

THE HOLY SEE IN DIALOGUE WITH THE COMMITTEE ON THE RIGHTS OF THE CHILD

Jane Adolphe[†]

INTRODUCTION

The Holy See's commitment to the well being of children, born and unborn, is longstanding. By reason of their vulnerability children occupy a special place in the heart of the Catholic Church and are the beneficiaries of special care. Since 2002, however, the Church's commitment to children has been the subject matter of intense scrutiny, by Catholics and non-Catholics alike, due to increasing awareness about the sexual abuse of children by some Catholic clergy, religious and laity.¹ In response, both Pope John Paul II and Pope Benedict XVI, as part of their pastoral ministry,² have publicly

[†] Associate Professor of Law, Ave Maria School of Law, Naples, Florida. The author holds a Bachelor of Arts degree (B.A.) from the University of Calgary in Calgary, Alberta and common law and civil law degrees (LL.B/B.C.L) from McGill University in Montreal, Quebec as well as degrees in canon law (J.C.L./J.C.D.) from the Pontificia Università della Santa Croce in Rome, Italy. I would like to express my deep gratitude to the following Professors who reviewed this work and made very helpful comments: Robert Araujo, S.J., Ronald Rychlak, Brian Scarnecchia, Kevin Govern and Judge Daniel Ryan.

1. See, e.g., ERLANDSON, GREGORY & BUNSON, MATTHEW, POPE BENEDICT XVI AND THE SEXUAL ABUSE CRISIS (Our Sunday Visitor (OSV), 2010); NICHOLAS P. CAFARDI, BEFORE DALLAS: THE U.S. BISHOP'S RESPONSE TO CLERGY SEXUAL ABUSE OF CHILDREN (Paulist Press: 2008); R. KARL HANSON, FRIEDEMANN, PFÄFFLIN, MANFRED LÜTZ, EDS. PONTIFICIA ACADEMIA PRO VITA, SEXUAL ABUSE IN THE CATHOLIC CHURCH SCIENTIFIC AND LEGAL PERSPECTIVES, PROCEEDINGS OF THE CONFERENCE "ABUSE OF CHILDREN AND YOUNG PEOPLE BY CATHOLIC PRIESTS AND RELIGIOUS" (*Libreria Editrice Vaticana*: 2004); GEORGE WEIGEL, THE COURAGE TO BE CATHOLIC: CRISIS, REFORM, AND THE FUTURE OF THE CHURCH (Basic Books, 2002); GROESCHEL, F. BENEDICT, FROM SCANDAL TO HOPE (OSV, 2002); JENKINS PHILIP, PEDOPHILES AND PRIESTS: ANATOMY OF A CONTEMPORARY CRISIS (Oxford University Press, 2001).

2. The universal Church "with its moral, spiritual, and religious mission, it is constituted as a society founded on the communion of faith, sacraments and discipline . . . The Church has the inherent right, acquired at the time of its foundation by Jesus Christ and independent of any civil authority, to urge and persuade [delinquent] faithful to lead authentic Christian lives by ceasing their misbehaviour. Such means, for example, include the pastoral path (e.g. exhortation, preaching, good example, correction), the sacramental path (e.g. [sacrament of penance and reconciliation, which includes] confession), the disciplinary path (e.g. norms as regards the . . . sacraments, the suitability of [ministers], the correct exercise of office), and the penal path (e.g. penal sanctions, penal remedies, and penances)." (INITIAL REPORT OF THE HOLY SEE TO THE COMMITTEE ON THE RIGHTS OF THE CHILD ON THE OPTIONAL PROTOCOL OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (hereinafter "The Holy See's Initial Report on OPSC"), CRC/C/OPSC/VAT/1 para. 26 a-c; THE HOLY SEE'S SECOND

acknowledged the failings of these individuals to respect the dignity of children.³ Pope Benedict XVI, in particular, has made it a priority to meet with victims of these horrendous offenses, many of which are crimes.⁴ In addition, both Pope John Paul II and Pope Benedict XVI amended the internal law of the Church to ensure that offenders are appropriately punished according to canon law,⁵ a system whose nature and scope differ

PERIODIC REPORT TO THE COMMITTEE ON THE RIGHTS OF THE CHILD ON THE CONVENTION ON THE RIGHTS OF THE CHILD (hereinafter "THE HOLY SEE'S SECOND REPORT ON CRC") CRC/C/VAT/2, para 77.

3. Cf. Pope John Paul II, *Address to the Cardinals of the United States* (Apr. 23, 2002) ("The abuse which has caused this crisis is by every standard wrong and rightly considered a crime by society; it is also an appalling sin in the eyes of God."); Pope John Paul II, *Homily at 17th World Youth Day* (July 28, 2002) ("The harm done by some priests and religious to the young and vulnerable fills us all with a deep sense of sadness and shame." [emphasis omitted]); Pope Benedict XVI, *Address to the Bishops of Ireland on their Ad Limina Visit* (Oct. 28, 2006) ("In the exercise of your pastoral ministry, you have had to respond in recent years to many heart-rending cases of sexual abuse of minors. These are all the more tragic when the abuser is a cleric."); Pope Benedict XVI, *Interview During the Flight to the United States of America* (Apr. 15, 2008) ("We will absolutely exclude paedophiles from the sacred ministry; it is absolutely incompatible, and whoever is really guilty of being a paedophile cannot be a priest."); POPE BENEDICT XVI, *Address to the Bishops of the United States of America* (Apr. 16, 2008) ("Many of you have spoken to me of the enormous pain that your communities have suffered when clerics have betrayed their priestly obligations and duties by such gravely immoral behavior."); Pope Benedict XVI, *Homily of his Holiness Benedict XVI: Washington Nationals Stadium* (Apr. 17, 2008) ("No words of mine could describe the pain and harm inflicted by such abuse."); POPE BENEDICT XVI, *Interview During the Flight to Australia* (July 12, 2008) ("[T]o be a priest, is incompatible with this behaviour . . . There are things which are always bad, and paedophilia is always bad.") [hereinafter Pope's Speeches, Homilies, & Interviews] (all available at http://www.vatican.va/holy_father/index.htm) (last accessed January 18, 2012). Cf. The Holy See, Abuse of Minors. The Church's Response, http://www.vatican.va/resources/index_en.htm (for additional information).

4. See Rachel Donadio, *The Pope Meets Victims Abused by Priests in Malta*, N.Y. TIMES, (April 18, 2010), <http://www.nytimes.com/2008/04/18/us/nationalspecial2/18pope.html?pagewanted=all>; Ian Fisher & Laurie Goodstein, *Benedict Meets With the Victims of Sexual Abuse*, N.Y. TIMES, Apr. 18, 2008, at A1; John Hooker & Riazat Butt, *Pope Meets Victims of Child Abuse and Expresses Deep Sorrow and Shame*, THE GUARDIAN UK, (September 18, 2010, 8:31 PM), <http://www.guardian.co.uk/world/2010/sep/18/pope-victims-child-abuse-sorrow>; *Pope Meets German Victims of Sexual Abuse*, BBC NEWS, (September 23, 2011, 5:14 PM), <http://www.bbc.co.uk/news/world-europe-15042358>; Auskar Surbakti, *Pope Meets Sex Abuse Victims*, SBS WORLD NEWS AUSTRALIA, (July 21, 2008, 8:30 AM), <http://www.sbs.com.au/news/article/552299/pope-meets-sex-abuse-victims>.

5. HOLY SEE'S SECOND PERIODIC REPORT ON CRC, *supra* note 2, paras. 78 h-i (In the year 2001, "the Roman Pontiff, who 'gives judgment either personally, or through the ordinary tribunals of the Apostolic See, or through judges whom he delegates' (c. 1442 CIC; cf. 1059 (1), CCEO) placed this offense [sexual abuse of a minor] under the special competence reserved to the CDF. These offenses are referred to as 'grave delicts against morals,' and are now treated according to the substantive procedural norms applicable for the whole Church, to be considered together with the 1983 Code of Canon Law. (cf. Apostolic Letter *motu proprio, Sacramentorum sanctitatis tutela*, 30 April 2001). Pope Benedict XVI approved and promulgated a revised set of substantive and procedural norms in 2010, a brief description of the changes and amendments of the normative text is available in an explanatory letter of the CDF, which can be found on the Holy See's website along with other materials under the topic: "Abuse of Minors. The Church's Response", http://www.vatican.va/resources/index_en.htm (last accessed 12 Jan.

“greatly from State criminal laws, and is not intended to usurp or otherwise interfere with them or with State civil actions.”⁶

The Church’s heartfelt concern has taken concrete form in international law. The Holy See, a subject of international law⁷ with a moral and religious mission, participated in the drafting process of the 1989 Convention on the Rights of the Child (hereinafter “CRC”),⁸ which it ultimately ratified in 1990 with three reservations and one interpretative declaration.⁹ In accordance

2011).” See also, Davide Cito, *The New “Delicta Graviora” Laws*, 1 AVE MARIA INT’L L. J. 98 (2012) www.amslij.org.

6. THE HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 78. (The following points are especially noteworthy: “(a) Since canon law is an original or non derived law that regards only the baptized faithful and those belonging to the Catholic Church, only these people are bound by penal canon law. Penal canon law addresses disturbances to the public order of the Church, it therefore, briefly treats the subject matter of delicts (e.g. homicide, theft, aggression, and sexual abuse). (b) These particular offenses also trigger sanctions by the State since the public order of civil society has also been disturbed. Penal canon law specifically acknowledges the State’s concurrent legislative jurisdiction, for example, a judge who is determining the appropriate sanction within the canonical order, may take into consideration whether “the offender has been or foreseeably will be sufficiently punished by the civil authority.” (*c. 1344 (2), CIC*). (c) Penal canon law contains norms for ecclesiastical delicts, which are definite, externally unjust actions, imputable to the author, that disturb the social order of the Church. Such delicts predominantly concern the unity and functioning of the Church and the administration of sacraments. (d) The Church does not address in a detailed or exhaustive manner the few ecclesiastical delicts mentioned in canon law, nor does it legislate as regards many more crimes which are generally sanctioned by the State. The reasons for this are stated in the aforementioned paragraphs. (e) The juridical system of the Church does not use physical force for exercising coercive punishment, neither through the use of prisons nor other such places. The penal sanctions in the Church are: medicinal penalties or censures (excommunication, interdict, suspension); and expiatory penalties (e.g. loss of the clerical state, loss of office, order to reside). (f) The universal law of the Church has always viewed sexual abuse of a minor by a cleric/religious as one of the most serious offenses that sacred ministers can commit. Accordingly, canon law has provided the most severe penalties, not excluding dismissal from the clerical state. The offense relates to the obligations founded in divine law regarding human sexuality as revealed in the sixth commandment of the Decalogue (*cf. c. 1395 (2), CIC; c. 1453 (1) CCEO*)... The Church conducts the aforementioned penal canon law proceedings in confidence in order to protect the witnesses, the accused and the integrity of the Church process. Although, the general public is not admitted to these proceedings, this fact does not forbid or even discourage anyone from reporting the underlying allegations to civil authorities. The Church has constantly taught the moral obligation to obey just civil laws (*cf. Matt. 22: 21; Rom. 13:1; Catechism of the Council of Trent, 1566; Second Vatican Council, Gaudium et spes, 1965; Catechism of the Catholic Church, 1987*)”).

7. Robert John Araujo, S.J., *The Holy See*, 1 AVE MARIA INT’L L. J. 1 (2012) www.amslij.org; See also Robert John Araujo, *The International Personality and Sovereignty of the Holy See*, 50 CATH. U. L. REV. 291 (2001). Vincenzo Buonomo, *The Holy See in the Contemporary International Community*, II CIVITAS ET IUSTITIA 7 (2004); See also *Id.* at 10 n.5.

8. CONVENTION ON THE RIGHTS OF THE CHILD, Apr. 20, 1999, 1577 U.N.T.S. 3; G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (Nov. 20, 1989); G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990. [hereinafter CRC].

9. See INITIAL REPORT OF THE HOLY SEE TO THE COMMITTEE ON THE RIGHTS OF THE CHILD ON THE CONVENTION ON THE RIGHTS OF THE CHILD U.N. Doc. CRC/C/3/Add.27 (Mar. 28, 1994) [hereinafter

with the CRC, it submitted its Initial Report¹⁰ and Second Periodic Report¹¹ to the Committee on the Rights of the Child (hereinafter “the Committee”), the monitoring body under the CRC. Then, in 2001, the Holy See strengthened its specific international commitment to the protection of children by acceding to the 2000 Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (OPSC)¹² as well as the 2000 Optional Protocol on the Involvement of Children in Armed Conflict (OPAC).¹³ Subsequently, the Holy See submitted its Initial Reports per the State reporting requirements under both OPSC and OPAC.¹⁴

The Reports the Holy See has provided pursuant to its obligations under the aforementioned treaties have common provisions. The purpose of this paper is to discuss these particular provisions, with special attention to those related to the general principles concerning the rights of the child as developed by the Committee and then compare and contrast the said principles with important principles highlighted by the Holy See. The paper will argue that the Holy See’s faithful interpretation to the terms and content of the texts of treaties is congruent with international law on treaty interpretation. It offers points for consideration that better reflect the object and purpose of the Convention and an integral vision of the rights and duties of child within the context of the family and society, where he or she is protected from conception until nature death.

To flesh out this thesis, the paper will be divided into two Parts. Part I will give an overview of what the Reports say about the Holy See and international order with special attention to its uniqueness in international law, its three Reservations and one Interpretative Declaration to the CRC,

“THE HOLY SEE’S INITIAL REPORT ON CRC”]. The reservations and interpretations of the declaration are repeated and discussed.

10. *Id.*

11. HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2.

12. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY, (hereinafter “OPSC”) Oct. 10, 2000, G.A. res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49 (2000) (entered in force on January 18, 2002).

13. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICTS, (hereinafter “OPAC”) G.A. res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49 (2000), (entered in force on February 12, 2002) [hereinafter “OPSC”].

14. THE HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2; INITIAL REPORT OF THE HOLY SEE TO THE COMMITTEE ON THE RIGHTS OF CHILDREN IN ARMED CONFLCIT (hereinafter “THE HOLY SEE’S INITIAL REPORT ON OPAC”) (*See also*: OPSC, *supra* note 12, arts. 12.1, and 12.2 Parties must submit an initial report to the Committee on the Rights of the Child two years following ratification or accession and then every five years thereafter, they are to include updates in their reports submitted under the CRC); OPAC, *supra*, note 13, arts. 8.1, 8.2. (the same reporting rules applies).

and its position on treaty interpretation. Part II will consider the general or core principles contained in the CRC as first developed by the Committee and then compared and contrasted with those proposed by the Holy See.

I. THE HOLY SEE AND INTERNATIONAL ORDER

A. Introduction

The Holy See, the fourth State to ratify the CRC, has submitted both its Initial Report and Second Report,¹⁵ and in regard to the latter, is waiting for a meeting to be set for dialogue with the Committee. In addition, the Holy See was the eleventh State to ratify the OPSC, and the seventh to ratify the OPAC. It has submitted its Initial Reports pursuant to reporting obligations under both treaties and is also waiting to speak with the Committee.¹⁶

The eighteen member Committee was established under art. 43 of CRC and is mandated to monitor implementation of the CRC and its Optional Protocols (OPSC and OPAC). In regard to the reporting requirements under the CRC, State Parties must report periodically every five years after their initial report, submitted within two years of ratification or accession (art. 44.1.(a)-(b)). The reports are to outline “the measures adopted which give effect to the rights [prescribed in the CRC] and the progress made in enjoyment of those rights” (art. 44.1). In addition, State Parties are required to indicate factors and difficulties, if any, involved in fulfilling their obligations under the CRC (44.2.). The Committee eventually produce concluding observations that highlight: positive and negative aspects of the reports, impediments the State Party is facing, or has created; principal points of concern; and suggestions and recommendations. With respect to the

15. HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, was filed about seventeen years late, however, this is not an uncommon event. For example, at its 32nd Session, the Committee noted that “many states” had not submitted their reports and consequently, it recommend a new procedure for overdue reports which allowed states to “catch up with the established periodicity” (GAOR, 59TH SESS., REPORT OF THE COMMITTEE ON THE RIGHTS OF THE CHILD, A/59/41/Add.1 Sept. 6, 2004) In addition, the Committee’s recommendation adopted at the 34th Session, noted that “13 initial reports and 100 second periodic reports [were overdue].” (*Id.*) Although these recommendations occurred some years ago, the pattern of delayed reporting, even up to 15 years or more for some States, continues to persist (SUBMISSION OF REPORTS BY STATE PARTIES: STATE PARTIES TO THE CONVENTION ON THE RIGHTS OF THE CHILD AND ITS TWO OPTIONAL PROTOCOLS AND RELATED STATUS OF SUBMISSION OF REPORTS, CRC/C/53/2, at 13,15 Nov. 11, 2009). See also the recent statistics noting the current “backlog of 263 reports and 459 individual communications pending consideration under 9 human rights treaty bodies.” (GAOR, 66TH SESS., MEASURES TO IMPROVE FURTHER THE EFFECTIVENESS HARMONIZATION AND REFORM OF THE TREATY BODY SYSTEM, UN Doc. A/66/344, para. 11, at 7 Sept. 7, 2011).

16. HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2.

OPSC, State Parties must submit an initial report to the Committee on the Rights of the Child two years following ratification or accession (art. 12.1); and then every five years thereafter, as part of the main report submitted under the CRC (art. 12.2). In regard to OPAC, equivalent reporting rules apply (arts. 8.1, 8.2).

In terms of what the Committee is required to monitor, the following is noteworthy. The CRC consists of thirteen preambular paragraphs followed by fifty-four articles, which are in turn divided into three parts. The Preamble to the CRC, while not legally binding, sets out basic principles that should guide interpretation of the Convention.¹⁷ It emphasizes the vulnerability of children, their need for “special care and assistance,” the importance of protecting the “natural family,” the “natural environment for the growth and well-being of children,” and the “need for legal protections before as well as after birth.”¹⁸ The preamble is followed by fifty-four articles, which are divided into three Parts. Part I covers the full spectrum of rights ranging from the right to life through to the civil and political rights on to economic and social rights. This part can be summarized as including provisions that: 1) are applicable to the interpretation of all provisions;¹⁹ 2) place the child’s rights within the context of the family;²⁰ 3) acknowledge the

17. See, e.g., that “childhood is entitled to special care and assistance” (CRC, *supra* note 8, pmbl. para. 4); that the “child, for the full and harmonious development of his or her personality, should grow up in a family environment” (*Id.* pmbl. para. 6); that the family, based on marriage between one man and one woman, is entitled to protection from society and the State (*Id.*, pmbl. para. 3 citing International Bill of Human Rights, which protects the “natural family”); that the family is “the natural environment for the growth and well-being of all its members and particularly children” (*Id.*, pmbl. para. 5); that the family should be protected and assisted in fully assuming its “responsibilities within the community” (*Id.*, pmbl. para. 5); that “the child should be fully prepared to live” in society (*Id.*, pmbl. para. 7); “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth” (*Id.*, pmbl. para.9); that “importance of the traditions and cultural values of each people for the protection and harmonious development of the child” should not be neglected (*Id.*, pmbl. para. 11).

18. *Id.*

19. *Id.* at arts. 1-5, respectively (the definition of the child (under 18); the non-discrimination principle; the best interests of the child principle which takes into account the rights and duties of parents; the obligations of State Parties to implement the rights of the child; respect for the rights and duties of parents to provide direction and guidance to their child in the exercise of his or her rights in a manner consistent with the evolving capacities of the child).

20. *Id.* at arts. 6-11 (child’s right to life, survival and development; right to a name, registration, acquire a nationality, to know and be cared for by his or her parents; right to preserve his or her identity, including nationality, name and family relations; right not to be separated from his or her parents except in accordance with national law and the best interest of the child (e.g. abuse, neglect); right to maintain regular contacts with both parents, save in exceptional circumstances; right to be protected from illicit transfer and non-return from abroad).

child's civil and political rights, as qualified and limited;²¹ 4) recognize the rights and duties of parents and the subsidiary role of the State²²; and 5) oblige State Parties to render special support and protection to children and give assistance to parents in this regard.²³ Part II contains provisions for

21. *Id.* at arts. 12-17 (right to freedom of expression by he or she who is capable of forming his or her own views, that they be given due weight in accordance with the age and maturity of the child, and have the opportunity to be heard in judicial and administrative proceedings; freedom of expression, including to seek, receive and impart information with limitations regarding rights of others, national security, public order, public health or morals; freedom of thought, conscience and religion taking into account the rights and duties of parents, and the same limitations mentioned above; freedom of association and peaceful assembly limited by the same concerns previously mentioned; right to protection from unlawful-interference of his or her privacy, family, home or correspondence, honour and reputation; right to information and material through the media, "especially those aimed at the promotion of his or her social, spiritual and moral well-being and mental health").

22. *Id.* at arts. 18-20 (States must recognize "the principle that both parents have common responsibilities for the upbringing and development of the child," parents have the "primary responsibility for the upbringing and development of the child. The best interests will be their basic concern." State parties shall render appropriate assistance to parents in the performance of their child-rearing responsibilities; States shall take appropriate measures to protect children from all forms of physical or mental violence while in the care of parents; a child temporarily or permanently deprived from his or her family shall receive alternative care, and special protection and assistance from the State).

23. *Id.* at arts. 21-40. The child must be protected from illicit adoption in view of the child's status concerning his or her parents, and given the dangers associated with inter-country adoption, the best interest of the child shall be the paramount consideration (art. 21). The child must be protected during a refugee status application process, whether accompanied or unaccompanied, and efforts must be made to trace parents and reunite families (art. 22). The child has a right to special care and assistance and resources, in cases where he or she is disabled, and such resources should be extended to his or her caregiver including parents to ensure that the child has access to education, training, health care, rehabilitation services and other opportunities including "cultural and spiritual development" (art. 23) and ensured the right to the "highest attainable standard of health" including appropriate "pre-natal and post-natal health care" (art. 24). The child must be ensured periodic review of his or her treatment in State institutions (art. 25). The child has the right to benefit from social security (art. 26). The child has the "right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development", the parents "have the primary responsibility" in this regard, and the State must assist parents (art. 27). The child has a right to education that should be directed, among other things, to the integral development of the child, and "respect for the child's parents" as well as others and the environment (arts. 28, 29). State Parties must ensure that rights relevant to children belonging to "ethnic, religious or linguistic minorities or persons of indigenous origin" are respected, including the right to "profess and practice his or her own religion or to use his or her own language" (art. 30). The child has a right to rest and leisure as well as participation in cultural life and the arts is respected (art. 31). The child must be protected from "economic exploitation," "performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development (art. 32)." The child must be protected from "illicit use of narcotic drugs and psychotropic substances" and prevent use of children in the illicit production and trafficking of the same (art. 33). The child must be protected from "all forms of sexual exploitation and sexual abuse" including: inducement or coercion to engage in unlawful sexual activity, exploitation in prostitution or other unlawful sexual practices, and pornographic performances and materials (art. 34), from "abduction," "sale" or trafficking" for any purpose or in any form (art. 35), from "all other forms of exploitation prejudicial to any aspects" of his or her welfare (art. 36), from torture or other cruel, inhuman or degrading treatment or punishment,

establishing the Committee having jurisdiction to monitor State implementation through a State reporting system,²⁴ while Part III sets out miscellaneous rules pertaining to the legal effects of the CRC.²⁵

The OPSC constitutes more decisive efforts to implement provisions of the CRC, especially articles relating to the sale of children, child prostitution, and child pornography.²⁶ It consists of twelve preamble paragraphs followed by seventeen articles. The preamble of the OPSC, like that of the CRC, emphasizes the vulnerability of children, especially the girl child,²⁷ with specific reference to economic exploitation,²⁸ international trafficking,²⁹ sex tourism,³⁰ sale of children, child prostitution and child pornography. It obliges State Parties to ensure that certain acts are treated as offenses in penal law and to enact laws, and/or take measures in relation to penalties, jurisdiction, extradition, prosecution, seizure and confiscation, victim assistance, prevention, public awareness, and international cooperation.³¹

including capital punishment, and life imprisonment without release (art. 37), from direct participation of hostilities in cases of armed conflict, and from recruiting, if under the age of 15 (art. 38). State parties must promote physical and psychological recovery, and social integration of a child victims of any form of neglect, exploitation, or abuse, torture or armed conflicts (art. 39). State Parties must recognize the rights of the child or juvenile offender, especially his or her presumption of innocence, right to know the charge, if appropriate through his or her parents, right to obtain legal assistance, to be tried within a reasonable time, to judicial review, to an interpreter, and to his or her privacy (art. 40).

24. *Id.* at art. 44.1.

25. *Id.*, Part III: consists of rules concerning: signature, ratification and accession (arts. 46-48); entry into force (art. 49); amendments (art. 50); reservations (art. 51); denouncement (art. 52); depositary of the documents (art. 53); and official languages of the text (art. 54).

26. OPSC, *supra* note 12, preamble para. 1 (cf. CRC, *supra* note 8, especially art. 1 (definition of the child), art. 11 (illicit transfer and non-return), art. 21 (illicit adoption), art. 32 (economic exploitation), art. 33 (illicit use, production and trafficking of narcotic drugs and psychotropic substances), art. 34 (sexual exploitation and sexual abuse), art. 35 (abduction, sale and trafficking), and art. 36 (all other forms of exploitation)).

27. OPSC, *supra* note 12, preamble para. 5.

28. *Id.* at preamble para. 2.

29. *Id.* at preamble para. 3.

30. *Id.* at preamble para. 4.

31. *Id.* The articles of the OPSC may be loosely grouped into two blocks. Arts. 1-10 address the following themes. *Prohibition*: State Parties must prohibit the sale of children, child prostitution and child pornography (art. 1); and to render these acts criminal or penal offenses in accordance with the definitions of these crimes provided therein (arts. 1-3); *Jurisdiction*: State Parties are required to establish jurisdiction over such offenses when they have been committed in their respective territories (art. 4.1) and are encouraged to take measure to establish jurisdiction when the alleged offender is a national of the respective State or has habitual residence in the same or when the victim is a national of the same (art. 4.2.) *Extradition*: the said offenses are deemed to be "extraditable offenses" in any extradition treaty existing between State Parties, and shall be explicitly included in future extradition treaties (art. 5) and in the absence of an extradition treaty, State Parties may consider the OPSC to be the legal basis for extradition (art. 5.2); *Mutual legal assistance*: State Parties must offer assistance in the investigation or criminal or extradition proceedings, including the obtaining of evidence (art. 6.1); *Seizure, confiscation*

The OPAC consists of eighteen preamble paragraphs followed by thirteen articles. The preamble notes the need to protect children from involvement in armed conflict, and draws attention to their vulnerability and special needs.³² It obliges State Parties “to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities” (art. 1); and are “not compulsorily recruited into their armed forces” (art. 2). It also obliges States Parties to “raise the minimum age for the voluntary recruitment of persons into their national armed forces” from that of 15 years of age (art. 38.3, CRC) to be more inline with recognizing that children are “persons under the age of 18 years [who] are entitled to special protection.”³³

and closing of premises: State Parties must take measures to ensure the seizure and confiscation of goods and proceeds of crime together with the closing of premises used to commit such crimes (art. 7); *Child victim assistance:* the rights and interests of child victims shall be protected “at all stages of the criminal justice process” (art.8.1), the uncertainty of a child’s age shall not be an obstacle to criminal investigation (art. 8.2), the best interests of the child shall be the primary consideration (art. 8.3), and measures should be taken to protect their safety, integrity along with those that help them (art. 8.5); *Prevention, Public Awareness and Victim Assistance:* State Parties shall also develop policies and programmes to prevent the said offenses (art. 9.1), promote public awareness, (art. 9.2), assist victims to attain full social reintegration as well as physical and psychological recovery (art.9.3), and ensure access to compensation procedures (art. 9.4); *International cooperation:* State Parties must pursue transnational cooperation on issues of prevention, detection, investigation, prosecution, punishment, recovery, social reintegration, repatriation and financial or technical assistance (art. 10). The remaining issues are treated in articles 11 to 17: State Parties must submit an initial report to the Committee on the Rights of the Child two years following ratification or accession (art. 12.1); and then every five years thereafter, they are to include updates in their reports submitted under the CRC (art. 12.2). The remaining articles deal with miscellaneous rules concerning: signature, ratification, entry into force, denunciation, amendment, and official languages of the text (arts. 13-17, respectively).

32. OPAC, *supra* note 13. In particular, the preamble recognizes the overwhelming support of the CRC (*Id.*, preamble para. 1); its definition of a child as “every human being below the age of 18 years” (*Id.*, preamble para.7); and the best interests of the child principle (*Id.*, preamble para. 8 cf. CRC, *supra* note 8, art. 3.1., 3.2., 3.3). In addition, the preamble underlines the vulnerability of children *per se* in reaffirming that children require “special protection” necessitating “continuous improvement of the situation of children” (*Id.*, preamble para.2) as well as “increase[ed] protection . . . from involvement in armed conflict” (*Id.*, preamble para.6), including “recruit[ment], train[ing] and use” for direct participation in hostilities (*Id.*, preamble para. 11.). It also recognizes that children have “special needs,” particularly those “vulnerable to recruitment or use in hostilities” owing to their economic, social status or sex (*Id.*, preamble para. 15).

33. *Id.* at art. 3.1 (cf. CRC, *supra* note 8, art. 38 provides: “1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities. 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest. 4. In accordance with their obligations under international humanitarian law to protect the civilian population in

B. *The Holy See: A Unique Subject of International Law*

The Holy See's Initial Reports on OPSC, OPAC and the Second CRC Report (hereinafter "the Reports") to the Committee on the Rights of the Child describe the Holy See as "a sovereign subject of international law having an original, non-derived legal personality independent of any authority or jurisdiction."³⁴ This point alludes to the divine constitution of the Catholic Church as established by Jesus Christ. The Reports also refer to canon law in noting that the Holy See is described as "the government of the universal Church composed of the Roman Pontiff and of the institutions which proceed from him."³⁵ A closer reading of the canons³⁶ reveals that one might also describe the Holy See as the Pope, in the narrow sense, or the Pope and the Roman Curia,³⁷ in the broader sense.³⁸

The Reports make a third distinction, namely between the Holy See and Vatican City State (hereinafter VCS).³⁹ For example, a common provision

armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.").

34. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, para. 4; HOLY SEE'S INITIAL REPORT ON OPAC, para. 4; HOLY SEE'S INITIAL REPORT ON CRC, *supra* note 2, para. 1; *Cf.* HOLY SEE'S INITIAL REPORT ON CRC, *supra* note 9, para. 1 ("The Holy See wishes to draw the attention of the Committee on the Rights of the Child to its singular nature within the international community. As the highest organ of government of the Catholic Church, the Holy See is recognized as a sovereign subject of international law. It is nevertheless distinguished by its particular nature, which is essentially of a universal religious and moral character. Similarly, its jurisdiction over a territory, known as the Vatican City State, serves solely to provide a basis for its autonomy and to guarantee the free exercise of its spiritual mission. The presence of the Holy See in the international organizations, beginning with the United Nations, and its accession to international conventions such as the Convention on the Rights of the Child, which it was among the first to ratify, are prompted by the same reasons.").

35. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, para. 4.a; HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, para. 4.a; HOLY SEE'S INITIAL REPORT ON CRC, *supra* note 9, para. 1.a.

36. *Cf.* *CODEX IURIS CANONICI* c. 361 (*Nomine Sedis Apostolicae vel Sanctae Sedis in hoc Codice veniunt non solum Romanus Pontifex, sed etiam, nisi ex rei natura vel sermonis contextu aliud appareat, Secretaria Status, Consilium pro publicis Ecclesiae negotiis, aliaque Romanae Curiae Instituta*); see also *CODEX CANONUM ECCLESIAE ORIENTALIU* c. 48.

37. See the special law on the Roman Curia: *CONSTITUTIO APOSTOLICA PASTOR BONUS* 28 Iunii 1998 *Acta Apostolicae Sedis [AAS]* 80 [1988] 841-930, 1867; 87 [1995] 588; For a commentary on the same see: *A CURA DI Mons. PIO VITO PINTO, COMMENTO ALLA PASTOR BONUS E ALLE NORME SUSSIDIARIE DELLA CURIA ROMANA* (Libreria Editrice Vaticana: 2003).

38. See, e.g., HOLY SEE'S SECOND PERIODIC REPORT ON CRC, *supra* note 2, Table of Contents: (Pontifical Council for Culture, Pontifical Council for the Family, Pontifical Council for Justice and Peace, Pontifical Council for the Pastoral Assistance to Health Care Workers, Pontifical Council for the Laity, Pontifical Council for the Pastoral Care of Migrants and Itinerant People, Pontifical Council for Social Communications, the Congregation for Catholic Education, Congregation for the Doctrine of the Faith, Pontifical Missionary Society of the Holy Childhood, and Pontifical Council "Cor Unum")

39. The territory of Vatican City State (hereinafter "VCS") is "neutral and inviolable" (*TRATTATO FRA LA SANTA SEDE E L'ITALIA*, 11 Febbraio 1929, art. 24, 21 [AAS] 209-221 (1929), (It.)). The sole and

states that the “Holy See also exercises its sovereignty over the territory of VCS, established in 1929 to ensure the Holy See’s absolute and evident independence and sovereignty for the accomplishment of its worldwide moral mission, including all actions related to international relations.”⁴⁰ It notes that the “international personality of the Holy See has never been confused with that of the territories over which it has exercised State sovereignty (e.g. the Papal States from 754 to 1870 and VCS since 1929).”⁴¹ To further clarify this last point, the Reports underline that “following the loss of the traditional Papal States in 1870 until the establishment of VCS in 1929, the Holy See continued to act as a subject of international law by concluding concordats and international treaties with States, participating in international conferences, conducting mediation and arbitration missions, and maintaining both active and passive diplomatic relations.”⁴²

The Reports also underline the Holy See’s diplomatic relations with over 170 States,⁴³ currently the number is 179 States,⁴⁴ and the fact that the Holy See also participates as a “Member or Permanent Observer to the United Nations and several specialized Agencies of the UN System, as well as in various universal or regional Intergovernmental Organizations.”⁴⁵ To date,

exclusive purpose of VCS is to assure the absolute and visible independence of the Holy See in the free exercise of its spiritual and moral mission in the world, and to guarantee its sovereignty in international matters which is an “inherent attribute in conformity with its traditions and the requirements of its mission in the world” (*Id.* pmbl. paras. 1, 3, art. 2). VCS has territorial jurisdiction over that which is necessary to facilitate the spiritual and moral mission of the Holy See; it encompasses a small territory with borders which is represented by its walls and the pavement curve that joins the two wings of the colonnades in St Peter’s Square and also includes extraterritorial areas within and outside Rome (*Id.* annex I). The form of government in VCS, might be described, as an elected and absolute Monarchy (*Id.* art. 26(2)). The fullness of legislative, executive and judicial power resides in the Supreme Pontiff as Sovereign and Head of State who represents the VCS in relations with States, and other subjects of international law through the Secretariat of State (*MOTU PROPRIO, LEGGE FONDAMENTALE DELLO STATO DELLA CITTÀ DEL VATICANO*, 26 Novembre 2000, arts. 1, 2 respectively, supp. 71 [AAS] 75-83 (2000), (It.)).

40. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 4.b; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 4.b; HOLY SEE’S INITIAL REPORT ON CRC, *supra* note 9, para. 1.b; *Cf.* Lateran Treaty, preamble and arts. 2-3.

41. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 4.c; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 4.c; HOLY SEE’S INITIAL REPORT ON CRC, *supra* note 9, para. 1.b; *Cf.* Lateran Treaty, preamble and arts. 2-3.

42. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 4.c; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 4.c; HOLY SEE’S INITIAL REPORT ON CRC, *supra* note 9, para. 1.b; *Cf.* Lateran Treaty, preamble and arts. 2-3.

43. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 4; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 4; HOLY SEE’S INITIAL REPORT ON CRC, *supra* note 9, para. 1.

44. *Malaysia: the 179th State with Diplomatic Ties with the Holy See*, ZENIT (27 July 2011), <http://www.zenit.org/article-33164?l=english> (last accessed Feb. 2, 2012)

45. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 4; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 4; HOLY SEE’S INITIAL REPORT ON CRC, *supra* note 9, para. 1.

this participation is realized within about thirty-three such organizations.⁴⁶ The Holy See also enters into relations with States and inter-governmental organizations on behalf of VCS,⁴⁷ an important distinction, and to date, VCS is a regular member of about six such organizations.⁴⁸

46. UNITED NATIONS, GENERAL ASSEMBLY RESOLUTION PARTICIPATION OF THE HOLY SEE IN THE WORK OF THE UNITED NATIONS, A/RES/58/314, July 16, 2004 (Cf. “the Holy See enjoys membership in various United Nations subsidiary bodies, specialized agencies and international intergovernmental organizations, including the Executive Committee of the Programme of the United Nations High Commissioner for Refugees, the United Nations Conference on Trade and Development, the World Intellectual Property Organization, the International Atomic Energy Agency, the Organization for the Prohibition of Chemical Weapons, the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization and the International Committee of Military Medicine...the Holy See actively participates as an observer in many of the specialized agencies, such as the Food and Agriculture Organization of the United Nations, the International Labour Organization, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the United Nations Industrial Development Organization, the International Fund for Agricultural Development and the World Tourism Organization, as well as in the World Trade Organization, that it is a full member of the Organization for Security and Cooperation in Europe and a Guest of Honour in its Parliamentary Assembly, and that it participates as an observer in various other regional intergovernmental organizations, including the Council of Europe, the Organization of American States and the African Union, and is regularly invited to take part in the main meetings of the Asian-African Legal Consultative Organization.”)

47. See HOLY SEE’S SECOND PERIODIC REPORT ON CRC, *supra* note 2, para. 38. The Supreme Pontiff as Sovereign and Head of State has the fullness of legislative, executive and judicial power represents the VCS in relations with States, and other subjects of international law through the Secretariat of State (POPE JOHN PAUL II, *LEGGE FONDAMENTALE DELLO STATO DELLA CITTÀ DEL VATICANO*, 26 Novembre 2000, AAS suppl. 71, art. 1-2, 75-83 (2000)). In regard to day-to-day activities legislative authority is delegated in collegial form to a Commission of Cardinals appointed to a five-year term by the Supreme Pontiff and chaired by a Cardinal President (*Id.* art. 3). The Commission “exercises its powers within the limits of the ‘Law Concerning the Sources of Law’” (*Id.* art. 4), and the Commission’s by-laws (*Id.* art. 4; Cf. PRESIDENTE DELLA PONTIFICIA COMMISSIONE PER LO STATO DELLA CITTÀ DEL VATICANO, *DECRETO N. CCCLVIII CON IL QUALE È PROMULGATO IL REGOLAMENTO DELLA PONTIFICIA COMMISSIONE PER LO STATO DELLA CITTÀ DEL VATICANO*, AAS Suppl. 79, 13-17 (2008)). Executive authority is delegated by the Supreme Pontiff to the Cardinal President of the Pontifical Commission who is assisted by a General Secretary and by a Deputy General Secretary (*LEGGE FONDAMENTALE*, *supra*, art. 5.1, 5.2). The Cardinal President may issue ordinances to implement laws or regulations and may in cases of special emergency enact provisions having the force of law which, however, lose their effect if not confirmed by the Commission within 90 days (*Id.* art. 7). He also represents the Supreme Pontiff as the sovereign of VCS on those matters not reserved to the Supreme Pontiff or other competent authority (e.g. diplomatic relations or vacant see) (*Id.* art.2). Judicial power is exercised in an ordinary vicarious way through the tribunals of VCS in the name of the Supreme Pontiff who can always judge a case himself whether civil or penal and who also has the faculty to grant amnesties, indults, remissions, and graces (*Id.* arts. 15, 16, 19). Judicial authority is vested in a Judge, a Tribunal, a Court of Appeal and a Supreme Court (*SEGRETARIO DI STATO*, *LEGGE N. CXIX CHE APPROVA L’ORDINAMENTO GIUDIZIARIO DELLO STATO DELLA CITTÀ DEL VATICANO*, 21 novembre 1987, AAS Suppl. 58, art. 1, 45-50 (1987)). For a helpful compilation of the norms of VCS see: JUAN IGNACIO ARRIETA, *CODICE DI NORME VATICANE* (Marcianum Press 2006).

48. *ANNUARIO PONTIFICIO (Città del Vaticano: Libreria Editrice Vaticana, 2011)* at 1341 (Universal Postal Union, Bern, *Member*; International Telecommunication Union, Geneva, *Member*; International Telecommunications Satellite Organization, Washington D.C., *Member*; International Grains

A common provision includes the assertion that State Reporting Guidelines, as prepared by the Committee, cannot be strictly followed but rather respected only in so far as possible given the Holy See's proper nature,⁴⁹ taking into consideration its moral and spiritual mission as well as its internal law, which is not capable of receiving or applying every treaty provision. These reporting guidelines as amended over time, especially as regards the CRC,⁵⁰ have been developed to standardize the form and content of the initial reports submitted on CRC, OPSC⁵¹ and OPAC⁵² as well

Council, London, *Member*; European Conference of Postal and Telecommunications, Copenhagen, *Member*; European Telecommunication Satellite Organization, Paris, *Member*).

49. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, para. 3; HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, para. 3; HOLY SEE'S INITIAL REPORT ON CRC, *supra* note 9, para. 4.

50. *See, e.g.*, CRC, *General Guidelines Regarding the Form and Content of Initial Reports*, CRC/C/5 (Oct. 30, 1991); CRC, *Overview of the Reporting Procedures*, CRC/C/33 (Oct. 24, 1994); CRC, *General Guidelines Regarding the Form and Content of Periodic Reports*, CRC/C/58/Rev. 1 (Nov. 29, 2005); and CRC, *Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to be submitted by State Parties under art. 44, para. 1 (b), of the Convention on the Rights of the Child*, CRC/C/58/Rev.2 (Nov. 23, 2010) (On Nov. 23 2010, the Committee released new guidelines encouraging State Parties to submit a "common core" document and a "treaty-specific" document with annex attached. The former constitutes the first part of any report in that it ought to contain "general information about the reporting of State, the general framework for the protection and promotion of human rights, as well as information on non-discrimination, equality and effective remedies." The "treaty-specific report," on the other hand, should contain "additional information specific to the implementation of the Convention and its Optional Protocols...information on the framework for the protection of human rights provided in the common core document should not be repeated."). CRC, *Annex to the general guidelines regarding the form and contents of periodic reports to be submitted by state parties under article 44, paragraph 1(b), of the convention*, (Oct. 1, 2010) (The Annex requests information and statistical data disaggregated by certain indicators such as "age and/or age group, gender, location in rural/urban area, membership of minority and/or indigenous group, ethnicity, religion, disability or any other category considered appropriate." The newest set of reporting guidelines for the main Convention maintains the same clusters of rights identified by the Committee in the past: general measures of implementation (arts. 4, 42, 44.6); definition of child (art. 1); general principles (arts. 2, 3, 6, 12); civil rights and freedoms (arts. 7, 8, 13-17, 37.a); family environment and alternative care (arts. 5, 9-11, 18.1-2, 19.21, 25, 27.4, 39); basic health and welfare (art. 6.2, 18.3, 23, 24, 26, 27.1-3); education, leisure and cultural activities (arts. 28, 29, 31); and special protection measures (arts. 22, 30, 32-40).

51. The reporting guidelines for the OPSC cluster the rights in the following manner: general guidelines; data; general measures for implementation; prevention (arts. 9.1.2); prohibition and related matters (arts. 3, 4.2, 4.3, 5-7); protection of the rights of the victims (arts. 8, 9.3, 9.4); international assistance and cooperation (art. 10); other legal provisions (art.11). (REVISED GUIDELINES REGARDING INITIAL REPORTS TO BE SUBMITTED BY STATE PARTIES UNDER ARTICLE 12, PARAGRAPH 1, OF OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY, CRC/C/OPSC/2 November 3, 2006.).

52. According to the reporting guidelines for OPAC information is requested as follows: general measures of implementation, prevention (arts. 1, 2, 4.2, 6.2); prohibition and related matters (art. 1, 2, 4.1, 4.2); protection, recovery and reintegration (art. 6.3); international assistance and cooperation (art. 7.1); other legal provisions (art. 5). (REVISED GUIDELINES REGARDING INITIAL REPORTS TO BE SUBMITTED BY STATE PARTIES UNDER ARTICLE 8, PARAGRAPH 1, OF OPTIONAL PROTOCOL TO THE CONVENTION ON THE

as periodic reports on the CRC, with a view to facilitating the process of reporting.

Another standard provision emphasizes the moral and spiritual mission of the Holy See: “When the Holy See ratifies or accedes to an international agreement following international law and practice, it intends also to manifest its moral authority and thereby encourages States to ratify the treaty and to accomplish their respective obligations.”⁵³ In other words, while the Holy See assumes international legal obligations in acceding to or ratifying such treaties, its mission, nonetheless remains moral and religious. Pursuant to this moral, spiritual and religious mission, the Holy See elaborates “juridical, social and moral principles founded upon right reason. . . addressed to the whole of humanity and not to Catholic believers alone.”⁵⁴ In particular, the Holy See promotes “common moral values of an objective nature” as the bedrock of international law and advances the same as well as conditions that ensure “peace, justice and social progress in a context of ever more effective respect and promotion of the human person and of his or her rights.”⁵⁵

For this reason, each of the Holy See’s Reports on CRC, OPSC and OPAC are structured in a way that gives precedence to the Holy See commencing with the Roman Pontiff and then followed by his dicasteries (departments) with many paragraphs emphasizing the relevant teachings of the Holy See, on the topic in issue.⁵⁶ In addition to these teachings, the Reports set out the activities of the Roman Pontiff and his dicasteries. The Reports also discuss activities at the local level that are encouraged by the Holy See, but are carried out by local Catholic institutions in accordance with their own authority and responsibilities under canon law and pursuant to the laws of the respective States, in which they operate.⁵⁷ In other words, the Holy See is not responsible for the activities of such organizations or the

RIGHTS OF THE CHILD ON INVOLVEMENT OF CHILDREN IN ARMED CONFLICT, CRC/C/OPAC/2 (October 19, 2007).

53. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 5; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 5; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 2.

54. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 5; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 5; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 2.

55. *Id.* HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 5; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 5; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 2.

56. *See, e.g.* HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, Part III, paras. 10-22, 27-31; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, at Part III, paras. 11-14; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, paras. 20, 22-28, 32, 37, 38-40, 53-56, 58, 60, 73, 75.

57. *See, e.g.* HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, paras. 40-43, 47-54; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, paras. 15, 21-25; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, paras. 33-35, 62-71, 79.

implementation of them, although such activities are inspired and moved by the Catholic faith. This is a critical point that is often overlooked by outside observers. Finally, since the Holy See is sovereign over the territory of VCS, a small part of each of the Reports is devoted to the implementation of the various treaties in this unique territory.⁵⁸ In this last regard, both the Holy See's Second Report on CRC and Initial Report on OPSC remind the Committee that application of any treaty must be compatible with the particular nature of VCS and the sources of its objective law: canon law as the primary source of law and primary criterion for interpretation; principal sources of law, that is, the Fundamental Law and other laws enacted by the Pope's authority to whom he has conferred legislative power; and supplementary law of Italy, received into the law of VCS.⁵⁹ It is noteworthy that the Holy See's Report on OPAC emphasizes that the Holy See does not have armed forces, within the accepted meaning of the term, but a body of guards (the Swiss Guards) who protect the Pope, and therefore the report says very little about VCS. It is, however, a good example of the Holy See ratifying documents "also to manifest its moral authority" and thereby to encourage States to ratify the respective treaty and to accomplish their respective obligations.⁶⁰

C. *The Holy See: Reservations and Declarations*

Other common provisions include a series of statements reaffirming the Holy See's three Reservations and one Interpretative Declaration to the CRC. This is necessary given the Committee's request for the Holy See to consider withdrawing its reservations.⁶¹ In response, the Holy See maintains its Reservations that are summarized as follows. However, it needs to be remembered that reservations are permitted under art. 51, CRC. The Holy See "interprets the phrase 'Family planning education and services' in art. 24. 2, to mean only those methods of family planning which it considers morally acceptable, that is, the natural methods of family planning."⁶² The

58. See, e.g. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, paras. 55-63; HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, para. 12; HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, paras. 83-92.

59. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, paras. 55-56; HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, paras. 84-85.

60. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, para. 5; HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, para. 5; HOLY SEE'S SECOND REPORT ON CRR, *supra* note 2, para. 2.

61. HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para. 7 (cf. CRC/C/15/Add.46, para. 10).

62. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, para. 8; HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, para. 8; HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para. 8.

Holy See “interprets the articles of the [CRC] in a way which safeguards the primary and inalienable rights of parents, in particular insofar as these rights concern education (articles 13, 28), religion (article 14), association with others (article 15) and privacy (article 16).”⁶³ The Holy See deems it necessary that “the application of the [CRC] be compatible in practice with the particular nature of [VCS] and of the sources of its objective law. . . and, in consideration of its limited extent, with its legislation in the matters of citizenship, access, and residence.”⁶⁴

The Holy See also takes the opportunity to reaffirm its Interpretative Declaration. In all three Reports a common provision maintains that the CRC is “a proper and laudable instrument aimed at protecting the rights and interests of children⁶⁵ . . . [and] enactment of principles previously adopted by the United Nations, and. . . will safeguard the rights of the child before as well as after birth, as expressly affirmed in the [1959 Declaration of the Rights of the Child, preamble, para. 3] and restated in the ninth preambular paragraph of the [CRC].”⁶⁶ Another provision highlights that the “ninth preamble paragraph will serve as the perspective through which the rest of the [CRC] will be interpreted, in conformity with art. 31 of the Vienna Convention on the Law of Treaties of 23 May 1969.” A third provision underlines, that “by acceding to the CRC, the Holy See intends to ‘give renewed expression to its constant concern for the well-being of children and families,’”⁶⁷ but due to its “singular nature and position, the Holy See. . . does not intend to [derogate] in any way from its specific mission which is of a religious and moral character.”⁶⁸

The Holy See’s Second Periodic Report on the CRC differs from its reports on OPSC and OPAC, insofar it includes an explanation for why it intends to maintain its Reservations and Interpretative Declaration. As previously, mentioned, this is in response to the Concluding Observations of

63. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 8; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 8; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 8.

64. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 8; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 8; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 8 (Cf. art. 1, Law of 7 June 1929, n. II; cf. Law of 1 October 2008, n. LXXI, on sources of law, in force as of 1 January 2009, replaced the law of 7 June 1929, n. II as regards the sources of law).

65. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 9; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 9; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 9.

66. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 9; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 9; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 9.

67. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 9; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 9; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 9.

68. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 9; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 9; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 9.

the Committee to the Holy See's Initial Report on the CRC, wherein it asked the Holy See to consider withdrawing the same.⁶⁹ The Holy See sets out eight arguments.

One, the said reservations and declaration are necessary in light of the minimal standard of behavior expected of States, however, the Holy See "works to further extend the protection and 'to develop the natural talents of children, and most importantly, to provide an opportunity for the spiritual fulfillment of its youngest citizens – from the first moment of conception.'" ⁷⁰ Two, they "emphasize the moral concepts" and "definitive positions" which the Holy See holds to be of "paramount importance," ⁷¹ and which "were the object of the extensive debate that led to the formulation of the text of the Convention." ⁷² Three, they are "not contrary to the object and purpose" of the CRC, which would be prohibited. ⁷³ Four, "no State Party has raised an objection to them as being incompatible with the object and purpose" of the CRC, something they are permitted to do pursuant to the 1969 Vienna Convention on the Law of Treaties. ⁷⁴ Five, they are line with the "original spirit of the CRC and contribute to its object and purpose." ⁷⁵ Six, the theory of reservations is based on the concept that "no State is bound in international law without its consent to the treaty," ⁷⁶ and since consent is the "very essence of any treaty commitment," reservations promote ratification of the largest number of State Parties possible, when the same cannot agree upon every provision of the written text. This last point is something enormously difficult in the context of multilateral treaties such as the CRC, ⁷⁷ but also extremely helpful in that such ratifications produce "impressive statistics as to the number of State Parties." Certainly, in the case of the Holy

69. HOLY SEE'S INITIAL REPORT ON CRC, *supra* note 9, para. 7 ("With respect to Guideline 10, and the Committee's Suggestion/Recommendation that the Holy See review and withdraw its reservations (CRC/C/15/Add.46, para. 10), the Holy See has reviewed and will maintain its three Reservations and Interpretative Declaration to the Convention on the Rights of the Child (CRC), which were entered under art. 51 of the same. They are reproduced in their entirety in Initial Report CRC/C/3Add.27, paras. 15, and 16 (a) –(c) and they have recently been reaffirmed in the Holy See's First Report on the Optional Protocols.")

70. HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para. 10, cf. CRC, *supra* note 8, art. 41.

71. HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para. 11.

72. *Id.* para. 11.

73. *Id.* para. 10, cf. CRC, *supra* note 8, art. 51.2.

74. HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para. 12, cf. 1969 VIENNA CONVENTION ON THE LAW OF TREATIES May 23, 1969, 1155 U.N.T.S. 331, arts. 20 - 21 (entered into force Jan. 27, 1980).

75. HOLY SEE'S SECOND REPORT ON CRC, para. 12.

76. *Id.* para. 13.

77. *Id.* para. 13.

See, it ratified the instrument notwithstanding its ethical concerns.⁷⁸ The reservations thus serve as a memorial to these concerns. Lastly, the Holy See contends such reservations are necessary “given the attempted redefinition or creation of new terms and/or rights and/or principles, which do not correspond to an authentic and holistic vision of the human person and his or her rights and duties, nor present a good faith interpretation” of the CRC.⁷⁹ The Holy See concludes by emphasizing that it “has never agreed to such terms, rights or principles often contained in the Committee’s General Comments⁸⁰ and its Concluding Observations,” and also underlines that they “do not enjoy international consensus.”⁸¹

D. *The Holy See: Treaty Interpretation*

The Holy See’s Second Periodic Report also differs from its Reports on OPSC and OPAC, in addressing the question of treaty interpretation. This particular section acts as a sort of preamble to the Holy See’s responses to the Committee’s questions asking the Holy See to explain its position on three matters: a) “the relationship between the responsibilities, duties and rights of parents (art. 5) and the right of the child to be heard (art. 12); and b) the principle of non-discrimination (art. 2), of the best interests of the child (art. 3) and of the respect for the views of the child (art. 12).”⁸² The Committee’s also expressed concerns for: 1) “discrimination ‘between children’ in Catholic schools, in particular with regard to girls; 2) education of children on health matters, including preventive health care, family

78. *Id.* para. 13.

79. *Id.* para. 15.

80. The term “general comments” does not exist in the text of the CRC, *supra* note 8. According to article 45 (d) of the CRC, the Committee may make “suggestions and *general recommendations* based on information received pursuant to articles 44 and 45.” The term “general comments” were included in the Rules of Procedures. Pursuant to these rules, as developed by the Committee, there are three types of general recommendations: “general recommendations” *per se*; “other general recommendations”, and “general comments.” Pursuant to Rule 75 of the Committee’s Rules of Procedure, the Committee may “[a]fter consideration of each report of a State party, together with such reports, information or advice, if any, received pursuant to article 44 and article 45, subparagraph (a), of the Convention, ...make such suggestions and *general recommendations* on the implementation on of the Convention by the reporting State as it may consider appropriate.” See COMMITTEE ON THE RIGHTS OF THE CHILD, RULES OF PROCEDURE, CRC/C/4/Rev.2 December 2, 2010. Rule 76 envisions the Committee making “*other general recommendations* based on information received pursuant to articles 44 and 45 of the Convention.” *Id.* Rule 77.1 purports to give the Committee jurisdiction to “prepare *general comments* based on the articles and provisions of the Convention with a view to promoting its further implementation and assisting States parties in fulfilling their reporting obligations.” *Id.*

81. HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 15.

82. *Id.* at para. 16; *Cf.* COMMITTEE’S CONCLUDING OBSERVATIONS CRC/C15/Add.46, paras. 13-14.

planning; and 3) promotion of the CRC in school curricula as well as training of professionals and volunteer.”⁸³

Since the answers to the aforementioned queries require consideration of the text, and the Committee has developed its own interpretation of the text, that can be construed as departing from the text as well as its intent and purpose, the Holy See commences its response in reference to the rules of international law on the topic of treaty interpretation, which presumably applies to both the Committee and State Parties. The Holy See commences the discussion by highlighting six key principles.

One, the Holy See interprets the CRC, pursuant to arts. 31 and 32 of the 1966 Vienna Convention on the Law of Treaties (hereinafter “VCLT”)⁸⁴ which it is bound in treaty law having ratified it, and “to which it is nonetheless bound insofar as the provisions contained therein form part of customary international law.”⁸⁵ Two, the Holy See will render a “‘good faith’ interpretation in accordance with the ‘ordinary meaning’ of the terms of the treaty in their ‘context and in light of [its] object and purpose.’”⁸⁶ Three, the Holy See acknowledges that “such context comprises the text including the preamble and annexes and any agreement relating to the Treaty made between all the parties and any instrument made by one or more parties” which will include its instrument of ratification with three Reservations and Interpretative Declaration.⁸⁷ Four, the Holy See notes that art. 32 VCLT provides recourse to “supplementary means of interpretation to confirm or to determine the meaning resulting from the application of art. 31 VCLT when the general rule articulated in the same ‘leaves the meaning ambiguous or obscure; or leads to a result which is manifestly absurd or unreasonable.’”⁸⁸ Five, the Holy See underlines that it has not “subsequently agreed with any party as to the interpretation of the treaty or its application in a way that differs from or contradicts its three Reservations and one Interpretative Declaration and all that which is explained in its Initial Report.”⁸⁹ Indeed, the Holy See duly notes that a “special meaning shall be given to a term if it is established that the parties so intended,” but does not

83. *Id.* at para. 21; *Cf.* COMMITTEE’S CONCLUDING OBSERVATIONS CRC/C/15/Add.46, paras. 8-9, 12.

84. VIENNA CONVENTION ON THE LAW OF TREATIES (hereinafter “VCLT”) May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980).

85. HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 17 (The Holy See ratified the VCLT on February 25, 1977).

86. *Id.*; *cf.* VCLT, *supra* note 84, art. 31.1.

87. *Id.* at para. 17a; *cf.* *Id.*, art. 31.1.

88. *Id.*; *cf.* *Id.*, art. 31.2(a)-(b).

89. *Id.* at para. 17(b); *cf.* *Id.*, art. 31.3(a)-(b).

admit of agreeing to any special meaning of a term.⁹⁰ Six, the Holy See emphasizes that the three Reservations and one Interpretative Declaration constitute “an essential basis of [its] consent to be bound by the Convention on the Rights of the Child under art. 62 (1) (a), VCLT.”⁹¹

Applying the aforementioned legal principles, the Holy See interprets the CRC “in a way that was foreseen at the time of the conclusion of the treaty, namely in line with the aforementioned international rules of interpretation taking into account its own Reservations and Interpretative Declaration.”⁹² The Holy See interprets a treaty provision in an integral way, in light of its Interpretative Declaration and three Reservations together with the whole of CRC including its preamble together with arts. 1-5.⁹³ The Holy See maintains that the object and purpose of the CRC (or the CRC’s “living heart”) is the promotion and protection of “the rights and duties of the child, before as well as after birth, within the context of the family, the natural and fundamental unit of society, which itself has rights and duties in addition to those of parents.”⁹⁴ Indeed, the Holy See acceded to and continues to endorse the CRC in the expectation that all initiatives: a) will “respect that children best learn about themselves and others, first and foremost, in the reality of ‘mutually supportive relationships in the family itself, where there is profound respect for all human life, unborn as well as born, and where both mother and father jointly make responsible decisions regarding the exercise of their parenthood;’”⁹⁵ and b) will “respect the moral and religious convictions of those to whom they are directed, in particular the moral convictions of parents regarding the transmission of life, with no urging to resort to means which are morally unacceptable, as well as their freedom in relation to the religious life and education of their children.”⁹⁶ It is clear that the position of the Holy See *vis-a-vis* the CRC is consistent with well respected principles of public international law.

The Holy See reminds the Committee that any other interpretation imposed on the Holy See would “depart from the original spirit” of the CRC and thereby constitute an “unforeseen and fundamental change of circumstances,” which in turn, would “radically” transform the extent of the

90. *Id.* at para. 17(f); *cf. Id.*, art. 31.4.

91. *Id.* at para. 7(c); *cf. Id.*, art. 31.3(c), 62.1(a).

92. HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 17(d).

93. *Id.* at para. 18.

94. *Id.*, para.19.

95. *Id.*, para. 19(a).

96. *Id.*, para. 9(b).

Holy See's "obligations still to be performed" under the CRC.⁹⁷ Accordingly, the Holy See would "be permitted to invoke such a fundamental change of circumstances as a ground for 'terminating or withdrawing' from the treaty or from 'suspending the operation' of the same."⁹⁸

II. THE CRC: GENERAL PRINCIPLES

A. *The Committee's General Principles*

1. *The General Principles*

The Committee established four general principles under the CRC: 1) non-discrimination; 2) best interests of the child; 3) right to life, survival and development; and 4) respect for the views of the child (also referred to as the right to participate or the right to be heard).⁹⁹ These general principles are based on art. 2, 3, 6 and 12, respectively of the CRC.

A perusal of these articles immediately reveals that any stark reference to such principles is misleading because they have been taken out of their context. For example, in regard to the principle of non-discrimination in article 2.1, this provision should be read with article 2.2, which places the principle within the context of the family and the child's parents.¹⁰⁰ With respect to article 3, the principle that the best interests of child shall be a paramount consideration is to be applied within the context of public or private legal or administrative proceedings, which must also "take into account the rights and duties of parents" where protection and care of the

97. *Id.*, para.17(e); cf. VCLT, *supra* note 84, art. 62.1(b).

98. *Id.*; cf. *Id.*, art. 62.3.

99. See, e.g. Committee on the Rights of the Child, *General Guidelines regarding the form and content of initial reports to be submitted by State Parties under article 44, paragraph 1(a) of the Convention*, para. 13, CRC/C/5 (October 30, 1991) ("General principles 13. Relevant information, including the principal legislative, judicial, administrative or other measures in force or foreseen, factors and difficulties encountered and progress achieved in implementing the provisions of the Convention, and implementation priorities and specific goals for the future should be provided in respect of: (a) Non-discrimination (art. 2); (b) Best interests of the child (art. 3); (c) The right to life, survival and development (art. 6); (d) Respect for the views of the child (art. 12)."): See also Committee On the Rights of the Child, *General Comment No. 12: The Right of the Child to be Heard*, CRC/C/GC/12, July 20, 2009.

100. CRC, *supra* note 8, art. 2(1)-(2) ("1. 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. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the *basis of the status, activities, expressed opinions, or beliefs of the child's parents*, legal guardians, or family members." [emphasis added]).

child is at stake.¹⁰¹ In regard to article 6, the child has an inherent right to life, survival and development, however, the Committee purports to take a neutral stand on abortion, even in the face of other articles which, when read together, clearly protect the life of the unborn: preamble para. 9, art. 1, art. 2, art 24.2.d.¹⁰²

In response to the “amoral or neutral” position, by analogy, the question is whether there is a way to have equal concern and respect for the torturer and the torture victim.¹⁰³ Either the torturer torments the person because this is right or good, or the torturer does not torture the person because this is right or good. States condemn the acts of the torturer, and protect the other’s right not to be tortured because the acts of the two individuals do not “deserve equal respect and concern.”¹⁰⁴ A similar dilemma is evident in discussions pertaining to the pre-natal child’s right to life versus the “new right” of the mother to abortion. Frequently, the issue is framed as whether the unborn child is even a human being (and/or human person); so the argument goes, because both views (the fetus is not a person vs. the fetus is a person) deserve equal respect and concern, the mother should be free to

101. *Id.*, art. 3. (“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.” [emphasis added].)

102. *Id.*, art. 6. (“1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.” [emphasis added].) (The argument that the CRC is neutral on abortion relies for support upon a document that has no value in international law, namely a statement by the Working group stating: “In adopting this preambular paragraph [“legal protections before or after birth” para. 9], the Working Group does not intend to prejudice the interpretation of article 1 or any other provision of the Convention.” RACHEL HODGKIN, PETER NEWELL, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD, 3rd edition, (UNICEF: 2007) at 85.) (So the argument goes: “Article 1 deliberately leaves open the starting point of childhood, that is, whether it is conception, birth or sometime in between. Thus, the Convention leaves individual States to decide for themselves the conflicting rights and interests involved in issues such as abortion and family planning, and the Committee on the Rights of the Child has therefore suggested that reservations to preserve state laws on abortion are unnecessary” *Id.*). It is noteworthy that the words of that preamble and other related provisions are clear and not ambiguous. Therefore there is no need to go to the working papers as a supplementary means of interpretation (VCLT, *supra* note 84, at arts. 31, 32). Moreover, there is a dispute as to the value of the Working Group’s statement itself in international law.

103. J. Budziszewski, NATURAL LAW FOR LAWYERS, 15 (ACW Press and The Blackstone Legal Fellowship eds., 2006)

104. *Id.*

abort.¹⁰⁵ Significantly every person has shared the same position as the prenatal child because each person has been an unborn child. This is a fact which many today elude or attempt to forget. In the end, the so-called “amoral or neutral” position does not award equal concern and respect to both views on whether the unborn child is a human being, but rather “covertly supposes the truth of one of them [the “fetus” in the mother’s womb is not a human being and/or a human person] but spares itself the trouble of demonstration.”¹⁰⁶ Moreover, the Committee has questioned the “illegality of abortions,” which brings into question its so-called neutrality.

Lastly, with respect to article 12(1), the child’s right to express his or her views is limited to the “child who is capable of forming his or her own views” and the “due weight” to given to such views will be “in accordance with the age and maturity of the child.” Article 12(2) provides for an “opportunity to be heard,” not a right to be heard, and places this opportunity within the context of “judicial and administrative proceedings affecting the child,” and “in a manner consistent with the procedural rules of national law.”¹⁰⁷ The Committee frequently refers to article 12 as proof that the child should be regarded as an active subject of rights, and frequently, connects this article with the child’s freedom of expression (art. 13), freedom of thought, conscience and religion (art. 14) and freedom of association (art. 15). However, again any naked reference to such principles is misleading in that each of these articles contains language regarding limitations (e.g. rights of others, public health, public order, morals) contained in these provisions. In addition, such references ought to be mentioned alongside the general principle set out in art. 5, that State Parties are obliged to “respect the responsibilities, rights and duties of parents. . . to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights.” These evolving capacities are crucial to the objective meaning of “rights” that are to be accorded to the child. If they are not considered, the child could erroneously be construed as an autonomous entity having the capacity to make claims or have claims

105. *Id.* at 16.

106. *Id.* at 17.

107. CRC, *supra* note 8, art. 12 (1) “States Parties shall assure to the child who is *capable of forming his or her own views* the right to express those views freely in all matters affecting the child, the *views of the child being given due weight in accordance with the age and maturity of the child.* (2) For this purpose, the child shall in particular be provided the *opportunity to be heard* in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.” (emphasis added).

made without acknowledging any corresponding duties, responsibilities, or obligations to others, especially parents.

2. *Application of the General Principles*

The aforementioned general principles of the Committee have been frequently referred to in the Concluding Observations of the Committee¹⁰⁸ and used in its General Comments to create new principles and terminology. It is beyond the scope of this paper to give a comprehensive review of every interpretation that raises issues for the Holy See. This paper will limit itself only to terminology and new principles that directly relate to the possible sexualisation of children, a tragic phenomenon, recognized worldwide.¹⁰⁹ In

108. See e.g. Committee on the Rights of the Child, “Concluding Observations: Paraguay,” Seventh Session, 24/10/94, CRC/C/15/Add. 27, par. 7 (The Committee expressed “its general concern that the State Party [Paraguay] does not appear to have fully taken into account the provisions of the Convention, including its general principles, as reflected in its articles 2, 3, 6, and 12, in the legislative and other measures relevant to children” [emphasis added]). See also RACHEL HODGKIN, PETER NEWELL, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD, 3rd edition, (UNICEF: 2007): art. 2 (non-discrimination) pp. 17-31; art. 3, (bests interests of the child) pp. 35-43; art. 6 (right, survival and development) pp. 83-94; and art. 12 (respect for the views of the child) pp. 149-172.

109. Although, there is no global unanimously accepted definition of sexualisation, it has been defined as “to make or to become sexual or sexually aware; to give or acquire sexual associations.” COLLINS ENGLISH DICTIONARY – COMPLETE & UNABRIDGED (10th ed. 2009); It has also been defined to include “sexuality as inappropriately imposed upon a person.” AMERICAN PSYCHOLOGICAL ASSOCIATION, REPORT OF THE APA TASK FORCE ON THE SEXUALISATION OF GIRLS, 2007; In specific regard to reports on the phenomenon of sexualisation, it is noteworthy that they recognize the essential role of parents in protecting children, and do not purport to exclude them as does the General Comments of the Committee, See REG BAILEY, UNITED KINGDOM DEPARTMENT OF EDUCATION, LETTING CHILDREN BE CHILDREN: REPORT OF AN INDEPENDENT REVIEW OF THE COMMERCIALISATION AND SEXUALISATION OF CHILDHOOD, June 2011; Nearly nine out of 10 parents surveyed for this Review agreed with the statement that ‘these days children are under pressure to grow up too quickly.’ This confirms what many parents, politicians, academics and commentators have suspected for some time, that this is a widely held concern of parents that needs to be taken seriously. This pressure on children to grow up takes two different but related forms: the pressure to take part in sexualized life before they are ready to do so; and the commercial pressure to consume a vast range of goods and services that are available to children and young people of all ages.” *Id.* para. 2, at 6; THE SCOTTISH PARLIAMENT, EQUAL OPPORTUNITIES COMMITTEE REPORT, 2ND REPORT, 2010 (SESSION 3) EXTERNAL RESEARCH ON SEXUALISING GOODS AIMED AT CHILDREN, EO/S3/10/R2, ANNEX A: David Buckingham, et al *Final Report Sexualised Goods Aimed at Children, Research Conducted for the Scottish Parliament*, June – December 2009; “Ultimately parents tended to conclude that it was their responsibility to take action on sexualised products...However, they also revealed how difficult this was in practice due to the availability of the products; peer pressure or general adolescent culture; children’s ‘nagging’ and persuasive tactics; decisions made by other parents and institutions; and economic structures and values limiting choice and shaping tastes.” *Id.* at 5 PARLIAMENT OF AUSTRALIA SENATE REPORT ON SEXUALISATION OF CHILDREN IN CONTEMPORARY MEDIA, June 26, 2008; “Throughout this report the committee has made a number of recommendations and suggestions whose object is to assist parents in managing the influences to which their children are exposed, to assist children in dealing with these influences. It is also the primary responsibility of parents to make decisions

this regard, the Holy See is concerned with the following expressions, which are not contained in the text of the CRC: “gender,” “sexual orientation,” “abortion,” “safe-abortion”, “life skills,” “sexual and reproductive health services,” “condoms” and “contraceptives.” Moreover, in contrast to provisions in the text that protect and promote respect for the rights and duties of parents, the Holy See is troubled by the General Comments which purport to create new principles that minimize and even exclude the role of parents, especially in areas where the sexualisation of children is at issue. Consider the following excerpts from various General Comments.

In General Comment No. 3 (2003) on HIV/AIDS the following appears with respect to the non-discrimination principle (art. 2):

Of particular concern is gender-based discrimination combined with taboos or negative or judgmental attitudes to sexual activity of girls often limiting their access to preventive measures and other services. Of course also is discrimination based on sexual orientation. . . State parties must give careful consideration to prescribed gender norms. . .with a view to eliminating gender discrimination as these norms impact on the vulnerability of both girls and boys to HIV/AIDS. . . Strategies should also promote education and training programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV/AIDS.¹¹⁰

In regard to the discussion of life, survival and development (art. 6), in the same report, the following appears:

*State [Parties have the] obligation. . . to give careful attention to *sexuality* as well as to the behaviours and lifestyles of children, even if they do not conform with what society determines to be acceptable under prevailing cultural norms for a particular age group. . . *Effective prevention programs are only those that acknowledge the realities of the lives of adolescents,**

about what their children see, hear, read or purchase. These parental decisions can have a significant impact on the marketing for sexualising products and services.” *Id.* para. 1.17; AMERICAN PSYCHOLOGICAL ASSOCIATION, REPORT OF THE APA TASK FORCE ON THE SEXUALISATION OF GIRLS, 2007; In study after study, findings have indicated that women more often than men are portrayed in a sexual manner (e.g. dressed in revealing clothing, with bodily postures or facial expressions that imply sexual readiness) and are objectified (e.g. used as decorative object, or as body parts rather than a whole person). In addition, a narrow and (and unrealistic) standard of physical beauty is heavily emphasized. These are the models of femininity presented for young girls to study and emulate. . . . Actions by parents and families have been effective in confronting sources of sexualised images of girls (*Id.*, Executive summary).

110. Committee on the Rights of the Child, *General Comment No. 3, HIV/AIDS and the Rights of the Child*, paras. 8, 9, U.N. Doc CRC/GC/2003/3 (Mar. 17, 2003). [emphasis added].

*while addressing sexuality by ensuring equal access to appropriate information, life skills and to preventive measures.*¹¹¹

The term “*life skills*” is later fleshed out in the report:

*...[children can] acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality”... “life skills education within schools, including skills in communicating on sexuality and healthy living”... “State parties must...ensure that children are reached with appropriate prevention messages even if they face constraints due to language, religion, disability or other factors of discrimination.*¹¹²

With respect to civil rights and freedoms, the following is noteworthy:

Child and adolescent sensitive health services... [mean that they] are accessible, affordable, confidential, and non-judgmental, *do not require parental consent* and are not discriminatory ...that health services employ trained personnel who fully respect the rights of children to privacy (art. 16) and non-discrimination in offering. . .*confidential sexual and reproductive health services, and free and low-cost contraceptive, methods and services.* . .¹¹³

Similar problems are raised in General Comment No. 4 (2003) on Adolescent Health and Development in the Context of the Rights of the Child.

[Civil rights and freedoms (art. 13-17) are fundamental in guaranteeing right to health and development especially for State initiatives as regards] “*family planning.* . .” [State parties must strictly respect their] “*right to privacy and confidentiality.* . .*information may only be disclosed with the consent of the adolescent.* . .*Adolescents deemed mature enough to receive counselling without the presence of a parent or other person are entitled to privacy and may request confidential services.*”¹¹⁴

Later in the same General Comment the following is stated:

111. *Id.* at para. 11. [emphasis added].

112. *Id.* at paras. 16, 17. [emphasis added].

113. *Id.* at para. 20. [emphasis added].

114. Committee on the Rights of the Child, , *General Comment No. 4, Adolescent Health and Development in the Context of the CRC* ¶ 27, 28, 31, 30, , U.N.Doc CRC/GC/2003/4 (July 1, 2003) [emphasis added].

[Adolescents must develop necessary] “self-care skills” [and State parties should provide] “access to *sexual and reproductive information*, including on family planning and contraceptives. . .[and] access. . .regardless of their marital status and whether their parents or guardians consent.” [State Parties must give access to] “*safe abortion services* where abortion is not against the law. . .[as well as] foster positive and supportive attitudes towards adolescent parenthood for their mothers and fathers. . .” [State parties are urged to provide programmes] “*aimed at changing cultural views about adolescents’ need for contraception and STD prevention and addressing cultural and other taboos surrounding adolescent sexuality [and] to take measure to remove all barriers hindering the access of adolescents to information, preventive measures such as condoms.*”¹¹⁵

B. *The Holy See and Key Principles*

The Holy See’s Reports include common provisions regarding “longstanding convictions.”¹¹⁶ These provisions emphasize key principles in promoting an authentic perspective of the rights and duties of the child. They may be articulated as the following: 1) the child has inherent dignity from the moment of conception (moment of fertilization); 2) the child’s rights and duties must be viewed within the context of the family; 3) the child’s rights and duties require special protection and promotion of the family; 4) the child’s well-being is the primary responsibility of parents and the family rather than those of self-proclaimed “expert”; and 5) the child’s right and duty as regards life and parents’ duties and rights in their regard; 6) the child’s right and duty as regards education and the parents’ duties and rights in this regard; and 7) the child’s right and duty as regards religious freedom and parents’ duties and rights in their regard.¹¹⁷ The Holy See contends that from a reading of the preamble together with its substantive provisions one can find support for these principles in the CRC, as well as other international treaties and long standing principles of customary international law. In regard to this last argument, the Holy See’s Second

115. *Id.*, paras. 28, 30, 31. [emphasis added].

116. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 10; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para.10; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 20 (“reaffirms what it has always taught”).

117. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 10; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para.10; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 20 (“reaffirms what it has always taught”) (*See also*, HOLY SEE’S INITIAL REPORT ON CRC, *supra* note 2, paras. 4 -16).

Report on CRC goes further than its Reports on OPSC and OPAC, in providing support for its propositions in international law.¹¹⁸

1. *The Inherent Dignity of the Child*

The Holy See's Reports emphasize that every human being, from the moment of conception and in every particular stage of his or her human development until natural death has inherent dignity.¹¹⁹ That is to say, every human being has inherent dignity as human persons, by nature endowed with intelligence and free will.¹²⁰ The Holy See's Second Report to the CRC explicitly underlines the point that human rights flow from the child's inherent dignity, an understanding that falls within the natural law tradition.¹²¹ It does not make a reference to the inherent dignity of the child as made in the image and likeness of God which constitutes a profound understanding of the phrase "inherent human dignity" going beyond the order of natural reason to that of divinely revealed truth to reflect upon the person of Jesus Christ.¹²² This Second Periodic Report also underlines that the "inherent dignity of the child is founded on something more profound than his ability to express his views."¹²³ This last point is alluding to the Committee's promotion of art. 12 as one of the key principles to ensure that children are treated as subjects. Obviously, an unborn child, an infant and some disabled children cannot express their views but are subjects of rights and duties nevertheless.

118. HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, paras. 20 b, d, f, h, j, l, n.

119. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, para. 10.a; HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, para. 10.a; HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para. 20.a. (See also, HOLY SEE'S INITIAL REPORT ON CRC, *supra* note 9, para. 4).

120. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, para. 10.a; HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, para. 10.a; HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para.20.a. (Cf. Pope John XXIII, *Pacem in Terris* [Encyclical Letter on Establishing Universal Peace in Truth, Justice, Charity and Liberty] paras. 9-10 (1963) [hereinafter *Pacem in Terris*]; see also Second Vatican Council, *Gaudium et Spes* [Pastoral Constitution on the Church in the Modern World] paras. 12-22 (1965), reprinted in *The Sixteen Documents of Vatican II* 515-624 (Nat'l Catholic Welfare Conference trans., 1967) [hereinafter *Gaudium et Spes*]).

121. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, para. 10.a; HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, para. 10.a; HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para. 20.a. (See also: Fr. Thomas D. Williams, *Who Is My Neighbor?: Personalism and the Foundations of Human Rights* 82-104 (Washington, D.C.: Catholic University of America Press, 2005), for a more detailed response to the debate among Catholics whether "human rights" language falls within the natural law tradition).

122. *Gaudium et Spes*, *supra* note 6, para. 22 (The new Adam "fully reveals man to man himself and makes his supreme calling clear;" every human person has been redeemed by Christ and is destined for eternal happiness.).

123. HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para.20.a.

The preamble of the CRC affirms the “inherent dignity” and “equal and inalienable rights of all members of the human family.”¹²⁴ It incorporates the Charter of the United Nations that reaffirms the “fundamental human rights” and “the dignity and worth of the human person.”¹²⁵ The CRC defines the child as under the age of eighteen and acknowledges his or her “physical and mental immaturity” noting the need for “special safeguards and care, including appropriate legal protection, *before as well as after birth.*”¹²⁶ Indeed, every child has the right to “*pre-natal*” as well as “post-natal health care.”¹²⁷ Lastly, the CRC incorporates the 1948 Universal Declaration of Human Rights (hereinafter “UDHR”), which acknowledges in art. 1 the essential characteristics of man as a human being “free and equal,” “endowed with reason and conscience” in relationship with others in that he or she “should act towards one another in a spirit of brotherhood.”¹²⁸

2. *The Child within the Context of the Family*

By reason of his or her origin, end and formative state, the child can only be understood within the context of the family, the basic cell of society. For this reason, the Holy See notes that the “protection of children’s rights cannot become fully effective unless the family and its rights are fully respected by the legal systems of States and the international community.”¹²⁹

The CRC recognizes the aforementioned principle. “The child, for the full and harmonious development of his or her personality, should grow up in

124. CRC, *supra* note 8, preamble para. 1.

125. Compare U.N. Charter, with CRC, *supra* note 8, preamble para. 2.

126. CRC, *supra* note 2, preamble para. 9, art. 1.

127. *Id.*, art. 1; pmbl. para. 3, arts. 1, 2(1), 3, 24(d); for a more expansive discussion, see also BRUCE ABRAMSON, VIOLENCE AGAINST BABIES: PROTECTION OF PRE- AND POST-NATAL CHILDREN UNDER THE FRAMEWORK OF THE CONVENTION ON THE RIGHTS OF THE CHILD (2005) (One might argue that because the child cannot be discriminated against on the ground of “birth” this might provide further evidence of pre-natal protection of the child, however, Abramson expresses a contrary view).

128. *Id.*, pmbl. paras. 3, 4 (This point, however, needs further clarification with recourse to the working papers given the word “born” in art. 1 of the UDHR); for further discussion, see JOHANNES MORSINK, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT (1999); see also *The Family and Human Rights* (Dec. 9, 1999), http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20001115_family-human-rights_en.html (quoting the UNIVERSAL DECLARATION OF HUMAN RIGHTS, G.A. Res. 217A, art. 3, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter UDHR]) (an interesting study by the Pontifical Council for the Family).

129. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, at para. 10(b); HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, at para. 10(b); HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, at para. 20(c) (Cf. HOLY SEE’S INITIAL REPORT ON CRC, *supra* note 9, para. 5; Cf. The Holy See, *Charter of the Rights of the Family*, preamble para. E (Oct. 22, 1983) [hereinafter *Charter on the Rights of the Family*]).

a family environment, in an atmosphere of happiness, love and understanding.”¹³⁰ This principle in turn is supported by numerous references to the family and parents¹³¹ most notably those contained in the umbrella provisions which require that the best interest of the child principle be applied “taking into account the rights and duties of parents,” and that “responsibilities, rights and duties of parents” be respected by State Parties.¹³²

3. *Special Protection and Promotion of the Family*

The Holy See argues that the first and most vital unit of society, the family, is the natural community which exists prior to the State or any other community, and possesses inherent rights and duties.¹³³ For this reason protection of children’s rights and duties means respect for the promotion and protection of the family and respect for the rights and duties of parents.¹³⁴ The Holy See reiterates that the family is based on marriage: that “intimate union of life in complementarity between a man and a woman, which is constituted in the freely contracted and publicly expressed indissoluble bond of matrimony and is open to the transmission of life.”¹³⁵

The CRC acknowledges that the family, as just explained, is the natural environment for children: “the family [is] the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children.”¹³⁶ The CRC also recognizes that special protection and promotion must be given to the natural family when it cites the UDHR, which in turn observes: “The Family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”¹³⁷ It furthermore, promotes the family based on marriage, as an equal partnership between husband and wife, to which the transmission of

130. CRC, *supra* note 8, at preambular para. 6.

131. *Id.* at arts. 2, 3, 5, 7, 8, 9, 10, 14, 16, 18, 20-24, 27, 37, 40.

132. *Id.* at arts. 3(2), 5.

133. See HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, at para. 10(c); See also HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, at para. 10(c); See also HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 20(e) (Cf. HOLY SEE’S INITIAL REPORT ON CRC, *supra* note 9, para. 5; Cf. *Charter on the Rights of the Family*, *supra* note 129, at paras. A, B.).

134. See HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, at para. 10(c); See also HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 20(e); (Cf. HOLY SEE’S INITIAL REPORT ON CRC, *supra* note 9, para. 5; Cf. *Charter on the Rights of the Family*, *supra* note 129, at paras. A, B.).

135. See HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 20(e); Cf. *Charter on the Rights of the Family*, *supra* note 129, at paras. A, B.

136. CRC, *supra* note 8, at preambular para. 5.

137. UDHR, *supra* note 128, at preambular para. 3, art. 16(3).

life is entrusted.¹³⁸ All of the above is a reaffirmation of that which is knowable by right reason taking into consideration the UDHR's recognition of the human person as being "endowed with reason and conscience."¹³⁹

4. *The Child's Well-being*

The Holy See contends that a presumption exists that the well-being of the child is most successfully realized in the natural family, based on marriage between one man and one woman.¹⁴⁰ Since parents bring a child into the world or adopt a child, they have fundamental duties and rights in regard to the child's upbringing, formation and supervision including delicate matters pertaining to primary care, religion, education about authentic human love, marriage, family, association with others, access to information, and so forth.¹⁴¹ Parents are presumed to act for the good, for the well-being, or according to the legal standard, for the "best interests of the child." Such a presumption, of course, may be rebutted with proven or substantiated acts, such as child neglect, abuse or violence either committed by parents or while in the care of parents; beyond these types of cases, however, civil authorities should not interfere with the primary duties and rights of parents.¹⁴²

The CRC provides that "in all actions concerning children whether undertaken by public or private social welfare institutions. . .the best interests of the child shall be a primary consideration."¹⁴³ The State must apply the best interest principle; however, "taking into account the rights and duties of his or her parents."¹⁴⁴ In addition, the State shall respect "the responsibilities, rights and duties of parents, . . .to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights. . . ."¹⁴⁵ The fact that the child shall not be separated from his or her parents unless in accordance with due process and

138. *Id.* at art. 16(1), (2).

139. *Id.* at art. 1.

140. See HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, para. 10(c); HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, 10(c); HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para. 20(e)l (Cf. HOLY SEE'S INITIAL REPORT ON CRC, *supra* note 2, paras. 5-6).

141. See HOLY SEE'S INITIAL REPORT ON OPSC *supra* note 2, para. 10(d); HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, 10(d); HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para. 20(g), (Cf. HOLY SEE'S INITIAL REPORT ON CRC, *supra* note 9, paras. 10-11).

142. Cf. HOLY SEE'S INITIAL REPORT ON CRC, *supra* note 9, paras. 16(b), HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para. 20(g).

143. CRC, *supra* note 8, art. 3(1)..

144. *Id.* at art. 3(2).

145. *Id.* at art. 5.

in grave cases such as abuse or neglect further reinforces the presumption in favour of parents and the family.¹⁴⁶ CRC acknowledges that parents have “common responsibilities” and the “primary responsibility” for the “upbringing and development of the child.”¹⁴⁷ The CRC affirms that the role of the State is subsidiary in that it “shall render appropriate assistance to parents”¹⁴⁸ and may only intervene “to protect the child from all forms of physical or mental violence, injury or abuse, neglect, or negligent treatment, or exploitation including sexual abuse.”¹⁴⁹

5. *The Child’s Right to Life*

The Holy See maintains that every human being has the inherent right to life in every phase of development, from conception until natural death, and in every human condition (e.g. sick, disabled, or poor).¹⁵⁰ In the first instance, parents have the primary and inalienable duty and right to ensure that their child’s right to life is respected, which means that they must protect their developing pre-natal and post-natal child from exploitation and destruction.¹⁵¹

The CRC affirms the right to life of the child “before as well as after birth.”¹⁵² This basic principle is read with the definition of the child as “every human being below the age of eighteen years” and in reference to the child’s right to pre-natal health.¹⁵³ All of which must be read together with the child’s “inherent right to life.”¹⁵⁴

146. *Id.* at art. 9.

147. *Id.* at art. 18(1).

148. *Id.* at art. 18(2).

149. *Id.* at art. 19(1).

150. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 10.e; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 10.e; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 20.i (*Cf.* HOLY SEE’S INITIAL REPORT ON CRC, *supra* note 9, paras. 7 and 8).

151. HOLY SEE’S INITIAL REPORT ON OPSC, *supra* note 2, para. 10.e; HOLY SEE’S INITIAL REPORT ON OPAC, *supra* note 14, para. 10.e; HOLY SEE’S SECOND REPORT ON CRC, *supra* note 2, para. 20.i (*Cf.* HOLY SEE’S INITIAL REPORT ON CRC, para. 7; *Cf. Charter on the Rights of the Family*, *supra* note 129, art. 4).

152. CRC, *supra* note 8, preambular para. 9.

153. *Id.* at art. 24 (d).

154. *Id.* at art. 6.

6. *The Child's Right to Education*

The Holy See argues that every child in virtue of his or her inherent dignity as a human person has the inalienable right to education.¹⁵⁵ Moreover, parents have the primary duty and right to educate their children, which includes having a free choice of schools in keeping with parental convictions that are protected by long standing principles of international law.¹⁵⁶ Of particular importance is the integral formation of the whole person (physical, intellectual, emotional, moral, and spiritual) in view of his or her origin, end and social nature.¹⁵⁷ Included within the ambit of education are issues related to primary care, religious education, association of the child with others, the child's access to information, expression of his or her views and matters of privacy including sex education.¹⁵⁸

The CRC incorporates the UDHR in its preamble, which in turn acknowledges that, "Parents have a prior right to choose the kind of education that shall be given their children."¹⁵⁹ As previously noted, the State undertakes "to ensure the child such protection and care as necessary for his or her well-being, taking into account the rights and duties of his or her parents;"¹⁶⁰ to apply the best interests of the child principle with parents in mind,¹⁶¹ and to respect parental rights and duties to provide appropriate direction and guidance to their child.¹⁶² The aforementioned principles are read with other articles dealing with the child's education¹⁶³ as well as the child's qualified civil and political rights.¹⁶⁴

155. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, para. 10. *cf.* HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, para. 10. *cf.* HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para. 20.k (*cf.* Holy See's Initial Report on CRC, *supra* note 9, para. 9).

156. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, para. 10. *Cf.* HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, para. 10. *Cf.* HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2 para. 20.k (*Cf.* HOLY SEE'S INITIAL REPORT ON CRC, *supra* note 9, para. 9; *Cf.* *Charter on the Rights of the Family*, *supra* note 129, art. 5).

157. HOLY SEE'S INITIAL REPORT ON CRC, *supra* note 9, para. 9.

158. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, para. 10. *cf.* HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, para. 10. *cf.* HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para. 20. *cf.* HOLY SEE'S INITIAL REPORT ON CRC, *supra* note 9, para. 9. *Cf.* *Charter on the Rights of the Family*, *supra* note 129, art. 5.

159. CRC, *supra* note 8, preambular para. 3; UDHR, art. 26(3).

160. *Id.* at art. 3(2).

161. *Id.*

162. *Id.* at art. 5.

163. *Id.* at arts. 28, 29.

164. *Id.* at arts. 12, 17.

7. *The Child's Freedom of Religion*

The Holy See argues that freedom of religion springs from “the very dignity of the human person as known through the revealed word of God and by reason itself,” and parents have the duty and right “to decide in accordance with their own religious beliefs the form of religious upbringing which is to be given to their children.”¹⁶⁵

It contends that the principles of international law referred to above with respect to the right to education are applicable here. In specific regard to the child's right to freedom of thought, conscience and religion, the Holy See makes specific reference to the limitation in art. 14 (2), CRC: “State Parties shall respect the rights and duties of the parents. . . to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.”¹⁶⁶

CONCLUSION

Clearly, the basic premise of each treaty (CRC, OPSC, and OPAC) is that children are vulnerable and in need of special protection. The aforementioned treaties recognize the rights and duties of the child within the context of the family taking into account the duties and rights of parents in the first instance to protect, to teach and to guide the child in the exercise of his or her rights and duties, which, in many instances, are carefully qualified, and limited according to parental duties and rights as well as public policy concerns.

The Committee, however, has developed its own particular approach to the CRC. It has chosen four key principles which it vigorously promotes along with the civil and political rights of the child in a way, that one might contend, betrays the very object and purpose of the CRC.¹⁶⁷ In response, the Holy See, in its recent reports, has fleshed out a faithful interpretation of the CRC's terms and content, highlighting key principles, based on the ordinary meaning of the words in the text taking into consideration its context and in accordance with binding international principles of interpretation. Moreover,

165. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, para. 10(g); HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, para. 10(g); HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, paras. 20(k), 20(m); *Cf.* HOLY SEE'S INITIAL REPORT ON CRC, *supra* note 9, para. 11; *Cf. Charter on the Rights of the Family* (1983), *supra* note 29, art. 5.

166. HOLY SEE'S INITIAL REPORT ON OPSC, *supra* note 2, para. 10(g); HOLY SEE'S INITIAL REPORT ON OPAC, *supra* note 14, para. 10(g); HOLY SEE'S SECOND REPORT ON CRC, *supra* note 2, para. 20(m).

the Holy See's position reflects the intention and general objectives of the CRC. In this way, the Holy See has entered into a dialogue with the Committee as regards a sound textual reading of the CRC by offering one that situates the rights of the child within the context of the family, and considers the CRC as enabling parents to better nurture, care, educate and protect their children with an exhortation to State Parties to assist parents in this regard. The Holy See is also urging the Committee to recognize the CRC's clear protection of the child's inherent right to life – "before as well as after birth" – a right, which renders all other rights possible. One hopes that the Committee will react to the overt and implicit corrections in a positive manner, and choose to become a beacon, alongside the Holy See, pointing to the whole truth about the child, a human person, with a mother and a father, from the moment of conception.