

Schmahl

**United Nations
Convention on the
Rights of the Child**

Article-by-Article Commentary



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by

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PREFACE

This Commentary covers the UN Convention on the Rights of the Child (CRC) as well as its three Optional Protocols and provides a detailed analysis of each Article of the Convention. The work updates and expands my German-language *Kinderrechtskonvention mit Zusatzprotokollen. Handkommentar* (i.e. Commentary on the Convention on the Rights of the Child with Optional Protocols), published by *Nomos* as first edition in 2013 and as second edition in 2017. The present English-language version almost entirely omits references to domestic German law, as contained in the *Kinderrechtskonvention mit Zusatzprotokollen*, while references to international human rights law were extended.

Like almost any scholarly text, also this Commentary has unavoidable gaps and omissions. The Commentary does not deal with the First Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Second Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in form of a detailed and in-depth article-by-article analysis. Rather, their main stipulations and objectives are elucidated as part of the respective explanations of the relevant provisions of the CRC. However, the Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure is analysed independently in an overview at the end of this book.

Furthermore, the Commentary does not cover all topics, nor could it. It mainly focuses on the work and recommendations of the UN Committee on the Rights of the Child (CRC Committee). Over the last three decades, the CRC Committee, the Convention's monitoring body, has taken a very active role in the understanding and interpretation of the CRC. It has passed, among others, 24 General Comments in roughly 20 years and nearly 900 Concluding Observations since the early 1990s. The Commentary considers all General Comments and a significant number of the Concluding Observations, as well as various versions of the CRC Committee's Reporting Guidelines. All these documents, albeit being legally non-binding, provide important interpretive guidance on the aims and for the implementation of the Convention.

The Commentary builds on the understanding that children's rights form part of the legal discipline of international human rights law. Irrespective of the considerable value of interdisciplinary studies on children's rights, the CRC is a legal treaty, which mainly has to be understood in legal terms. With all their specificities, international children's rights remain an area of international human rights law, which imposes obligations and responsibilities for those States that have ratified the relevant international instruments. Therefore, insights and findings from other disciplines are included on a limited basis and just to the extent that they have a bearing on the legal interpretation of a provision or its implementation.

The Commentary takes into account perspectives of other, universal and regional, human rights instruments. Such perspectives are not only examined as part of the introduction at the beginning of this book, but also in the context of each Article as well as in the final chapter of each Article where the provision is put in a wider human rights context. This legal comparison places special emphasis on the "International Bill of Rights", i.e. the International Covenants on Civil and Political Rights as well as on Economic, Social and Cultural Rights. Furthermore, a particular focus is laid on the rights and fundamental freedoms enshrined in the European Convention on Human Rights. Finally, to further contextualise the provisions of the CRC within the general human rights setting, the Commentary also takes into consideration reports and resolutions of UN Special Rapporteurs and the UN General Assembly, the case-law of

Preface

international courts and recommendations of other international monitoring bodies as well as on scholarly works in the field of international law.

The preparation of a Commentary, especially in a foreign language, takes time and requires support. In essence, this work has been last updated in summer 2020. Only partially, it was possible to incorporate more recent decisions and scholarly articles. I received linguistic assistance from *Thomas Hardaker* in the translation of an early draft, and from native speakers and copyeditors at *Nomos*, *Beck* and *Hart*, who cleaned up the last version of my Commentary from remaining grammar and expression errors. I am deeply grateful for this help.

In particular, I would like to thank the research assistants at my chair for their diligent and meticulous verification of the footnotes and their proofreading. Without their tireless commitment, this book would not have been completed. My warmest thanks thus go to *Matthias Grundei*, *Antonia Kuhn*, *Rico Neidinger*, *Dorina Schmidt* and *Henri Weber*.

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Stefanie Schmahl

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