so” rather loosely commit themselves to financial assistance for the implementation of the Protocol. This differentiation of responsibility and the concomitant identification of duty-bearers for obligations of international cooperation for development are highly important and relevant. Regrettably, these provisions are so vaguely worded that it is difficult to deduce any specific legal obligation therefrom.

As of 1 November 2006, 110 States had ratified the OP-AC, among which many of the Northern States. No State party has made a reservation or declaration with regard to international cooperation.
III. The References to International Cooperation in the CRC Interpreted

In what follows, the interpretation given to international cooperation by the CRC Committee will be scrutinized. Reference is only made to statements in which the Committee explicitly referred to international cooperation, and not to those in which the more narrow term of technical advice and assistance by UN bodies is referred to.

A. CRC Committee

While reference is often made to international cooperation and technical assistance in direct juxtaposition, recommendations to “seek assistance through international cooperation, including from UNICEF” (CRC/C/15/Add.177 (Guinea-Bissau), para. 33) or to seek “international cooperation including, for example, through the ILO International Programme on the Elimination of Child Labour (IPEC)” (CRC/C/15/Add.141 (Comoros), para. 49; CRC/C/15/Add.131 (Djibouti), para. 54; CRC/C/15/Add.116 (Sierra Leone), para. 81) seem to suggest that the Committee uses “international cooperation” as a general or comprehensive term, which then also includes technical assistance. A comparable general use of the term “international cooperation”, which includes the more specific notions of “international cooperation for development” and “development assistance”, has been made as well. With regard to France, the Committee noted, e.g., “the active participation of France in international cooperation activities, including in the area of development assistance” (CRC/C/15/Add.20 (France), para. 9). International cooperation refers to the general idea of cooperating together internationally, e.g., through the United Nations (CRC/C/15/Add.69 (Myanmar), para. 47). In the OP-AC, a shift in language was introduced: reference is there made to “technical cooperation and financial assistance”. In its concluding observations on country reports on the OP-AC, the CRC Committee sometimes uses the heading of “international cooperation and assistance” (CRC/C/OPAC/BDG/CO/1 (Bangladesh); CRC/C/OPAC/CHE/CO/1 (Switzerland), para. 11) and sometimes that of “technical cooperation and financial assistance” (CRC/C/OPAC/AND/CO/1 (Andorra); CRC/C/OPAC/DNK/CO/1 (Denmark), para. 6; CRC/C/OPAC/FIN/CO/1 (Finland), para. 5), apparently without any preference for one or the other term.

On the occasion of the tenth anniversary of the CRC, the CRC Committee pointed out that “optimal implementation of the Convention require(d) the involvement of governments, civil society, children, and international cooperation”, and that the reporting process equally required that broad involvement (CRC/C/87, Annex IV, para. 291). The Committee believes that its concluding observations may “serve as a basis for discussions on international cooperation”,

and that the “Committee may also, in its observations, make particular reference to the need for and possibilities of such cooperation”. (UN Doc. CRC/C/33, para. 28).

Both in its general comments and in its concluding observations, the CRC Committee has devoted considerable attention to international cooperation. A substantial amount of comments or recommendations pertain to the necessity for developing countries to look for international cooperation and assistance. These will remain largely unaddressed in this paper. The Committee has nevertheless also paid attention to the contribution Northern States can make to international cooperation and assistance, albeit not consistently for each and every Northern State.

In its 2003 general comment on the general measures of implementation of the CRC, the Committee clarified the meaning of the reference to international cooperation in article 4 CRC. Developing States “need to be able to demonstrate that they have implemented “to the maximum extent of their available resources” and, where necessary, have sought international cooperation (CRC Committee, 2003: para. 7). Developed States “take upon themselves obligations not only to implement (the CRC) within their jurisdiction, but also to contribute, through international cooperation, to global implementation (…). This obligation was explained in more detail in the paragraphs 60 to 64 of the same general comment.

First of all, there is a shared responsibility for the implementation of the CRC: “Article 4 emphasizes that implementation of the Convention is a cooperative exercise for the States of the world” (CRC Committee, 2003: para. 60). This shared responsibility is based on the articles 55 and 56 UN Charter and on commitments at global meetings to international cooperation to eliminate poverty. Northern States parties are advised that the CRC “should form the framework for international development assistance related directly or indirectly to children and that programmes of donor States should be rights-based”. They are also urged to meet internationally agreed targets, including the United Nations target for international development assistance of 0.7 per cent of gross domestic product (GDP). States parties are expected “to be able to identify on a yearly basis the amount and proportion of international support earmarked for the implementation of children’s rights”. (CRC Committee, 2003: para. 61). Developed States are encouraged to provide technical assistance in the implementation process of the CRC (CRC Committee, 2003: para. 63).

In light of the obligations upon States parties to promote and encourage international cooperation both in general terms (arts. 4 and 45 of the Convention) and in relation to education (art. 28 (3)), the Committee urges States parties providing development cooperation to ensure that their programmes are designed so as to take full account of the principles contained in article 29 (1). (CRC Committee, 2001: para. 28).
The CRC Committee also encourages UN agencies and the International Financial Institutions to take the CRC into account. As a criterion to determine the extent to which UN agencies are responsible, the concept of “sphere of influence” is used (CRC Committee, 2003: para. 64):

In their promotion of international cooperation and technical assistance, all International United Nations and United Nations-related agencies should be guided by the Convention and should mainstream children’s rights throughout their activities. They should seek to ensure within their influence that international cooperation is targeted at supporting States to fulfil their obligations under the Convention. Similarly the World Bank Group, the Monetary Fund and World Trade Organization should ensure that their activities related to international cooperation and economic development give primary consideration to the best interests of children and promote full implementation of the Convention.

Multilateral and bilateral donors, including the World Bank and United Nations bodies, are also asked to support early childhood development programmes financially and technically, and to make it one of their main targets to assist sustainable development in countries receiving international assistance. The belief was expressed that “(e)ffective international cooperation can also strengthen capacity-building for early childhood, in terms of policy development, programme development, research and professional training”. (CRC Committee, 2005: para. 42).

Generally speaking, the CRC Committee does not seem to have paid sustained attention to third State obligations for development under the CRC, i.e. the obligations of bilateral or multilateral donors. In particular since 2005, surprisingly few recommendations related to international cooperation have been made to donor countries under review.

The CRC Committee has welcomed States’ contribution to official development assistance (CRC/C/15/Add.231 (Japan), para. 4; CRC/C/15/Add. 151 (Denmark), para. 4), in particular for the promotion and protection of the rights of the child (see, e.g., CRC/C/DNK/CO/3 (Denmark), para. 4 (b)), or alternatively, their commitment to raise the budget allocation to ODA (CRC/C/15/Add.251 (Austria), para. 14; CRC/C/15/Add.92 (Luxembourg), para. 4). It has expressed appreciation for States’ activities in the area of international cooperation and development assistance (see, e.g., CRC/C/15/Add.226 (Germany), para. 21), and their allocation of a considerable percentage of ODA to children and children’s rights (see, e.g., CRC/C/15/Add.248 (Sweden), para. 16), or for their provision of a specific budget line for children-related projects (CRC/C/15/Add.98 (Austria), para. 12). Concerns very often pertain to the actual or envisaged allocation of a percentage of gross domestic product (GDP) that is far below the UN ODA target of 0.7% of GDP (CRC/C/15/Add. 251 (Austria), para. 14; CRC/C/15/Add.226 (Germany), para. 21), its slow increase (CRC/C/15/Add.226 (Germany), para. 21), the lack of increase relative to the GDP (CRC/C/15/Add.203 (Iceland), para. 16), or the reduction
of the budget allocation to development cooperation (CRC/C/15/Add.53 (Finland), para. 7).

Concluding observations to a donor country, if mentioning international cooperation, typically include recommendations to continue and strengthen activities in the area of international cooperation (see, e.g., CRC/C/SAU/CO/2 (Saudi Arabia), para. 24), particularly for the benefit of vulnerable groups such as disabled children and children needing special protection (CRC/C/15/Add.33 (Denmark), para. 19; CRC/C/15/Add.2 (Sweden), para. 10); to increase official development assistance to 0.7 per cent of GDP (see, e.g., CRC/C/SAU/CO/2 (Saudi Arabia), para. 24; ) as soon as possible (CRC/C/15/Add.226 (Germany), para. 22); and to give special consideration of a child rights focus in programmes and projects (see, e.g., CRC/C/SAU/CO/2 (Saudi Arabia), para. 24), i.e. to use the principles and provisions of the CRC as a framework for programmes of international development assistance (see, e.g., CRC/C/15/Add.85 (Ireland), para. 27).

The CRC Committee has occasionally invited States to allocate special funds in their international cooperation programmes and schemes to children (CRC/C/15/Add.79 (Australia), para. 25), or to consider allocating a fixed percentage of their international development cooperation funds to programmes and schemes for children (CRC/C/15/Add.98 (Austria), para. 12). States have also been asked to consider reviewing their programme for international cooperation “in order to assess the possibility of giving more emphasis to the social sectors” (CRC/C/15/Add.41 (Italy), para. 19) “and to direct the assistance to the most underprivileged children” (CRC/C/15/Add.28 (Spain), para. 15). Exceptionally, a State has been recommended to take “into account in its bilateral cooperation with developing countries the concluding observations and recommendations made by the Committee regarding those countries and provide support for their implementation” (CRC/C/15/Add.248 (Sweden), para. 17); to give “priority to the elimination of female genital mutilation in its programme of international cooperation by, inter alia, extending financial and technical assistance to countries of origin where female genital mutilation is practised that have active programmes designed to eliminate this practice” (CRC/C/15/Add.226 (Germany), para. 47(d)); or to “give consideration to the use of debt conversion and forgiveness measures in favour of programmes to improve the situation of children”. (CRC/C/15/Add.43 (Germany), para. 25). In the specific context of armed conflict, the Committee has called upon international donors to reopen the dialogue, in particular with regard to programmes for the implementation of children’s rights (CRC/C/15/Add.204 (Eritrea), para. 13), and upon relevant international agencies and institutions, as well as States, “to develop cooperation with (the) authorities and voluntary organizations, in the reconstruction effort after the many years of war devastation. Displaced persons and refugees should be given priority in such international cooperation”. (CRC/C/15/Add.54 (Lebanon), para. 45).
In some of its general comments, the Committee has addressed the issue of international cooperation with regard to particular economic, social and cultural rights, such as the right to health and the right to education. The corresponding articles for both rights (art. 24 and art. 28) both contain an explicit reference to international cooperation and assistance. In its general comment on HIV/AIDS, it called upon the relevant international organizations such as UNICEF, World Health Organization, United Nations Population Fund, UNAIDS and others “to contribute systematically, at the national level, to efforts to ensure the rights of children in the context of HIV/AIDS, and also to continue to work with the Committee to improve the rights of the child in the context of HIV/AIDS” in order to promote international cooperation. The CRC Committee also urged “States providing development cooperation to ensure that HIV/AIDS strategies (were) so designed as to take fully into account the rights of the child.” (CRC/GC/2003/3, para. 41). The Committee did not phrase a duty of development cooperation, but rather an obligation to mainstream child rights in HIV/AIDS strategies if States engage in development cooperation. In its general comment on the right to education, the CRC Committee identified a general and specific obligation to promote and encourage international cooperation. Again, it refrained from imposing an obligation to provide development cooperation, choosing instead to focus on the substantive orientation to be ensured in case a State provides development cooperation (CRC/GC/2001/1, para. 28):

Implementation of comprehensive national plans of action to enhance compliance with article 29 (1) will require human and financial resources which should be available to the maximum extent possible, in accordance with article 4. Therefore, the Committee considers that resource constraints cannot provide a justification for a State party’s failure to take any, or enough, of the measures that are required. In this context, and in light of the obligations upon States parties to promote and encourage international cooperation both in general terms (arts. 4 and 45 of the Convention) and in relation to education (art. 28 (3)), the Committee urges States parties providing development cooperation to ensure that their programmes are designed so as to take full account of the principles contained in article 29 (1).

The same approach was adopted in the 2006 General Comment on the rights of children with disabilities. The Committee did not frame an obligation to provide development assistance, but recommended States parties to ensure “that in the framework of bilateral or multilateral development assistance particular attention is paid to children with disabilities and their survival and development”. (CRC/C/ GC/9, para. 16). Nevertheless, it did argue that “the international community should explore new ways and means of raising funds, including substantial increase of resources, and take the necessary follow-up measures for mobilizing resources”. (ibid., para. 22).

Under the initial report procedure of the OP-AC, States have been requested to provide (more) information on international cooperation in the implementation
of the Protocol, including through technical cooperation and financial assistance projects (CRC/C/OPAC/DNK/CO/1 (Denmark), para. 6) “aimed at preventing the involvement of children in armed conflicts as well as assisting the recovery of child victims of armed conflict” (CRC/C/OPAC/FIN/CO/1 (Finland), para. 5). Explicit reference has thereby been made to article 7 of OP-AC (CRC/C/OPAC/DNK/CO/1 (Denmark), para. 6). States have also been recommended to continue their bilateral and multilateral activities (CRC/C/OPAC/ISL/CO/1 (Iceland), para. 11; CRC/C/OPAC/CHE/CO/1 (Switzerland), para. 11) and to increase their activities and support for the implementation of the Optional Protocol in other States parties (CRC/C/OPAC/CHE/CO/1 (Switzerland), para. 11; CRC/C/OPAC/AND/CO/1 (Andorra), para. 9).

Reporting under the OP-SC, as under the OP-AC, has only begun. Conclusions drawn on the basis of the limited material available are necessarily preliminary. The Committee’s concluding observations reflect the drafters’ intention to include international cooperation in judicial, police and administrative measures, as well as development cooperation and assistance. Most observations and recommendations pertain to cooperation in the general sense, regarding prevention and law enforcement in the field of child exploitation (see, e.g., CRC/C/OPSA/NOR/CO/1 (Norway), paras. 25–26). Occasionally, recommendations have also been made to continue and strengthen activities in the area of international cooperation by striving to reach the 0.7 per cent target for development assistance (CRC/C/OPSC/ISL/CO/1 (Iceland), para. 25).

What can be concluded from this account of the CRC Committee’s treatment of the issue of international cooperation? The CRC Committee’s starting point, as clarified in its general comment on general measures of implementation, is that there is a shared responsibility for the implementation of the CRC: it is a cooperative exercise for all States. This shared responsibility is based on the articles 55 and 56 UN Charter, and on political commitments at global meetings to international development cooperation and the elimination of poverty.

The CRC Committee has also shed some light on the division of responsibility. Developing States are actively to seek international cooperation if their own resources are insufficient. In the Committee’s concluding observations, they have been urged quite consistently to look for international cooperation and assistance, in relation both to economic, social and cultural rights (which article 4 CRC is limited to) and to a lesser extent also to civil and political rights. Developing countries have been called upon also to consider their obligations under the Convention in all aspects of their negotiations with international financial institutions and other donors or when concluding free trade agreements, to ensure that the economic, social and cultural rights of children, particularly children belonging to the most vulnerable groups, are well observed (see, e.g., CRC/C/15/Add.265 (Nicaragua), para. 17). It seems only fair to impose such obligations on developing States if there is a legitimate expectation both on behalf
of the Committee and of developing countries that calls for international cooperation and assistance will be received and reacted upon positively.

A corresponding obligation for donor countries to observe (i.e., to respect, protect and fulfil) the economic, social and cultural rights of children in their relations with developing countries—be it through (agricultural) trade, aid or otherwise—has been framed indeed: as asserted in the CRC Committee’s general comment on general measures of implementation, developed States’ obligations for implementation of the CRC are not limited to their own jurisdiction, but also apply extraterritorially. This obligation is to be fulfilled through international cooperation for development.

The Committee has refrained from establishing a general duty of providing development cooperation, commensurate to ability on the side of donor countries, and of need, e.g., on the side of countries in the South. In its general comments on HIV/AIDS and on the aims of education, instead of recognizing a general obligation to provide development cooperation, the Committee has argued that if States provide development cooperation, child rights should feature prominently therein. In its general comments on the aims of education, instead of recognizing a general obligation to provide development cooperation, the Committee has argued that if States provide development cooperation, child rights should feature prominently therein. In its concluding observations, the Committee has resorted to a similar approach. But for three of its early concluding observations (CRC/C/15/Add.41 (Italy), para. 8; CRC/C/15/Add.45 (Portugal), para. 12; CRC/C/15/Add.2 (Sweden), para. 5), it has refrained from explicitly invoking article 4 CRC (or any other article in which reference is made to international cooperation and assistance). In none of these concluding observations in which article 4 was explicitly invoked, a general duty of international development cooperation was established. Rather, States were told that if they provided development cooperation and assistance, they were to pay sufficient attention to child rights and the social sector. This comes hardly as a surprise, for an obligation to provide development cooperation would amount to an obligation to fulfil. This obligation to fulfil, and a fortiori its sub-obligation to provide, inevitably requires the mobilization of financial resources, and may therefore be most difficult to read a legally binding extraterritorial obligation in.

The CRC Committee has nevertheless identified specific obligations for donor countries in relation to development cooperation. The recommendations to use the CRC as a framework for development cooperation and to mainstream a child rights perspective in all development programmes and projects could easily be considered to flow from an obligation to respect, to protect and possibly to fulfil the rights of children in third countries. Quite remarkably, the Committee has frequently made recommendations on strengthening activities in the area of international cooperation and assistance, and on increasing the budget allocation for development cooperation, which mainly relate to the obligation to fulfil-provide. In justification and support of its recommendations on ODA and a prioritisation of social spending (the initial emphasis on social development and social services
has only recently reappeared in the concluding observations) (see CRC/C/15/Add.226 (Germany), para. 22; compare CRC Committee, 2003, para. 62), the Committee has invoked States’ political commitments – such as the ODA target of 0.7 per cent of GDP (see, e.g., CRC/C/15/Add.251 (Austria), para. 14) and the objectives of the Copenhagen 20/20 Initiative (see, e.g., CRC/C/15/Add.28 (Spain), para. 15) – and the recommendations of United Nations organs and specialized agencies (CRC/C/15/Add.20 (France), para. 21).

IV. Interpretation of the Jurisdiction Clause

Contrary to article 2 ICESCR (see further), but in line with universal and regional treaties on civil and political rights (art. 1 European Convention, art. 1 American Convention), article 2 (1) CRC contains a jurisdiction clause by which human rights responsibility of the States parties is limited to persons under their jurisdiction. It reads:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective 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.

The CRC Committee considers State obligations under the CRC to apply to each child within the State's territory and to all children subject to its jurisdiction (CRC Committee, 2005: para. 12). The jurisdiction concept in the CRC should therefore not be reduced to territorial jurisdiction. Moreover, “(w)hen States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation”. (CRC Committee, 2003: para. 7). The Committee has also made clear that “(t)hese State obligations cannot be arbitrarily and unilaterally curtailed” (CRC Committee, 2005: para. 12). While this position was taken with regard to the practice of domestic States parties whereby zones or areas are excluded from its territory or whereby particular zones or areas are defined as not, or only partly, under the jurisdiction of the State, the same criterion can be argued to apply with regard to any possible extraterritorial jurisdiction. The criterion whether or not someone is subject to a State’s jurisdiction is not a legal but a factual one (CRC Committee, 2005: para. 78).

The Committee has also clarified its position on jurisdiction on the occasion of the examination of the report of Israel, with regard to the occupied Palestinian territory. It made clear that “it saw the Convention as binding upon Israel as the occupying Power in respect of the occupied Palestinian territory”.

It firmly rebutted Israel’s assertion that, since it had transferred power and responsibilities for the Palestinian population, in matters covered by the CRC, to the Palestinian Authority, it could not provide the predominant part of the information requested. The Committee read in this claim the recognition that Israel exercised jurisdiction over the Palestinian territories (CRC/C/SR.829, para. 21):

> Powers and responsibilities could be transferred only by an entity within whose jurisdiction they already rested; and they could, of course, be taken back - which seemed, in fact, to be the case. And even if the powers had been transferred, their exercise was being seriously hampered.

In sum, the CRC Committee does not limit the concept of jurisdiction to territorial jurisdiction. It favours a de facto rather than a de iure approach in order to decide whether someone is subject to a State’s jurisdiction. It also subscribes to the approach of other UN human rights treaty bodies whereby the exercise of effective control over territory brings that territory and the individuals living there under the jurisdiction of a State party (see further). Although it is unclear what the CRC Committee’s position would be in case there is no effective control over territory nor individuals, extraterritorial jurisdiction under the CRC cannot be excluded, the more so since the Committee has asserted that States parties “take upon themselves obligations not only to implement the (CRC) within their jurisdiction, but also to contribute, through international cooperation, to global implementation”. (CRC Committee, 2003: para. 7). If there exists an obligation to contribute to global implementation regardless of jurisdiction, certainly obligations ensuing from the exercise of jurisdiction, albeit extraterritorial, cannot be excluded.

In its advisory opinion on the Israeli Wall, the International Court of Justice has confirmed that the CRC, which Israel is a State party to, is applicable to the Occupied Palestinian Territory (ICJ 9 July 2004, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, para. 113).

V. Comparable Provisions, Divergent Interpretations?

The CRC Committee has pointed out that

> (i)n international human rights law, there are articles similar to article 4 of the Convention, setting out overall implementation obligations, such as article 2 of the International Covenant

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5) In many of the concerns voiced, the Committee made clear that it considered the Palestinian territory to be under Israel’s jurisdiction (see CRC/C/15/Add.195 (Israel), paras. 5, 14, 20, 24, 26, 44 and 50).
on Civil and Political Rights and article 2 of the International Covenant on Economic, Social and Cultural Rights. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have issued general comments in relation to these provisions which should be seen as complementary to the (…) general comment (on general measures of implementation) (CRC Committee, 2003, para. 5).

It is therefore important to examine the parallel provisions of article 4 CRC, i.e. article 2 of both the ICCPR and the ICESCR. Two issues in particular deserve further study: the absence (in the ICESCR) or presence (in the ICCPR) of a jurisdiction clause, and the reference to international cooperation in the ICESCR. Attention will also be paid to the Disability Convention, for discussions on this convention may clarify States’ current understanding of duties of international cooperation for development under human rights law.

A. The International Covenant on Civil and Political Rights (1966)

The CRC contains a more liberal provision on jurisdiction than the ICCPR. In the latter, responsibility is limited to individuals within a State’s territory and subject to its jurisdiction. However, even in the case of a very restrictive jurisdiction clause as in the ICCPR, exceptions have been accepted, for strictly territorial jurisdiction proved untenable. In López Burgos v. Uruguay, the Human Rights Committee opted for a disjunctive reading of the phrase “within its territory and subject to its jurisdiction”, as if the undertaking to respect and to ensure human rights covered both persons within the territory of a State and persons subject to a State’s jurisdiction (López Burgos v. Uruguay, CCPR/C/13/D/52/1979, para. 12.3). This reading was recently reiterated in the HRC’s General Comment No. 31 on the nature of the general legal obligation under the ICCPR (HRC, 2004: para. 10).

The commonly used criterion to establish extraterritorial jurisdiction is whether authority, or power or control (over territory and/or persons) is being exercised. This has been accepted to be the case in the event of military occupation of territory, or of support for a local regime that cannot survive without a State’s support (see e.g. Ect.HR (GC, preliminary objections), Loizidou v. Turkey, Judgment of 23 March 1995; Ect.HR (GC), Cyprus v. Turkey, Judgment of 10 May 2001; Ect. HR (GC), Ilaşcu v. Moldova and Russia, Judgment of 8 July 2004), and of the arrest or detention of a person (see e.g. Ect.HR, Issa v. Turkey, Judgment of 16 November 2004; Ect.HR (GC), Öcalan v. Turkey, Judgment of 12 May 2005; IACHR, Coard et al. v. the United States, Report No. 109/99 of 29 September 1999, case No. 10.951, Ann. Rep. IACHR 1999). Therefore, the rather broad reading of the jurisdiction clause in the CRC as not being confined to territorial jurisdiction is fully in line with the understanding of jurisdiction clauses by other supervisory human rights bodies at the universal and regional level (Coomans and Kamminga, 2004a).

Contrary to the CRC, the ICESCR does not contain a jurisdiction clause. In what follows, first the conclusions that can be drawn from the absence of a jurisdiction clause for the existence of extraterritorial obligations will be scrutinized. Secondly, the interpretation by the ICESCR Committee of the references to international cooperation in the ICESCR will be analyzed.

1. The Absence of a Jurisdiction Clause

The ICESCR does not contain a jurisdiction clause. In order to assess the relevance of the absence thereof, a brief scrutiny will be undertaken of other humanitarian and human rights treaties in which a jurisdiction clause is lacking.

Neither the four Geneva Conventions nor the Genocide Convention contain a jurisdiction clause. Recently, the International Court of Justice has read in common article 1 of the Geneva Conventions an extraterritorial *positive* obligation to ensure compliance:

> It follows from that provision that every State party to that Convention, whether or not it is a party to a specific conflict, is under an obligation to ensure that the requirements of the instruments in question are complied with (ICJ 9 July 2004, Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, para. 158).

The existence of a *negative* duty had earlier been identified by the ICJ in the Nicaragua judgment: “The Court considers that there is an obligation on the United States Government, in the terms of Article 1 of the Geneva Conventions, to “respect” the Conventions and even “to ensure respect” for them “in all circumstances”. The Court argued that this rule did not only derive from the Geneva Conventions themselves, but also from the general principles of humanitarian law (ICJ 27 June 1986, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, ICJ Reports 1986 at 114, para. 220).

In the Bosnia case, the ICJ held that the rights and obligations enshrined in the 1950 Genocide Convention are rights and obligations *erga omnes*, and that the obligation each State has to prevent and to punish the crime of genocide is not territorially limited by the Convention (ICJ 11 July 1996, (prel obj), *Case concerning Application of the Convention on the Prevention and Punishment of Genocide (Bosnia-Herzegovina v. Yugoslavia)* ICJ Reports 1996 at 616, para. 31). Craven has pointed out that this judgment “does (...) raise the possibility that, absent a jurisdictional clause, human rights treaty obligations may generally be regarded as extending to all acts of State irrespective of where they may be taken as having effect”. (Craven, 2004: 251).

The American Declaration of the Rights and Duties of Men (1948) also does not contain a jurisdiction clause. The American Declaration is considered to be
applicable to member States of the Organization of American States that are not a party to the American Convention on Human Rights. The Inter-American Commission came to a broad understanding of extraterritorial jurisdiction under the American Declaration. In a case against Cuba, it accepted that the downing of civil planes by military aircrafts brought the individuals in the civil planes under the jurisdiction of the State to which the military aircrafts belonged (IACHR, Armando Alejandro jr. and others v. Cuba, Report No. 86/99 of 29 September 1999, case No. 11.589, Ann. Rep. IACHR 1999). It thus introduced the principle that States are responsible for the (extraterritorial) conduct of their agents that adversely affects individuals in another State. Cerna has coined this a ‘cause and effect’ theory of jurisdiction (Cerna, 2004: 158).

In the absence of a jurisdiction clause, and consistent with the interpretation given to other legal instruments, the ICESCR may be interpreted as enshrining extraterritorial or third State obligations. These extraterritorial or third State obligations arise in these cases in which individuals are adversely affected by the acts or omissions of (the agents of) third States.

2. The References to International Assistance and Cooperation

The ICESCR does not only lack a jurisdiction clause, it contains also explicit references to international assistance and cooperation for the realization of the rights contained in the Covenant. Article 2 ICESCR, which enshrines the general obligation to take steps in order to achieve progressively the full realization of the rights in the Covenant, refers to international assistance and cooperation. Article 11 too, dealing with the right to an adequate standard of living, including the right to food, mentions international cooperation. Finally, procedural articles 22 and 23 of the Covenant refer to international measures and international action.

Scholars differ in opinion as to whether the drafters envisaged explicitly including third State obligations in the ICESCR. Alston and Quinn believe that on the basis of the preparatory work, no legally binding obligation upon any particular State to provide any particular form of assistance can be concluded to (Alston and Quinn, 1987: 191). This position focuses on the obligation to fulfil, and does not exclude third State obligations to respect and to protect. Kamminga-Coomans and Skogly submit that extraterritorial obligations were envisaged by the drafters (Coomand and Kamminga, 2004b: 2; Skogly, 2006: 83-98). Whatever the drafters’ intentions, the more relevant point is whether nowadays the ICESCR can be argued to enshrine third State obligations.

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6) The ICJ has suggested in passim that the absence of a jurisdictional clause in the ICESCR might be explained by the fact that it guarantees rights ‘which are essentially territorial’. This suggestion, which is not substantiated, is difficult to reconcile with the multiple references to international assistance and cooperation in the same Covenant. (ICJ 9 July 2004, Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para. 112).
The International Court of Justice has recently created some, albeit very limited, space for the extraterritorial application of the ICESCR, i.e. in the event that a State occupies territory. It held:

It is not to be excluded that the (ICESCR) applies both to territories over which a State party has sovereignty and to those over which that State exercises territorial jurisdiction. Thus Article 14 makes provision for transitional measures in the case of any State which “at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge” (ICJ 9 July 2004, Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, para. 112).

The ICESCR Committee has taken a much more liberal approach. In its concluding observations, it has implicitly recognized the existence of third State obligations under the Covenant by paying attention to some aspects thereof. It has thus encouraged States parties, as a member of international organizations, including international financial institutions, such as the International Monetary Fund and the World Bank, to do all they can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties under the Covenant, in particular with the obligation contained in articles 2.1, 11.2, 15.4 and 23 concerning international assistance and cooperation (see, e.g., E/C.12/1/Add.79 (United Kingdom), para. 26). It has also urged donor countries to spend at least 0.7 per cent of their GDP on development assistance (E/C.12/1/Add.99 (Spain), paras. 10 and 27; E/C.12/1/Add.103 (Italy), para. 15), or welcomed that they were doing so (see, e.g., E/C.12/1/Add.109 (Norway), para. 35; E/C.12/1/Add.102 (Denmark), para. 5). In its recent concluding observations on Norway, it asked for information on measures taken to ensure compliance with Covenant obligations in its international development cooperation (E/C.12/1/Add.109 (Norway), para. 25). In some of its general comments, it has more explicitly emphasized their existence. In its general comment on the obligation of States parties, it argued that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself (the Committee mentioned articles 2(1), 11, 15, 22 and 23), international cooperation for development and thus for the realization of economic, social and cultural rights was an obligation of all States. It added that it was particularly incumbent upon those States which are in a position to assist others in this regard (ICESCR Committee, 1990b, para. 14).

The ICESCR Committee usually refers to third State obligations as ‘international obligations’. With regard to the third State obligation to respect, the Committee has pointed out that States “should take steps to respect the enjoyment of the right to food in other countries” (ICESCR Committee, 1999b: para. 36), and “have to respect the enjoyment of the right to health in other countries” (ICESCR Committee, 2000: para. 39). International cooperation requires
States to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within a State’s jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction (ICESCR Committee, 2002: para. 31). International agencies should scrupulously avoid involvement in projects which, for example, involve the use of forced labour in contravention of international standards, or promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation (ICESCR Committee, 1990a: para. 6). In relation to the right to adequate housing, international financial institutions promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing (ICESCR Committee, 1991: para. 19). The World Bank and other agencies are moreover required to fully respect the World Bank and OECD guidelines on relocation and/or resettlement, insofar as these guidelines reflect the obligations contained in the Covenant (ICESCR Committee, 1997: para. 18). The international financial institutions are to pay greater attention to economic, social and cultural rights in their lending policies, credit agreements, international measures to deal with the debt crisis, structural adjustments and development projects (ICESCR Committee, 2005: para. 53; 2002: para. 60; 2000: para. 64; 1999c: para. 60; 1999b: para. 41). Moreover, States are to refrain at all times from embargos or similar measures: food, medicines and medical equipment, and water should never be used as an instrument of political and economic pressure (ICESCR Committee, 1999b: para. 37).

With regard to the obligation to protect, the ICESCR Committee has emphasized that States are to prevent their own citizens and companies from violating, for example, the right to water of individuals and communities in other countries. Where possible, States have to take steps to influence third parties to respect the right to water, through legal or political means (ICESCR Committee, 2002: para. 33). States, as members of international organizations, are under the obligation to pay greater attention to the protection of economic, social and cultural rights, for example, by influencing the lending policies, credit agreements and international measures of these institutions (see, e.g., ICESCR Committee, 2005: para. 30). Agreements concerning trade liberalization e.g. should not curtail or inhibit a country’s capacity to ensure the full realization of the right to water (ICESCR Committee, 2002: para. 35).

Finally, the Committee has also identified some fulfilment obligations, which require positive action. The obligation to fulfil is composed of obligations to

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7 A similar argument has been made with regard to the right to health (ICESCR Committee, 2000, para. 41) and the right to water (ICESCR Committee, 2002, para. 32).
facilitate, to promote and to provide. The obligation to facilitate entails active measures that enable and assist individuals and communities to enjoy a right. A third State obligation to fulfill-facilitate with regard to the right to food implies, e.g., that food aid should be organized in ways that facilitate the return to food self-reliance of the beneficiaries (ICESCR Committee, 1999b, para. 39). Appropriate UN programmes and agencies should assist in drafting framework legislation for the implementation of a national strategy concerning the right to food, and in reviewing sectoral legislation (ICESCR Committee, 1999b: para. 30).

An element of the obligation to promote economic, social and cultural rights could be the obligation for international agencies to act as advocates of projects and approaches which contribute also to enhanced enjoyment of the full range of economic, social and cultural rights (ICESCR Committee, 1990a: para. 6). The Committee has thus recommended to the international community to support the diversion of resources to social welfare measures by the Guatemalan government, and to ensure the regular and close monitoring and reviewing of projects undertaken pursuant to peace agreements (E/C.12/1/Add.3 (Guatemala), para. 25). To comply with their international obligations in relation to the right to work, States are to promote the right to work in other countries as well as in bilateral and multilateral negotiations (ICESCR Committee, 2005; para. 30).

The domestic obligation to provide is understood as an obligation for the domestic State to realize a right “whenever an individual or group is unable, for reasons beyond their control, to enjoy an (economic, social or cultural) right by the means at their disposal”. (ICESCR Committee, 1999b: para. 15). The third State obligation to fulfill can be understood in the same way. The ICESCR Committee has for example identified the following fulfill obligations for donor countries or the international community at large:

- States parties, both recipients and providers, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed (ICESCR Committee, 1991: para. 19); States are to take monitoring measures with regard to the right to adequate food in order to implement their obligations under articles 2.1 and 23 of the ICESCR;
- Where a State party is clearly lacking in the financial resources and/or expertise required to “work out and adopt” a detailed plan of action for primary education, the international community has a clear obligation to assist (ICESCR Committee, 1999a: para. 9);
- States and international organizations have a joint and individual responsibility to cooperate in providing disaster relief and humanitarian assistance in times of emergency (ICESCR Committee, 2000: para. 40; 1999b: para. 38). In disaster relief and emergency assistance, priority is to be given to Covenant rights (ICESCR Committee, 2002: para. 34).

In conclusion, the ICESCR Committee clearly has read third State obligations (“international obligations”) in the Covenant. While it has identified a number of fulfilment obligations for States parties, it has equally elaborated on the obligations to respect and to protect economic, social and cultural rights in third countries. Particular attention has been paid to the obligation of member States
to international organizations to protect economic, social and cultural rights in
the measures taken by these organizations with regard to developing countries.

C. Convention on the Rights of Persons with Disabilities

Negotiations on a Disability Convention at the United Nations were concluded
on 5 December 2006. An Ad Hoc Committee to negotiate the text of the
Convention was established by the General Assembly in December 2001 (GA/
RES/56/168). This Committee met for the first time in 2002. In 2003, a Working
Group was established by the Ad Hoc Committee with the aim of preparing a
draft text of a convention. Negotiations on the draft text were started in 2004. A
first reading was concluded in the same year. The draft was adopted by the Ad
Hoc Committee without a vote (except for preambular paragraph s(bis)) on 25
August 2006. The General Assembly adopted the Disability Convention on 13
December 2006.

1. International Cooperation

The issue of international cooperation has featured prominently in the discus-
sions and negotiations on the Disability Convention. Although all parties recog-
nize the importance of international cooperation, the issue has nevertheless
reconfirmed the north-south divide, and it has proven to be one of the most
difficult topics to reach consensus on. In the view of Sudan, “(i)nternational
cooperation would be one of the most serious, difficult, and important topics
addressed by the Committee”. (Ad Hoc Committee Daily Summary (AHCDS),
vol. 4, #1 of 24 May 2004, p. 6 (Sudan)).\(^8\) The political sensitivity of interna-
tional cooperation is first of all reflected in the procedure followed: unlike the
procedure followed for other topics, the Working Group did not come up with
text proposals. Instead, a reflection of the discussion was annexed to the report
of the Working Group, after a difficult discussion at the end of the Working
Group session on how to cover in the report deliberations on the issue. During
the third session of the Ad Hoc Committee, no drafting discussion was begun, as
was done for other issues. Rather, only then a first discussion on international
cooperation was held, while the fundamental decision whether there would be a
drafting exercise on a specific provision on international cooperation was still
postponed (AHCDS, vol. 4, #8 of 3 June 2004, p. 10-11). Secondly, disagree-
ment first on including language on international cooperation at all in the
Disability Convention,\(^9\) and subsequently on including a specific provision on

\(^8\) All summaries can be found on http://www.un.org/esa/socdev/enable/rights/adhoccom.htm.

\(^9\) In the Working Group (2004), Ireland opposed the inclusion of a reference to international
cooperation in the preamble. It only accepted that international cooperation was included in the
draft preamble on condition that a footnote conveyed the lack of consensus (Working Group Daily
the issue persisted for a very long time. By 2006, the basic positions taken by both camps were that while the North did not oppose (anymore) a principled reference to international cooperation, the South favoured inclusion of international cooperation in the Convention both as a general principle governing all provisions of the Convention and as an implementation measure.

Quite some discussion took place on the nature and meaning of international cooperation. In an attempt to win the minds of the delegates of northern States, proponents of inclusion of references to international cooperation stressed that international cooperation included north-south and south-south (see, e.g., AHCDS, vol. 4, #1 of 24 May 2004, p. 6 (Mali)), north-north (AHCDS, vol. 4, #8 of 3 June 2004, p. 15 (Peoples with Disabilities Australia)) and even south-north cooperation (AHCDS, vol. 5, #5 of 27 August 2004, p. 10 (Morocco)); and that the concept not necessarily pertained to global cooperation (AHCDS, vol. 4, #8 of 3 June 2004, p. 11 (Lebanon)), but could also refer to regional cooperation. Secondly, it was emphasized by delegates from North and South that international cooperation was not a synonym for development assistance and the transfer of resources from North to South. The many substantive dimensions of international cooperation were evoked, ranging from the transfer of resources and technical assistance and cooperation (Working Group Daily Summary (WGDS), volume 3, #2 of 6 January 2004, p. 9 (Venezuela)) to policy advice (AHCDS, vol. 4, #2 of 25 May 2004, p. 2 (PWD Australia and National Association of Community Legal Centers)), and the international sharing and exchange of experience, expertise and good practice to assist in effective implementation (AHCDS, vol. 4, #8 of 3 June 2004, p. 10 (European Union)), networking and workshops (AHCDS, vol. 4, #8 of 3 June 2004, p. 15), training, awareness, cooperation among disabled people's organizations, and development of technologies (AHCDS, vol. 5, #5 of 27 August 2004, p. 13 (Mexico). The “traditional view” of international cooperation in the sense of a transfer of resources to developing countries was claimed to be so fundamentally rejected by Mexico, that it opposed any specific reference to developing countries in the text (AHCDS, vol. 5, #1 of 23 August 2004, p. 2).

Summary (WGDS), volume 3, #10 of 16 January 2004, http://www.un.org/esa/socdev/enable/rights/adhoccom.htm, p. 4 and 10). Similarly, references to international cooperation in the part on principles and objectives (see WGDS, volume 3, #1 of 5 January 2004, p. 6; see also WGDS, volume 3, #2 of 6 January 2004, p. 5), and with regard to a provision on accessibility, were objected to (WGDS, volume 3, #7 of 13 January 2004, p. 13). During the subsequent third session of the Ad Hoc Committee, the EU did not oppose inclusion of a principled reference to international cooperation in the preamble (AHCDS, vol. 4, #8 of 3 June 2004, p. 10), or in a provision on general measures of implementation with regard to economic, social and cultural rights, as is also the case in art. 4 (2) CRC (AHCDS, vol. 4, #1 of 24 May 2004, p. 6).

10 Inclusion was considered in article 2 on general principles and in article 4 on general obligations, as well as in the preamble and in a separate article devoted to international cooperation.
With regard to international cooperation for development, two fundamental questions are to be answered. First of all, how the division of responsibility for development is depicted, and secondly, whether a legal obligation to internationally cooperate for development has been recognized and included in the text. The background to discussions on international cooperation for development in the negotiating process of the Disability Convention is the fact that 66 to 80 per cent of persons with disabilities live in developing countries. The need to focus on poverty eradication, and to combine human rights and social development has therefore been highlighted (José Ocampo, speaking on behalf the Secretary General of the UN, AHCDS, vol. 4, #1 of 24 May 2004, p. 2). According to China and some NGOs, international cooperation is to be “encouraged as an important part of the Convention” (AHCDS, vol. 4, #1 of 24 May 2004, p. 2 (China)), for the practical implementation of general measures involves international cooperation (AHCDS, vol. 4, #2 of 25 May 2004, p. 2 (PWD Australia and National Association of Community Legal Centers)).

Northern States have stuck – quite rightly so – to their fixed position that implementation of a human rights treaty, including the Disability Convention, is primarily the responsibility of individual, domestic States parties. Moreover, implementation of human rights obligations cannot be conditional on receiving aid or assistance (see, e.g., Ad AHCDS, vol. 5, #5 of 27 August 2004, p. 11 (European Union), p. 12 (Canada)). NGOs too have emphasized that international cooperation cannot be a precondition for action, and that the lack of it is no excuse for inaction (AHCDS, vol. 4, #8 of 3 June 2004, p. 14-15 (People with Disabilities Australia; European Disability Forum)). In opposing a reference to international cooperation in the 2004 Working Group, Ireland explained that in the UN context, the term international cooperation had often been “code for developmental assistance”, and that it had “grave reservations about creating international obligations regarding developmental aid” (WGDS, volume 3, #10 of 16 January 2004, p. 10). Nonetheless, from August 2004 onwards, willingness could be discerned on behalf of Northern States at least to discuss the inclusion of a separate provision on international cooperation (AHCDS, vol. 5, #5 of 27 August 2004, p. 11 (European Union)).

While not calling into question the principle that the domestic State has primary responsibility for implementation, Southern countries have emphasized the importance of shared responsibilities (AHCDS, vol. 7, #1 of 1 August 2005, p. 11 (El Salvador)), in light of the different levels of development States find

1) The fact that the realization of economic, social and cultural rights is not conditional on international cooperation, but that international cooperation is a means to assist countries in achieving implementation was also stressed by Landmine Survivors Network (WGDS, volume 3, #3 of 7 January 2004, p. 9).
themselves in. So while primary responsibility for implementation lies with them, other States parties, through international cooperation, are to complement national efforts (AHCDS, vol. 5, #5 of 27 August 2004, p. 13 (Mexico); 14 (El Salvador)). The major goal of southern States seemed to be to “raise international cooperation to the normative level”, i.e. to elaborate legal obligations in this regard (AHCDS, vol. 5, #5 of 27 August 2004, p. 14 (Trinidad and Tobago)).

In 2005, a specific text proposal on international cooperation, i.e. art. 24 bis, was suggested and discussed. The crucial question is how the specific paragraph dealing with technical cooperation and economic assistance for developing countries, was received. Southern countries pointed out that the provision referred to relations among States, and clarified what international cooperation meant in the context of the Disability Convention (AHCDS vol. 7, #1 of 1 August 2005, p. 11 (Chile)). China submitted that the provision clarified that disability rights were not only an issue of human rights, but also of development (AHCDS, vol. 7, #1 of 1 August 2005, p. 12). According to Yemen, an article on international cooperation would emphasize that “wealthy countries should help developing countries” (AHCDS, vol. 7, #1 of 1 August 2005, p. 11). Mexico hailed art. 24 bis as modernizing the Convention, and bringing concepts of international cooperation into the 21st century (AHCDS, vol. 7, #1 of 1 August 2005, p. 12).

Much less enthusiasm was to be found among Northern countries. The EU objected to inclusion of a specific article on international cooperation for several reasons. It did not focus however on development cooperation, but on international cooperation in general. First of all, it was argued that a human rights treaty like the Disability Convention was to contain rights of individuals, and that international cooperation was not a specific right of individuals. Secondly, the EU submitted that the introduction of a provision on international cooperation would make the Convention to deal with States’ obligations toward other States. No other human rights treaty was believed to do so (AHCDS, vol. 7, #1 of 1 August 2005, p. 10). According to the United States, article 24 bis, para. (d), which dealt with development cooperation and economic assistance, departed from the overall framework of the Convention that was believed to focus on non-discrimination and equality of treatment (AHCDS, vol. 7, #1 of 1 August 2005, p. 12). Serbia and Montenegro submitted that para. (d) was “very ambitious and controversial and probably (did) not belong in the (Disability) Convention (AHCDS, vol. 7, #1 of 1 August 2005, p. 11). In order to accommodate EU concerns that a stand-alone article on international cooperation could be invoked as an excuse for non-implementation, the chair proposed additional language to avoid this risk (AHCDS, vol. 7, #1 of 1 August 2005, p. 11 (Chair)).

The discussion on a stand-alone article on international cooperation was resumed in January 2006, on the basis of a new text proposal (of article 32 meanwhile) that had resulted from the work of the Facilitator on this issue (http://www.un.org/esa/socdev/enable/rights/ahc7docs/ahc7faintcooprev2.doc).
The new text proposal stipulated explicitly that international cooperation was complementary to national efforts, and that lack of international cooperation could not be invoked to absolve a State party from responsibility for non-implementation. As concrete measures of implementation of international cooperation were inter alia mentioned: ensuring that international cooperation, including international development programmes, were inclusive of, and accessible to, persons with disabilities; and providing, as appropriate, technical and economic assistance (Draft article 32 (1) (a) and (d)). It can be no accident that the references to “development programmes” and “as appropriate” were still disputed, the former by Northern, and the latter by Southern countries. The EU for example expressed concern about the reference to international development programmes, which was interpreted to focus strictly on North-South relationships rather than on international cooperation in the broad sense (AHCDS, vol. 8, #14 of 2 February 2006, p. 16). This comment seem to suggest that the EU is only willing to discuss international cooperation in general terms, and on the condition that cooperation for development is excluded or at least not explicitly dealt with. Moreover, the earlier suggestion of Thailand and the Russian Federation that disagreement was reduced from international cooperation in a separate article, to the specific paragraph on development cooperation (AHCDS, vol. 7, #1 of 1 August 2005, p. 13 (Thailand); 14 (Russian Federation)), seemed to be too optimistic and unwarranted. In January 2006, the EU clearly opposed the idea of a stand-alone article on international cooperation, and instead favoured inclusion in the article on general obligations (AHCDS, vol. 8, #14 of 2 February 2006, p. 16). Eventually, a specific article on international cooperation was included, in which the importance of international cooperation is recognized. Among the measures mentioned feature: “ensuring that international cooperation, including international development cooperation, are inclusive of, and accessible to, persons with disabilities” and “providing, as appropriate, technical and economic assistance” (art. 32, para. 1 (a) and (d)). The proviso is included that “the provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention”. (art. 32, para. 2).

Some Asian countries, a number of NGOs and the International Labour Organisation have stressed the importance of mainstreaming disability in international development cooperation, both by donors and recipients (AHCDS, vol. 4, #8 of 3 June 2004, p. 10 (Thailand); p. 15 (People with Disabilities Australia; World Blind Union, Rehabilitation International); p. 16 (ILO); AHCDS, vol. 4, #1 of 24 May 2004, p. 7, p. 12, 14–15 (Thailand, supported by NGO Landmine Survivors Network); AHCDS, vol. 5, #5 of 27 August 2004, p. 11 (China, Thailand); AHCDS, vol. 5, #6 of 30 August 2004, p. 11 (Thailand) and p. 14 (Viet Nam); AHCDS, vol. 7, #1 of 1 August 2005, p. 14 (IDC, European Disability Forum); AHCDS, vol. 8, #15 of 3 February 2006, p. 3-4 (IDC; International Disability and Development Consortium)). This idea of
mainstreaming disability rights in international development programmes seems to have gained wide acceptance. The proposal was explicitly supported by New Zealand (AHCDS, vol. 5, #5 of 27 August 2004, p. 11-12). The United States have begun to implement standards in their international aid programs that are equal to their domestic standards. Similarly, the European Parliament has adopted a resolution on disability and development in which mainstreaming disability is a key element (AHCDS, vol. 8, #15 of 3 February 2006, p. 4 (International Disability and Development Consortium)). An obligation to engage in disability-inclusive international cooperation would boil down to the recognition of a minimal obligation on behalf of donors to respect and protect the rights of persons with disabilities in the South, when engaging in development cooperation.

2. Jurisdiction
An interesting discussion took also place on the inclusion of a reference to jurisdiction. While India suggested deletion of any reference to jurisdiction in order to avoid responsibility under the Disability Convention for illegal immigrants, the African Group wanted to keep it in the text. Canada opposed the inclusion of the alternative phrase “under their control”. As a major contributor to international peace-keeping operations it believed that such a reference would expand the scope of the Disability Convention far beyond that in current international human rights law. Costa Rica pointed out the tension with the expressed importance of international cooperation: if international cooperation was believed to be important for implementation of the Convention, a reference to jurisdiction was too limiting (AHCDS, vol. 5, #7 of 31 August 2004, p. 4). In the end, a reference to jurisdiction was not included in the Disability Convention, only in the Optional Protocol on an individual complaints procedure.

3. Conclusions
During the drafting negotiations on the Disability Convention, much attention has been paid to international cooperation for the realisation of the rights of persons with disabilities. Northern countries, and in particular the EU, have gradually adopted a more constructive approach to the issue, although at the price of excluding an explicit reference to international cooperation for development.

The language used in the CRC for inclusion of a reference to international cooperation, in particular with regard to the realisation of economic, social and cultural rights, has been favoured over the language used in the ICESCR, for it would better reflect the concept of international cooperation (AHCDS, vol. 5, #6 of 30 August 2004, p. 6 (summary of coordinator)). The Disability Convention goes nevertheless beyond the text of the CRC on the issue of international cooperation. The inclusion of a stand-alone article on international cooperation is an important step forward towards explicit recognition of third
State obligations. This can in turn reinforce a third States obligations conducive interpretation of the CRC (and the ICESCR).

It has been argued in this article that the CRC Committee has paid disproportionate attention to the third State obligation to *fulfil* (i.e. to provide development assistance, through the transfer of resources from North to South), while third State obligations to respect and to protect have been neglected. The latter are politically less contentious though, even in a development cooperation context. The by now unchallenged nature of the third State obligation to respect is illustrated by the broad consensus, beyond the North-South divide, on disability mainstreaming in international cooperation for development. Donor countries accept that in the framework of development cooperation they are at least to abstain from violating the rights of persons with disabilities in the South.

**VI. Conclusion: Is There a Legal Obligation in the CRC to Cooperate Internationally for Development?**

Central to this article is the question whether third State obligations (commonly called extraterritorial obligations) for the realization of economic, social and cultural rights of children in the South can be read into the provisions of the CRC on international cooperation (in particular arts. 4, 23, 24, 28 and 45). 12

References to international cooperation and to the particular needs of developing countries gradually trickled into the text of the CRC during the drafting process. The reference to international cooperation was never the subject of huge controversy as a matter of principle. The repeated references to international cooperation and the needs of developing countries in a significant number of provisions testify to its uncontested nature. No declarations and reservations have been made on international cooperation, which may be interpreted as additional evidence of the fact that the references to international cooperation were not objected to by any of the States parties. The CRC Committee has rightly emphasized that there is a *shared* responsibility for the implementation of the CRC.

However, no *general and undifferentiated* legal obligation to cooperate internationally for development (in particular with regard to children) can be deducted from the text of the CRC. The shared responsibility for development pertains mainly to the exchange of information on preventive health care and treatment of disabled children, the right to the highest attainable standard of health, and the right to education, and is phrased in rather weak terms. The CRC Committee has further clarified the scope of third State obligations under the CRC by

12) Skogly goes further and submits that there is a “regular obligation to respect (all of the rights) of children over whom (a State) exerts ‘effective control’”, and that article 4 CRC *adds* a “positive obligation in relation to economic, social and cultural rights” (Skogly, 2006: 104-105).
identifying specific obligations for donor countries in relation to development cooperation, such as allocating 0.7 per cent of GDP to development assistance and mainstreaming a child rights perspective in all development programmes and projects. Quite remarkably, the CRC Committee has mainly focused on a third State obligation to *fulfil-provide*, which is because of its direct link with the transfer of resources from North to South politically the most sensitive and disputed one. The practice of the ICESCR Committee indicates that a much broader range of third State obligations could be pointed out to States parties. In light of the negotiations on the Disability Convention it can be concluded that the third State obligation to respect now goes by and large unchallenged.

References


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ICESCR Committee, General Comment No. 12 (1999b), *The Right to Adequate Food (art. 11)*, HRI/GEN/1/Rev.7.

ICESCR Committee, General Comment No. 13 (1999c), *The Right to Education (article 13)*, HRI/GEN/1/Rev.7.


ICESCR Committee, General Comment No. 15 (2002), *The Right to Water (Arts. 11 and 12)*, HRI/GEN/1/Rev.7.


