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Introduction: The EU as a Children's Rights Actor: Law, Policy and Structural Dimensions

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Introduction: The EU as a Children's Rights Actor: Law, Policy and Structural Dimensions

Ingi Iusmen and Helen Stalford

'Children have always been and remain at the heart of EU policy. Inspired by the Convention, the EU promotes children's rights through specific Guidelines as well as through the EU Agenda for the rights of the child for internal action [...] In order to prevent and respond to violence against children, which remains a harsh reality, we need to ensure that children benefit from enhanced access to justice and that, starting with birth, every child's right to his or her identity is respected [...] In promoting children's rights worldwide, the EU will continue to work closely with international organisations, UN bodies; in particular UNICEF, and relevant civil society organisations.'

(Federica Mogherini, High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the Commission, 2014)

The rise of an international child rights agenda

20 November 2014 marked 25 years since the adoption of the 1989 UN Convention on the Rights of the Child (CRC), which provided a paradigm shift in the way international law views children as both 'beings' and 'becomings' (Freeman 2011: 27). The CRC is the most ratified of all the treaties on human rights and it constitutes the first international instrument to focus on children as autonomous, rights-bearing subjects, possessing individual and inalienable human rights. Therefore, their well-being is a question of rightful entitlements (Veerman 1992; Freeman 2000; Archard 2004). The Convention provided a new *Weltanschauung* in terms of how children should be approached in legal, policy and normative terms at the national level. For instance, the CRC included fundamental principles that should underpin all children's rights, such as the 'best interests of the child' (Article 3) and the right to have a say (Article 12) in all matters affecting them within the family, schools, local communities, public services, or judicial procedures, to name just a few. The Convention constitutes a landmark in international law by establishing children's status as legally empowered subjects of entitlement.

Over the last two decades the Convention has shaped how states and non-state actors think about children in legal, policy and normative terms at the societal level. More concretely, state parties to the CRC are legally obliged to incorporate its principles within their domestic legal and procedural infrastructure and to ensure that all national law and policy adhere to the rights

and principles enshrined therein. But the CRC has also exerted a significant influence on the way in which children's human rights are considered and articulated at supra-national level, providing a universally endorsed framework within which international politics can forge greater national compliance and co-operation on children's rights issues that are either shared in common by states parties, or which straddle national boundaries. Civil society actors, NGOs, social movements and quasi-governmental bodies play a growing, crucial role both in facilitating communication between this multifarious network of children's rights interlocutors and in identifying where gaps in implementation of children's rights are evident on the ground. What the CRC has provided the backdrop to is, in effect, a genuinely global partnership whose members share remarkably clear and consistently articulated objectives for the protection and promotion of children's rights, notwithstanding the diversity of contexts within which children's rights are located across the world. Maintaining an effective and co-ordinated global partnership of this nature is all the more crucial if there is to be any hope of responding to the ever more nefarious effects of economic and political globalisation and of the rapid, almost boundless advancements in online technologies on children's lives, including a rise in child labour, child trafficking, illegal migration, sexual exploitation and violence (Timimi 2005, Aitken 2001; Pogge 2008).

But that is not to say that the CRC is uncontested; the 'partnership' of children's rights activists have far from resolved some of the tensions – culturally, ideologically, jurisdictionally and economically – that are exposed in many areas of children's rights protection, tensions which are compounded by the vague, ill-defined nature of key, ubiquitous notions such as 'best interests of the child' (Cordero Arce 2012; Van Bueren 1998; Freeman 2000). Furthermore, the absence of any overarching enforcement mechanism, significant inconsistencies in the way in which the Convention has been transposed into domestic law across the signatory states, and the relatively impotent, resource-intensive nature of the Committee on the Rights of the Child's monitoring function, are critical barriers to its full and effective application (Tomás 2002; Freeman 2000; Gareth 2005, Stalford and Drywood 2011: 204).

Despite these shortcomings, the CRC retains its appeal as the *lingua franca* of children's rights advocacy at the regional, national, European and international levels. It has been highly successful in transforming declarations of 'rights' that appeared indifferent to the specific needs and interests of children's into much more sensitive, responsive tools for promoting children's rights. For instance, at the European level, the enforcement mechanisms of the European Convention on Human Rights (ECHR) are now routinely interpreted in the light of the CRC standards and principles (Kilkelly 2002). This, in turn, has given rise to 'the most extensive body of jurisprudence concern-

ing children's civil rights of any of the regional human rights fora' (Van Bueren 2007: 15-16). A similar pattern of 'children's rights auditing' has occurred organically across other international jurisdictions such as the ICC, the Inter-American Court of Human Rights, the European Committee of Social Rights and the African Court on Human and People's Rights (Liefwaard and Doek 2014), notwithstanding the inability of international polities to ratify the CRC. The jurisprudence generated by this process, in turn, acts as a powerful fortification of the children's rights obligations incumbent on domestic States.

The European Union (EU) has emerged as a more recent protagonist in this international children's rights partnership, but far from simply jumping on the bandwagon, it has carved out a distinct and potentially extremely powerful role in developing and enforcing children's rights, not just across the Member States of the EU, but in non-EU states as well.

The emergence of the EU as a children's rights actor

Since the mid-2000s, the EU has sought to extend its embrace of human rights norms to children and young people, inside and outside the European Union by drawing on the CRC as the key source of inspiration for its children's rights measures. The EU's commitment to advancing child rights measures based on the CRC principles in both its internal and external policy dimensions has been primarily steered by the European Commission (Iusmen 2013) with the European Parliament making some important (albeit rather more symbolic) rhetorical gestures in support. The promotion of children's rights-based norms, responds to the 'normative-power' image that the EU has sought to promote via its external policy (Manners 2002; Sjursen 2006).

While the EU has, for over 50 years, shown sporadic interest in areas connected with children's lives (Stalford 2012), it is only since the late 1990s, in the context of negotiations around EU Eastern enlargement and external development co-operation, that the EU's activities have been grounded in a more explicit children's rights normative framework (Iusmen 2014). The protection of child rights emerged as an issue pertaining to the Area of Freedom, Security and Justice as part of the Hague Programme 2005-2009, when the Commission adopted its first action plan on child rights included in the Communication *Towards an EU Strategy on the Rights of the Child* (2006). This action plan and accompanying statement of intent provided a set of policy measures in line with a rights-based framework (European Commission 2006: 2). Since then a wide range of policy documents and financial

instruments¹ have been adopted and deployed to target child rights issues in EU external policy, particularly as part of the EU enlargement process,² not to mention across a growing range of internal market activities.

‘Actorness’

Many studies have focused on the EU’s role as an actor in world politics (Bretherton and Vogler 2006; Nuttall 2000; Ginsberg 2001; Smith 2006; Peterson and Smith 2003; Knodt and Princen 2003; Hill and Smith 2005). A number of EU ‘actorness’ models have been developed to capture the EU’s role in and its impact on international politics. Jupille and Caporaso’s (1998) model of ‘actorness’ focuses on four dimensions of EU international actorness: cohesion, authority, autonomy and recognition. According to Jupille and Caporaso’s model, *cohesion* indicates the extent to which an actor is able to formulate internally consistent policy preferences; *autonomy* is determined by institutional distinctiveness, namely that the EU can operate independently from individual EU Member States; *authority* pertains to the legal competence of the EU to act; and *recognition* refers to acceptance of the EU by other actors. Bretherton and Vogler’s (2006) model provides a process-oriented approach by focusing on the EU’s behaviour in international politics. According to them ‘actorness is constructed through the interplay of many factors, both internal to the Union and in the external environment of ideas and events that permit or constrain EU action’ (Bretherton and Vogler 2006:2). Their model of EU ‘actorness’ comprises three dimensions: *opportunity*, which provides the external context; *presence*, which renders the EU’s ability to have an influence beyond its borders; and finally, *capability*, which indicates the ability to exploit opportunity and capitalise on presence.

The EU’s actorness with respect to international child rights includes all the dimensions captured by the two models above. It entails actions taken to address child rights violations and promote children’s rights principles in both the EU’s external and internal policy dimensions. More specifically, it

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- 1 The Council adopted the *EU Guidelines for the Promotion and Protection of the Rights of the Child* (2007) and, in so far as children’s rights in zones of conflict are concerned, the Council issued *EU Guidelines on Children and Armed Conflict* (2003, 2008). The Commission developed an action for EU external policies by adopting the *Communication A Special Place for Children in EU External Action* (2008). Child rights are also promoted via the EU’s thematic programmes in EU development and cooperation policy, primarily via the Investing in People and the European Instrument for Democracy and Human Rights (EIDHR).
 - 2 A new *acquis* Chapter in the Progress Reports was created in 2005 – Chapter 23 on ‘Judiciary and Fundamental Rights’ – and human rights, including child rights, are now monitored and assessed both under this chapter and under the political criteria (Iusmen 2014:115).

involves the EU's development and deployment of a set of clearly identified legal, policy, procedural, institutional and financial instruments, inspired by international human rights instruments (such as the CRC). Such measures have to be developed and interpreted within the confines of EU competence in policy sectors where the EU has the powers (exclusive, shared or supportive) to intervene. But it also demands some sensitive and challenging balancing of children's rights objectives with the broader, potentially competing objectives of market integration and economic growth. This is where the EU exercises the greatest potential to effect dramatic changes in the way that children's rights are perceived and disposed – above and beyond other international or national actors in fact. It is in a distinctly powerful position insofar as it wields unique legal, political and financial authority over its Member States and over the external regions that rely on its support. It has potent enforcement mechanisms, and unparalleled resources to support rigorous monitoring, data-collection and cross-national policy exchange and collaboration. It follows that if it can succeed in mainstreaming children's rights considerations into the textural spirit of all EU legal and policy making – including those areas that are of seemingly only tangential relevance to children's lives – then it is creating the context for a progressive 'normalisation' of children's rights; a context which regards respect for children's rights not just as the chance outcome of a niche set of legal or policy initiatives, but as absolutely integral to the broader success and sustainability of the EU.

Embracing the CRC

The magnitude of the EU's potential reinforces the importance of ensuring that any efforts to embed children's rights within its procedural, institutional, legal and policy architecture are firmly rooted in an ideologically persuasive framework. The explicit EU constitutional reference to the protection of children's rights as one of the core objectives of the EU (Article 3(3) TEU) and the panoply of children's rights measures included in the EU Charter of Fundamental Rights³ carry significant credence in this regard (Lamont 2014; Stalford 2012; McGlynn 2002: 392-94; Ruxton 2005: 21-22). This is further reinforced by the increasingly explicit allusions to the CRC in the substance of binding EU legislation (Stalford and Drywood 2011; Stalford 2012). But

3 The EU Charter of Fundamental Rights (Article 24) contains explicit references to child rights provisions in the CRC, such as child participation, protection and care for children's well-being as well as the principle of the 'best interests of the child' guiding all actions relating to children. Other Charter articles are also relevant for children, for instance Article 14 – right to education; Article 21 – non-discrimination; Article 32 – prohibition of child labour and protection of young people at work or Article 33 – family and professional life.

allusions are one thing; achieving meaningful positive impacts are another thing altogether.

The EU as a ‘Children’s Rights Actor’

The EU’s role as a child rights actor is examined in this book from two connected perspectives: first, as the development and adoption of EU-level *systems* (policies, laws, processes) aimed at the protection of children’s rights; and second, as a critical assessment of the *impact* of the EU’s actions on children’s rights protection at the national level.

What renders this book unique in the field of EU child rights scholarship is the variety of contributions –from academics, legal experts and child rights practitioners – as well as the interdisciplinarity of the chapters, which cover international law, European politics, public policy and childhood studies. Some of the contributions draw upon qualitative evidence collected as part of empirical research or anecdotal evidence collected through years of experience of working in the NGO sector. The CRC provisions and principles, other international human rights instruments and progressive theorisations of children’s rights provide primary reference points against which EU actions and performance as a child rights actor is being assessed.

The development of EU-level systems to protect child rights

The chapters included in the first section of the book scrutinise the extent to which existing EU systems facilitate the protection and promotion of children’s rights. Stalford’s chapter critically assesses the extent to which children can access EU-level justice remedies to hold Member States and the EU institutions themselves to account for alleged breaches of their rights. Her findings highlight the doublestandards of the EU in failing to provide children with basic access to justice at EU level, on the one hand, whilst, on the other, pursuing so vociferously the ‘child friendly justice’ agenda at the national level. Schuurman’s chapter partially responds to some of the concerns raised in Stalford’s chapter by making concrete suggestions as to how children’s rights could be mainstreamed in a more comprehensive and meaningful way into all areas of EU law and policy-making. Her suggestions are informed by the findings of interviews with key EU officials and by good practice examples at the domestic level. Lind-Haldorsson and O’Donnell’s chapter adds further support to a holistic, systemic approach to EU children’s

rights by scrutinising how the EU can add value to the development of more effective child protection systems across the Member States. Lamont's chapter, on the other hand, illustrates the important function that cross-border administrative structures, such as Central Authorities and the European Judicial Network, can and should play in reinforcing child rights principles when implementing EU family law.

The effects of EU actions (law, policy) on child rights

The second half of the book provides a critical and empirical analysis of how the current EU actions impact – directly and indirectly – on national child rights provisions and, more concretely, on children's lived experiences. Rap's chapter draws upon detailed cross-national comparative expositions of domestic juvenile justice processes to explore the extent to which they are amenable to current European initiatives pertaining to child friendly justice. Iusmen's chapter investigates the emergence of children's de-institutionalisation as an EU issue and the current EU policy on de-institutionalisation, as well as its shortcomings. How the rights of two distinct categories of children are protected and, indeed, corrupted by the operation of the EU's internal market preoccupations are examined in Drywood's and Ferreira's chapters. Drywood scrutinises the relevance of the EU's role in securing the protection of child rights in the recruitment of young foreign footballers, while Ferreira's chapter examines the extent to which the EU has achieved a satisfactory protection of child rights in the field of EU labour policy. Similarly, Savirimuthu's contribution reveals just how challenging it can be to achieve a healthy balance between protecting children and supporting the development of autonomous decision-making in an environment which is characterised by age-insensitive marketing and digital profiling. Finally, Vandenhole's chapter provides an insightful analysis of the strengths, weaknesses, opportunities and threats of deploying child rights-based approaches to EU development cooperation.

These chapters collectively provide fresh, critical insights into substantive issues that have come to characterise the EU children's rights agenda (such as child protection and child friendly justice). They also break new ground, exploring more niche, hitherto 'hidden' examples of cross-border child exploitation (such as online data protection and football recruitment). Crucially, they offer practical, methodological suggestions as to how administrative, legal and policy processes can be sensitised to children's rights so that they respond more effectively to the overarching EU children's rights agenda.

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