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Ultra Vires Acts by the Committee on the Rights of the Child and the New Optional Protocol to UNCRC

Analytical Report

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Executive Summary

This Report examines the issues around the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (UN document A/RES/66/138), such as:

- procedural flaws in its development;
- its undermining of domestic legislation and judicial systems;
- its erosion of the exhaustion of domestic remedies rule;
- its potential belittlement of the value of the family.

Due to the protocol granting the Committee new powers to consider complaints for UNCRC violations (including complaints by children), particular attention is given to past *ultra vires* (beyond its authority) acts by the Committee. The Report notes with concern that many CRC acts can be viewed as being:

- contrary to the principle of the sovereign equality of the UN member States (Article 2 of the UN Charter);
- beyond the mandate of the Committee;
- contrary to or not based on intergovernmental consensus.

In particular, its acts included:

- pressuring states to change their abortion laws irrespective of intergovernmental consensus and with no foundation in international human rights instruments;
- indirectly promoting controversial concepts with no established intergovernmental consensus behind them (legalizing same-sex sexual relationships, legal recognition of same-sex marriages and partnerships, decriminalization of prostitution);
- demanding that states should give children sexuality education regardless of and access to reproductive health services regardless of and without parental consent and knowledge, with no basis in UNCRC or other international human rights instruments whatsoever and contrary to the Cairo Programme of Action and the Beijing Platform for Action (both possessing a degree of intergovernmental recognition at UN level);
- using an *ultra vires* (beyond its authority) interpretation of UNCRC to unlawfully introduce a new 'obligation' for states parties (to outlaw any parental corporal punishment for children) not following from UNCRC itself, and then demanding compliance, up to the point of changing their national legislation;
- demanding of states (contrary to the principle of the sovereign equality of states and with no basis in UNCRC) ratification of international agreements hitherto not signed by them.

All these acts (documented in the Appendix), regardless of their ethical assessment, are shown to be *ultra vires* and must be recognized as violating the principle of sovereign equality and exceeding the treaty monitoring body mandate. The Committee's *ultra vires* acts, though not directly legally binding, seriously affect the legal regime in states parties to UNCRC. They affect national law enforcement

practice, changes to national legislation, and influence legally binding decisions by other international bodies.

Ultra vires acts by the Committee can seriously threaten the sustainability of international human rights framework, the sovereignty of states parties, cultural identity of their peoples, and the standing of the family, which is 'the natural and fundamental group unit of society and is entitled to protection by society and the State' (Article 16 (3) of the Universal Declaration of Human Rights), and, therefore, by the international community.

For states parties to recognize the new CRC power by signing and ratifying the Optional Protocol would, in these circumstances, seem impractical and dangerous.

The Report points out that to remedy the situation created by the ultra vires acts by the Committee, legitimately concerned states parties can employ a number of means, such as:

- refusing to ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure until a relevant reform of the Committee is taken place;
- exercising their right to issue interpretative declarations on UNCRC;
- exercising their right to point out the limits of the Committee's mandate replying to its requests for additional information related to periodic reports;
- warning the Committee of the possibility of their denunciation of UNCRC in case a relevant reform of its activities does not take place;
- actively participating in reforming UN treaty bodies to bring their activities into strict conformity with their mandates, to give it greater transparency, and to bring it under more effective states parties control.

These means can, after due assessment of the consequences of their implementation, be employed at the discretion of states to protect the rights of their sovereign peoples, the family, and their cultural, religious, and moral identity.

1. Optional Protocol to the Convention on the Rights of the Child on a communications procedure and the main problems inherent to it

The Optional Protocol to CRC on a communications procedure (UN document A/RES/66/138) was adopted by consensus first by UNHRC (17.06.2011), and then by the UN General Assembly (19.12.2011). It grants the Committee powers to receive and consider individual and group communications (complaints) for violations of UNCRC provisions (including complaints by children). Following the consideration of a communication by the Committee it is to prepare its views and recommendations.

As a result, new powers are granted to CRC by the Protocol. Although the Committee's decisions are not legally binding, they can seriously affect the legal regime in states parties. They can be used by intergovernmental agencies (i.e. UNICEF) and NGOs, both international and national, to exert serious pressure on the respective governments, which can lead to introduction of corresponding measures, and even changes to the national legislation.

In particular, recommendations and decisions by UN treaty bodies, though not themselves legally binding, are employed by international bodies with authority to make legally binding decisions in their practice[1].

In other words, powers given to the Committee by the Protocol are substantial and can be employed as an extra instrument of social and legal change. Therefore it is vital for the instrument itself to be free from defect and be put into reliable hands. However, both the quality of the Protocol and CRC's previous acts, brought into spotlight by its new powers, raise serious issues.

Some of these issues were raised in an official reply by the Russian Foreign Ministry to a local NGO inquiring of the prospects of the Russian Federation becoming party to the Protocol[2].

a) Procedural flaws in the development of the Protocol

> *'…We were pointing out substantial procedural flaws in this document's development, with amendments and proposals from a whole number of states being totally ignored. As a result, the Optional Protocol exceeds previously established international treaties, with many states taking issue with some of its statements'.*

[1] For example, under Article 46 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms states parties to it are legally bound by judgments of the European Court of Human Rights. Moreover, Article 32 (1) of ECPHR extends its jurisdiction to 'to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it'. However, recommendations, observations, and decisions made by UN treaty monitoring bodies, of no legally binding character themselves, have increasingly been referred to in its judgments by ECHR. A whole number of its recent judgments contain such references, for example Soltysyak v. Russia, no. 4663/05, 10.02.2011, para. 24; Kiyutin v. Russia, no. 2700/10, 10.03.2011, paras. 28-29; Giuliani and Gaggio [GC], no. 23458/02, 24.03.2011, para. 154; R.R. v. Poland, no. 27617/04, 26.05.2011, paras. 85-86; Stummer v. Austria [GC], no. 37452/02, 7.07.2011, para. 47; Bayatyan v. Armenia [GC], no. 23459/03, 7.07.2011, paras. 58-65; V.C. v. Slovakia, no. 18968/07, 8.11.2011, para. 83; Ergashev v. Russia, no. 12106/09, 20.12.2011, para. 99; Finogenov and others v. Russia, nos. 18299/03 and 27311/03, 20.12.2011, paras. 162-163; Gorovenky and Bugara v. Ukraine, nos. 36146/05 and 42418/05, 12.01.2012, para. 22; Fetisov and others v. Russia, nos. 43710/07 et al., 17.01.2012, para. 65; C.A.S. and C.S. v. Romania, no. 26692/05, 20.03.2012, para. 53; Konstantin Markin v. Russia [GC], no. 30078/06, 22.03.2012, para. 51.

[2] A reply to a media query concerning the prospects of Russia becoming party to the Optional Protocol to the Convention on the Rights of the Child on a communications procedure by Russian Foreign Ministry's official representative A. Lukashevitch http://www.mid.ru/brp_4.nsf/newsline/3AB939A9C3F9E61A442579C1005E52BC (retrieved 19.03.2012, our English translation)

b) Devaluation of national legislative norms

> *'In particular, the Optional Protocol allows receiving complaints from minors making no mention of their age and legal capacity as defined by national legislation. CRC wants to arbitrary judge the 'maturity' of underage applicants and the 'importance' of their communications'.*

c) Erosion of the exhaustion of domestic remedies rule

> *'Moreover, this Optional Protocol essentially erodes the fundamental principle of the necessity to exhaust all domestic legal remedies before submitting a communication to human rights treaty bodies. If a domestic judicial system 'is unlikely to bring effective relief', communications can be submitted to CRC bypassing it. Such phrasing allows CRC to dismiss virtually any preliminary legal proceedings as ineffective and unnecessary'.*

d) Potential belittlement of the value of the family

The Foreign Ministry's representative goes on to rightly point out that

> *'concerns about the 'pioneering' approach set in the Optional Protocol are shared not only by numerous state authorities, but also by human rights NGOs, including those campaigning for the protection of traditional family values. They think that turning children into 'complainants' can seriously undermine parental authority and the pedagogic role of the family'.*

As it is shown below, CRC has been exerting systematic pressure on states parties leading to the belittlement of the role of the parents and their rights, long established both in national family and education cultures and in national legal systems.

Allowing children to submit complaints to CRC on their own, the Protocol, effectively, assumes that the Committee is *a priori* better qualified to judge on their best interests and whether they are in need of protection than either their parents or the national legal system.

This approach, already quite controversial, definitely requires that there should be no major challenges to the Committee's competence, objectivity and compliance with UNCRC regulations and general principles of international law.

e) New CRC powers in view of its previous* ultra vires *acts

There is, however, another serious issue not raised by the Foreign Ministry's representative in his reply. CRC, unfortunately, has a history of *ultra vires* acts, repeatedly acting beyond its competence and mandate. Using so-called *general comments* and *concluding observations* on states parties' reports it repeatedly imposed on them new unjustified 'rights' and corresponding 'obligations' neither provided under nor following from international human rights instruments. A detailed analysis of a number of such cases follows.

2. *Ultra vires* acts by CRC

a) General applicable principles and norms

Analyzing the legal propriety of the Committee's acts, a number of basic norms and principles of international law must be taken into account:

i) The principle of the sovereign equality of states (UN Charter)

Each and every UN act must comply with the principle of the sovereign equality of states explicitly set forth in Article 2 of the UN Charter, of which for the purpose of this analysis Paragraphs 1 and 7 are of particular importance:

> **Article 2**
>
> The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.
>
> 1. The Organization is based on the principle of the sovereign equality of all its Members.
>
> 7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Vll.
>
> *UN Charter*

As a result, under the United Nations system member states retain full sovereignty in all matters within their domestic jurisdiction. Intervention in internal affairs of member states is allowed only if explicitly provided under or directly following from international treaties to which they are parties. This applies to international human rights law, too. Any acts by UN bodies or parties in breach of this principle are to be regarded as being *ultra vires* (beyond their authority).

ii) Intergovernmental consensus and the interpretation of international treaties

It readily follows from the principle of sovereign equality that UN bodies and parties are not authorized to create any regulation or obligation legally binding upon its member states. This also applies to UN treaty monitoring bodies.

Considering international human rights treaties by which they are authorized, UN treaty bodies, including CRC, can interpret them solely by reference to the texts of such treaties, and also to the applicable basic principles and norms of international law on interpretation of international treaties (in particular, provisions of the 1969 Vienna Convention on the Law of Treaties). Such interpretations, however, can not be legally binding.

Interpreting the text of an international treaty, they can also make reference to documents showing definite and universal intergovernmental consensus. Any interpretation of international treaties not following from their texts and failing to comply with or contrary to intergovernmental consensus must

be regarded as unlawful[3]. At the same time, the consensus itself can, of course, only be regarded as legitimate if it was reached on the basis of reliable information, without fraud, bribery, coercion, or any other instance of unlawful pressure perpetrated against its parties.

The question to what extent documents such as the *Cairo Programme of Action* (1994 Cairo International Conference on Population and Development) and the *Beijing Platform for Action* (1995 Beijing Fourth World Conference on Women) can be regarded as showing intergovernmental consensus remains somewhat debatable[4]. The following analysis makes use of these documents because they are the only international documents on so-called *reproductive rights* having some intergovernmental recognition at UN level[5]. Referring to them, reservations and statements made by UN member states during the adoption of these documents by the corresponding conferences must, of course, also be taken into account.

Likewise, referring to both of these documents one should always take into account the fact that they are not legally binding and are to be implemented at the discretion of each sovereign state only, with full consideration of its cultural heritage and moral and religious values of its peoples. Therefore, these

[3] Speaking of intergovernmental consensus, it should be noted that recently attempts have been made to redefine this term narrowing it down from the general consensus to the consensus of the majority of parties. This raises serious concerns and can threaten the stability of the whole United Nations framework.
Although there is currently no clear unified definition of the term given at UN level, its apparent meaning implies the absence of parties explicitly refusing to adopt a decision in question. In 1987 the following legal opinion was given by the Office of Legal Affairs of the United Nations Secretariat:

> 'There is no established United Nations definition of consensus. However, in United Nations practice, consensus is generally understood to mean adoption of a decision without formal objections and vote; this being possible only when no delegation formally objects to a consensus being recorded, though some delegations may have reservations to the substantive matter at issue or to a part of it.
> The fact that consensus is recorded does not necessarily mean that there is "unanimity", namely, complete agreement as to substance and a consequent absence of reservations. For example, there are numerous occasions where States make declarations or reservations to a matter at issue while not objecting to a decision being recorded as taken by consensus' (United Nations Juridical Yearbook, 1987, p. 174 ISBN: 92-1-133509-4 UN Sales No. 96.V.60)

It was followed in 2003 by another legal opinion given by same Office:

> 'As Member States are aware, however, it is the long-established practice of the General Assembly and its Main Committees to strive for consensus whenever possible. This means that, in the absence of an objection or a specific request for a vote, draft resolutions and decisions are adopted without a vote.
> <…>
> Thus, when the Chairman announces that, in the absence of any objection, may he take it that the Committee wishes to adopt the proposal without a vote, any delegation may block a consensus by lodging an objection or by specifically requesting a vote on the proposal as a whole. It is for the objecting delegation to formulate the grounds for its objection which, in any event, has the same effect as requesting a vote on the proposal as a whole' (United Nations Juridical Yearbook, 2003, p. 533 United Nations Juridical Yearbook, 2003 ISBN: 978-92-1-133767-9 UN Sales No. E.07.V.1)

In this respect great concern is raised by situations like the one that took place at the 2010 Cancún Climate Change Conference where the final document was adopted by 'consensus' disregarding formal objections by Bolivia. Its representative rightly pointed out that 'this will set a dangerous precedent of exclusion. It may be Bolivia tonight, but it could be any country tomorrow (cf. http://ictsd.org/i/news/bridgesweekly/99004/). Doubts regarding the legitimacy of such a 'consensus' look entirely justified.

[4] See, for example: Cornides Jacob, J.D., Natural or Un-Natural Law, Catholic Family and Human Rights Institute, 2010, p. 14 (http://www.c-fam.org/docLib/20100420_Un-Natural_Law_FINAL.pdf - retrieved 21.03.2012).

[5] Regarding the Cairo Programme of Action, see UN General Assembly resolution A/RES/49/128, regarding the Beijing Platform for Action UN General Assembly resolutions A/RES/5042, A/RES/50/203, and A/RES/51/69.

documents give no justification for exerting any kind of pressure on a sovereign state or interfering in affairs within its domestic jurisdiction.

As a result, endorsing the Cairo Programme of Action in its resolution (A/RES/49/128), the UN General Assembly explicitly stated that it does so

> 'Recognizing that the implementation of the recommendations contained in the Programme of Action of the International Conference on Population and Development 4/ is the sovereign right of every country, in accordance with its national laws and development priorities, with full respect for the various religious and ethical values and cultural backgrounds of its peoples and in conformity with universally recognized international human rights'.

The Beijing Platform for Action itself explicitly refers to this principle in Paragraph 9:

> 'The implementation of this Platform, including through national laws and the formulation of strategies, policies, programmes and development priorities, is the sovereign responsibility of each State, in conformity with all human rights and fundamental freedoms, and the significance of and full respect for various religious and ethical values, cultural backgrounds and philosophical convictions of individuals and their communities should contribute to the full enjoyment by women of their human rights in order to achieve equality, development and peace'.

iii) CRC mandate

In its activities, UN treaty bodies, including CRC, can only exercise the authority granted to them by states parties. Such an authority, or the mandate of a treaty body, is, as a rule, defined by the respective treaty or by its optional protocols. Treaty bodies can not assume authority beyond their respective mandates.

UNCRC defines the Committee's mandate relevant to its goals in its Articles 43-45. A number of important points should be emphasized:

- *The Committee has no right to make legally binding decisions.* Interacting with states parties, it can only request additional information relevant to their implementation of UNCRC (art. 44 (4)) and transmit to them 'suggestions and general recommendations' (art. 45 (d)). It should be noted that these suggestions and recommendations must be based on 'information received pursuant to articles 44 and 45 of the present Convention' (ibid.). Strictly speaking, they must not exceed its limits.
- *CRC has no right to interfere in internal affairs of a state party.* It follows from neither UNCRC nor other universally accepted intergovernmental treaties that the Committee is authorized to demand of a state actions not explicitly following from UNCRC provisions. Nor does it follow from the intergovernmental consensus. Similarly, it is does not follow from them that the Committee is authorized to interfere in matters of the state's ratification of new international agreements or of introducing changes to the national legislation not explicitly following from UNCRC provisions.

- *The Committee is not authorized to issue legally binding UNCRC interpretations*. Neither UNCRC provisions nor the intergovernmental consensus provide for such an authority.

This raises serious questions with the Committee in its 'general comments', in fact, giving general interpretation of UNCRC norms not based on information received from its parties' reports. Questions of even more serious nature are raised by the Committee's practice of criticizing state parties by citing its own interpretations contained in said 'general comments'.

The notion of its authority to interpret UNCRC being implied by the text itself does not stand up to criticism. Should states signing an international agreement wish to confer to the respective treaty body the authority to interpret its text, there is nothing preventing them from explicitly making the necessary provision, as was the case with the European Court of Human Rights under the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (arts. 30; 32 (1)). Sates parties to UNCRC, however, did not choose to make a similar provision granting CRC similar authority.

It is even more obvious that the Committee is not authorized to interpret UNCRC in a way that introduces new human rights and the corresponding obligations for states parties that are neither provided under nor are following from it.

An entirely justified declaration was made in Article 6 of the *San Jose Articles*, an international expert document[6]:

> 'Treaty monitoring bodies have no authority, either under the treaties that created them or under general international law, to interpret these treaties in ways that create new state obligations or that alter the substance of the treaties.
>
> Accordingly, any such body that interprets a treaty to include a right to abortion acts beyond its authority and contrary to its mandate. Such *ultra vires* acts do not create any legal obligations for states parties to the treaty, nor should states accept them as contributing to the formation of new customary international law'.

This is true for matters beyond 'a right to abortion'. In this respect serious concerns are raised by UN treaty bodies attempting to introduce into the sphere of international law (by means of 'general comments' and 'concluding observations') new controversial categories and notions (such as *sexual orientation*, or *gender identity*) or new state obligations not following from international treaties and definite intergovernmental consensus. Such acts are clearly being *ultra vires* and must be recognized as a serious abuse of the mechanisms of international law.

Even greater concern is raised by UN treaty bodies acting as some sort of 'global government', imposing new top-down norms and standards, alleging them to be already established, using misinformation or illegal pressure to force states to adopt them. Such acts can rightly be regarded as a violation of the principle of sovereign equality expressed in Article 2 of the UN Charter, and as a way of seizing the power from the sovereign peoples.

As a result, the following acts by UN treaty bodies must definitely be recognized as being *ultra vires*:

- exerting on states any kind of pressure aimed at them changing the national legislation or ratifying new international agreements unless directly following from the respective treaty;

[6] Hereinafter quoted from the official website www.sanjosearticles.com

- interpreting international treaties in a way inconsistent or contrary to their texts, norms of international treaty law, or intergovernmental consensus;
- attempting to present their interpretation of international treaties as a binding norm;
- attempting to introduce new 'human rights' and the corresponding state obligations not following from the respective treaty and definite intergovernmental consensus;
- directly or indirectly introducing into the sphere of international law notions and concepts with no established intergovernmental consensus behind them.

Unfortunately, as is shown below, UNCRC has been committing acts possessing all the aforementioned qualities of being *ultra vires*. The Report views many of these actions as being contrary to the spirit of the basic norms of international law and intergovernmental consensus documents on the family. This raises serious concerns, given that 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the State' (Article 16 (3) of the Universal Declaration of Human Rights), and, therefore, by intergovernmental bodies.

These actions question the Committee's credibility and threaten the sustainability of the whole international human rights framework.

b) Pressuring states concerning the liberalization of abortion law

UNCRC does not provide for a right to abortion. It does not employ the term *reproductive rights*. Moreover, its Preamble cites the *Declaration on the Rights of the Child* (Resolution 1386 (XIV), third paragraph of the Preamble) indicating that children have a right to legal protection before birth:

> 'Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "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"'.

The *San Jose Articles*, an international expert document, in its Article 5 rightly notes that

> 'There exists no right to abortion under international law, either by way of treaty obligation or under customary international law. No United Nations treaty can accurately be cited as establishing or recognizing a right to abortion.'

Likewise in Article 7 it says:

> 'There is no international legal obligation to provide access to abortion based on any ground, including but not limited to health, privacy or sexual autonomy, or non-discrimination.'

It should be emphasized that it follows from relevant documents of some intergovernmental standing at the UN that deciding on the legal status of abortion is the prerogative of national governments. As a result, the International Conference on Population and Development in its definition of *reproductive health* (art. 7 (2) of its Programme of Action) makes no reference to abortions. Moreover, Article 8 (25) of same Programme clearly specifies that

> 'Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process.'

As norms of international law do not contain a right to abortion, UN treaty bodies have no authority to impose changes to relevant national laws upon state parties. Speaking of UN treaty bodies in its Article 6, the experts behind the *San Jose Articles* certify that

> '…any such body that interprets a treaty to include a right to abortion acts beyond its authority and contrary to its mandate'.

Nonetheless, CRC, as well as other UN treaty bodies, repeatedly exerted pressure on states aimed at forcing them to review their respective national legislation concerning abortion.

For example, commenting on the 2001 Palau report, the Committee notes (CRC/C/103):

> 465. … The Committee recommends that the State party review its legislation concerning abortion, with a view to guaranteeing the best interests of child victims of rape and incest.. …

Commenting on the 2007 Kenya report, the Committee notes (CRC/C/KEN/CO/2):

> 49. The Committee … is concerned at the high rates of teenage pregnancies, the criminalization of the termination of pregnancies in cases of rape and incest…

Similar calls for reviewing national legislation concerning abortion were contained in concluding observations on reports by Uruguay (2007, CRC/C/URY/CO/2, para. 51-52), Mozambique (2009, CRC/C/MOZ/CO/2, para. 64), Nigeria (2010, CRC/C/NGA/CO/3−4, para. 62 (e)), Burkina Faso (2010, CRC/C/BFA/CO/3-4, para. 57), Sri Lanka (2010, CRC/C/LKA/CO/3-4, para. 55), El Salvador (2010, CRC/C/SLV/CO/3-4, para. 61 (d)), et al. (ref. Appendix).

These CRC acts were *ultra vires* and going beyond its mandate and the intergovernmental consensus.

c) Indirectly promoting concepts not backed by intergovernmental consensus

The Committee has been promoting concepts, notions, and measures not following from UNCRC provisions and with no established intergovernmental consensus behind them.

In particular, this concerns referring in its documents to the so-called *International Guidelines on HIV/AIDS and Human Rights* (E/CN.4/1997/37). This non-binding expert document contains a commentary wherein a whole number of controversial concepts and measures not following from UNCRC or other international agreements and with no established intergovernmental consensus behind them are promoted ostensibly for the purpose of protecting human rights and preventing HIV/AIDS infection:

> 'A right to abortion', absent from international law (Guideline 5 (f)):
>
> > 'Laws <u>should also be enacted</u> to ensure women's reproductive and sexual rights, including the right of independent access to reproductive and STD health information and services … <u>including safe and legal abortion</u> …'.
>
> Same-sex sexual relationships and legitimization of same-sex marriages or partnerships (Guidelines 4 (b) and 5 (h)):
>
> > 'Criminal law prohibiting sexual acts (including adultery, sodomy, fornication and commercial sexual encounters) between consenting adults in private should be reviewed, with the aim of repeal' (Guideline 4 (b)).

> 'Anti-discrimination and protective laws should be enacted to reduce human rights violations against men having sex with men … These measures should include providing penalties for vilification of people who engage in same-sex relationships, giving legal recognition to same-sex marriages and/or relationships and governing such relationships with consistent property, divorce and inheritance provisions. … Laws and police practices relating to assaults against men who have sex with men should be reviewed to ensure that adequate legal protection is given in these situations' (Guideline 5 (h)).

Decriminalization of prostitution (Guideline 4 (c)):

> 'With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing …'.

These principles and norms are not following from international human rights instruments, and the relevant decisions lie at the discretion of sovereign states.

Nevertheless, in its concluding observation CRC has repeatedly made references to this controversial document as the basis for its recommendations, which implies its regulatory character and indirectly promotes controversial norms and provisions contained therein. Such references were made in concluding observations on reports by Uganda (2005, CRC/C/UGA/CO/2, para. 52), Mexico (2006, CRC/C/MEX/CO/3, para. 53), Benin (2006, CRC/C/BEN/CO/2, para. 58), Ethiopia (2006, CRC/C/ETH/CO/3, para. 56), Thailand (2006, CRC/C/THA/CO/2, para. 58), Lebanon (2006, CRC/C/LBN/CO/3, para. 60), Tanzania (2006, CRC/C/TZA/CO/2, para. 49) , et al. (ref. Appendix).

These acts can be described as an unreasonable attempt by the Committee to indirectly impose on sovereign states norms exceeding intergovernmental consensus, and must be recognized as being *ultra vires*.

d) Exerting pressure aimed at the belittlement of the rights of the parents regarding sexual health and education of their children

UNCRC does not include norms for education of children and adolescents on subjects of sexual and reproductive health. Although Article 13 provides for 'freedom to seek, receive and impart information and ideas of all kinds', it can be subject to restrictions by law, in particular, 'for respect of the rights … of others'. Furthermore, Article 5 clearly documents the connection between the exercise by the child of the rights provided under UNCRC and the rights of their parents:

> 'States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, 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 recognized in the present Convention'.

Authors of the present Report regard Article 5 as implying that the child has a right to direction and guidance by their parents or legal guardians. Said right must be considered in view of the fact, acknowledged both in the Convention and in the Declaration on the Rights of the Child (Resolution 1386 (XIV), third paragraph of the Preamble), that

> '…the child, by reason of his physical and mental immaturity, needs special safeguards and care…'.

As a result, depriving the child of the direction and guidance of their parents or legal guardians can be regarded as a violation of the right of the child provided under Article 5 of UNCRC.

It should be noted that the Cairo Programme of Action and the Beijing Platform for Action are the only international documents directly dealing with issues of reproductive health promotion and sexuality education of children that have some intergovernmental recognition at UN level. The necessity to respect the corresponding rights of the parents is explicitly recognized therein.

Specifically, ICPD Programme of Action notes that

> 'Support should be given to integral sexual education and services for young people, with the support and guidance of their parents …' (7.37).
>
> 'Recognizing the rights, duties and responsibilities of parents and other persons legally responsible for adolescents to provide, in a manner consistent with the evolving capacities of the adolescent, appropriate direction and guidance in sexual and reproductive matters, countries must ensure that the programmes and attitudes of health-care providers do not restrict the access of adolescents to appropriate services and the information they need, including on sexually transmitted diseases and sexual abuse' (7.45).
>
> 'Sexually active adolescents will require special family-planning information, counselling and services, and those who become pregnant will require special support from their families and community during pregnancy and early child care. Adolescents must be fully involved in the planning, implementation and evaluation of such information and services with proper regard for parental guidance and responsibilities' (7.47).
>
> 'To be most effective, education about population issues must begin in primary school and continue through all levels of formal and non-formal education, taking into account the rights and responsibilities of parents and the needs of children and adolescents' (11.9).

Similar instructions are contained in the Beijing Platform for Action:

> 'Prepare and disseminate accessible information, through public health campaigns, the media, reliable counselling and the education system, designed to ensure that women and men, particularly young people, can acquire knowledge about their health, especially information on sexuality and reproduction, taking into account the rights of the child to access to information, privacy, confidentiality, respect and informed consent, as well as the responsibilities, rights and duties of parents and legal guardians 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 recognized in the Convention on the Rights of the Child…[7]' (107 (e))
>
> 'Recognize the specific needs of adolescents and implement specific appropriate programmes, such as education and information on sexual and reproductive health issues and on sexually transmitted diseases, including HIV/AIDS, taking into account the rights of the child and the responsibilities, rights and duties of parents as stated in paragraph 107 (e) above' (107 (g)).
>
> 'Design specific programmes for men of all ages and male adolescents, recognizing the parental roles referred to in paragraph 107 (e) above, aimed at providing complete and accurate

[7] A clear reference to Article 5 of UNCRC.

> information on safe and responsible sexual and reproductive behaviour, including voluntary, appropriate and effective male methods for the prevention of HIV/AIDS and other sexually transmitted diseases through, inter alia, abstinence and condom use' (108 (l)).

Hereby both the Cairo Programme of Action and the Beijing Platform for Action explicitly note the need in these matters to respect and observe the rights of the parents, in particular the rights of the parents (and the child) as provided under Article 5 or UNCRC. Moreover, as was already mentioned (Principle ii of Part 2 (a)), these documents are to be implemented at the discretion of each sovereign state only, with full consideration of its cultural heritage and moral and religious values of its peoples and communities[8].

It should also be noted that the right of the parents to guide their children in matters of their education is a fundamental right recognized in the Universal Declaration of Human Rights (Article 26 (3)):

> 'Parents have a prior right to choose the kind of education that shall be given to their children'.

Education on sexual and reproductive health ventures far into the area of cultural, religious, and moral values. As a result, the rights of the parents in this area provided under relevant UN human rights treaties should also be respected:

> 'The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions' (International Covenant on Civil and Political Rights, Art. 18.4).
>
> «The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions' (International Covenant on Economic, Social and Cultural Rights, Art. 13.3).

It follows from neither international human rights instruments, nor the intergovernmental consensus that the states are under obligation to educate the children on subjects of sexual and reproductive health without parental consent. Moreover, such acts can violate both the aforementioned fundamental rights of the parents and the right to parental direction and guidance in the exercise by the child of the right to education and the freedom to receive information.

Nonetheless, the Committee has been explicitly demanding that state parties provide children with access to both confidential sexual health counselling and services and sexuality education without the need for parental consent.

For example, in its General Comment No. 3 *HIV/AIDS and the Rights of the Child* (CRC/GC/2003/3) it recommends establishing health services that are '… confidential and non-judgemental, do not require parental consent …' (para. 20) and specifies, contrary to the legal principles of a number of states

[8] Said principle, in its turn, inevitably implies the necessity in helping the children to exercise their respective rights to fully respect the rights of their parents as provided under Article 26 (3) of the Universal Declaration Of Human Rights, Article 18 (4) of the International Covenant on Civil and Political Rights, and Article 13 (3) of the International Covenant on Economic, Social and Cultural Rights, referred to below.

(including Russia), that 'information on the HIV status of children may not be disclosed to third parties, including parents, without the child's consent' (para. 24).

In its General comment No. 4 *Adolescent health and development in the context of the Convention on the Rights of the Child* (CRC/GC/2003/4) the Committee continues with this policy demanding that (para. 28)

> '… States parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives ... In addition, States parties should ensure that they have access to appropriate information, regardless of their marital status and whether their parents or guardians consent'.

It further goes on to 'urge' states parties 'to develop effective prevention programmes, including measures … addressing cultural and other taboos surrounding adolescent sexuality' (para. 30), in effect, promoting free and irresponsible sexual behaviour.

These CRC recommendations cause particular anxiety in view of its UN-backed sexuality education programmes often proving highly controversial and causing serious concern, in particular, by:

- leading to early sexualization of children;
- belittling parental and family authority;
- promoting sexual freedom and risky sexual behaviour linked to increased health hazards;
- making false claims about 'a right to abortion' being a human right provided for by international law;
- implanting into the minds of the children controversial notions and ideas with no intergovernmental consensus behind them aimed at accepting as a norm all kinds of 'sexual orientation' and 'gender identity', and also the so-called 'sexual rights' with no basis in international human rights agreements[9].

Said programmes, promoted with the assistance of UN bodies, have met serious objections from sovereign states. For example, during the sixty-fifth session of the UN General Assembly the Russian Federation, criticizing the reference to UNICEF's *International Technical Guidance on Sexuality Education* made by a UN Special Rapporteur in his report, stated that

> 'As justification for his conclusions, he had cited numerous documents which had not been agreed to at the intergovernmental level, and which therefore could not be considered as authoritative expressions of the opinion of the international community. In particular, he referred to the Yogyakarta Principles and also to the International Technical Guidance on Sexuality Education. Implementation of various provisions and recommendations of the latter document would result in criminal prosecution for such criminal offences as corrupting youth' (A/C.3/65/SR.29, Para. 23).

[9] See, in particular, Special Report by Family Watch International *Comprehensive Sexuality Education: Sexual Rights vs. Sexual Health* http://www.familywatchinternational.org/fwi/documents/Special_Report_CSE_Revised_1_12.pdf (retrieved 21.03.2012)

To give another example of controversial concepts promoted within so-called 'sexuality education programmes', one can point out the so-called 2010 Cologne *Standards for sexuality education in Europe: a framework for policy makers, educational and health authorities and specialists* issued by the WHO Regional Office for Europe and the Federal Centre for Health Education[10].

Page 12 of this document reads: 'In this document, it was deliberately decided to call for an approach in which sexuality education starts from birth'. Ibid., page 31 notes that '[s]exuality education is based on a (sexual and reproductive) human rights approach' despite the fact that the notion of "sexual rights" is absent in generally recognized binding international treaties. Ibid., page 38 demands that children aged 0 to 4 be provided with information about 'enjoyment and pleasure when touching one's own body, early childhood masturbation'. Page 45 demands that children aged 9 to 12 be given information about their 'sexual rights, as defined by IPPF and by WAS'. A footnote refers to *Sexual rights: an IPPF declaration* by the International Planned Parenthood Federation (London, 2008) and the *Declaration of Sexual Rights* by the World Association for Sexual Health (Hong Kong, 1999). Notably, Principle 4 of the IPPF *Declaration*[11] states (p. 14) that '[s]exuality, and pleasure deriving from it, is a central aspect of being human, whether or not a person chooses to reproduce'. Provision 5 of the WAS *Declaration* describes 'the right to sexual pleasure': 'The right to sexual pleasure. Sexual pleasure, including autoeroticism, is a source of physical, psychological, intellectual and spiritual well being' [12].

Such recommendations explicitly contradict cultural, religious, and moral values of many families from various nations[13]. Imposing the use of such programmes without parental consent contradicts their rights provided under fundamental international instruments cited above, the rights of the children provided under UNCRC Article 5, and the intergovernmental consensus. It is no accident that the promotion of so-called 'comprehensive sexuality education' causes public, indeed, already international outrage[14].

It is echoed by negative expert assessment. For example, Dr. Krisztina Morvai, LL. M, Ph.D., a legal expert and, between 2003-2006, a member of the UN Women's Anti-discrimination Committee, in her briefing given at 6 September 2006 in UN Headquarters stated her preoccupation with

> '…The promotion of *"sex education"* for young teenagers, instead of education for moral responsibility for themselves and their partners; in other words, responsible partnerships, parenthood and family life. "Sex education" reduces human sexuality to a mere technicality

[10] http://www.bzgawhocc.de/pdf.php?id=061a863a0fdf28218e4fe9e1b3f463b3
[11] http://www.ippfwhr.org/sites/default/files/files/SexualRightsIPPFdeclaration.pdf (retrieved 21.03.2012)
[12] http://www2.hu-berlin.de/sexology/ECE5/was_declaration_of_sexual_righ.html (retrieved 21.03.2012)
[13] In the context of Russian culture, educating on these 'sexual rights' children aged 9 to 12 can be regarded as a form of molestation. Article 135 (3) of the Criminal Code of the Russian Federation specifies imprisonment for a period of 5 to 12 years as punishment for committing lecherous actions towards a person known to be under 12 years of age, while legal commentary explains that such actions may be both physical and intellectual (indecent talk, etc.). See, inter alia: Commentary on the Criminal Code of the Russian Federation, ed. by. V. Tomin and V. Sverchlov, 6th ed., Moscow, 2010, p. 445 (Комментарий к Уголовному кодексу РФ, под ред. В.Т. Томина, В.В. Сверчкова, 6-е изд., М.: 2010, с. 445).
[14] For instance, in February 2012 a parallel international youth meeting backed by a number of NGOs took place in UN Headquarters in New York, resulting in the Coalition for Protecting the Health and Innocence of Children being formed and the launch of the worldwide *STOP the Sexualization of Children!* Petition calling to cease the promotion and funding of 'comprehensive sexuality education' programmes. Cf. http://www.stopsexualizingchildren.org/ssc/petition.cfm (retrieved 21.03.2012).

– through the separation of "sex" from other elements of human relationships. While this has a damaging impact on both sexes, the damage is considerably larger in the lives of women and girls'[15].

It should be especially noted that Paragraph 198 (l) of the Beijing Platform for Action speaks of 'abstinence and condom use', showing abstinence-oriented sexual education to be part of intergovernmental consensus. However, the Committee's concluding observations make no reference to abstinence, speaking of condom use only (CRC/GC/2003/4, para. 30; CRC/C/BEN/CO/2, para. 58 (h); CRC/C/THA/CO/2, para. 58 (e), et. al., ref. Appendix).

A whole number of states were recommended to by CRC to incorporate sexuality education programmes in the school curriculum and introduce confidential sexual health counselling with reference to its General comment No. 3 and, therefore, implying that they should do so regardless of parental consent. Such recommendations are found in its concluding observations on reports by, to name but a few examples, the Russian Federation (2005, CRC/C/RUS/CO/3, para. 56), Uganda (2005, CRC/C/UGA/CO/2, para. 52 (c)), Jordan (2006, CRC/C/JOR/CO/3, para. 65), Trinidad and Tobago (2006, CRC/C/TTO/CO/2, para. 54 (c)), Saudi Arabia (2006, CRC/C/SAU/CO/2, para. 58), Hungary (2006, CRC/C/HUN/CO/2, para. 44), Columbia (2006, CRC/C/COL/CO/3, para. 71), et. al. (ref. Appendix).

A whole number of states were also recommended to by CRC to review their respective national legislation to provide children access to reproductive health services without the need for parental consent, which likewise has no basis in UNCRC and the intergovernmental consensus (see, for example, its concluding observations on reports by Bulgaria (2008, CRC/C/BGR/CO/2, para. 48 (d)) и Georgia (2008, CRC/C/GEO/CO/3, para. 47-48)).

All these CRC recommendations, as well as the aforementioned General comments Nos. 3 and 4, were in accordance with neither UNCRC nor the intergovernmental consensus, and therefore must be regarded as being *ultra vires*.

e) Outlawing parental corporal punishment for children: a case of unlawful introduction of a new state obligation

As stated previously citing Article 6 of the *San Jose Articles*, UN treaty monitoring bodies have no authority to interpret respective treaties in ways that introduce new state obligations or change the essence of said treaties. 'Incorporating' into a treaty a new right or obligation by means of interpretation, said treaty body acts *ultra vires* (beyond its authority) irrespective of the content of the norm, thereon unlawful, being approved or disapproved.

In 2006 the Committee has issued its General comment No. 8 *The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)* (CRC/C/GC/8). Said document gives UNCRC an interpretation introducing a new obligation for its states parties: to outlaw all forms of corporal punishment of children, including parental (para. 18):

[15] Dr. Krisztina Morvai, LL.M, Ph.D., Respecting National Sovereignty and Restoring International Law: The Need to Reform UN Treaty Monitoring Committees, September 6, 2006 – Briefing* at United Nations Headquarters, New York, http://fota.cdnetworks.net/pdfs/Krisztina-Morvai-statement-final.pdf (retrieved 21.03.2012).

> ‘Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them’.

Irrespective of views on corporal punishment of children, this CRC act must be recognized as being *ultra vires*. Said *General comment* openly admits that such an obligation was not implied by states parties to UNCRC (para. 20):

> ‘Article 19 and article 28, paragraph 2, do not refer explicitly to corporal punishment. The *travaux préparatoires* for the Convention do not record any discussion of corporal punishment during the drafting sessions’.

Therefore this is a case of CRC introducing a new obligation by means of interpreting UNCRC.

It should be noted that the subject of corporal punishment of children did figure in preliminary discussions on the 1959 UNDRC draft by the UN Commission on Human Rights. A motion to outlaw corporal punishment of children in schools was put to vote and subsequently defeated by the Commission. Its report documents (E/CN.4/789) that

> ‘178. The Commission rejected by 9 votes to 3, with 6 abstentions, the amendment submitted by the Soviet Union (E/CN.4/L.526) calling for the insertion of the following sentence after the first sentence:
>
> "In particular, the child shall not be subjected to corporal punishment in schools."’.

Therefore, in the only instance a proposal to outlaw pedagogic corporal punishment was made during the discussion of UNDRC (a predecessor to UNCRC), it was rejected by the Commission on Human Rights.

In its interpretation, the Committee also failed to consider that it contradicts the general rules of international treaty interpretation under Article 31.1 (b) of the Vienna Convention on the Law of Treaties:

> ‘1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
>
> 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
>
> …
>
> (b) <u>any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty</u>’.

It should be noted that, acceding to UNCRC, the Republic of Singapore made a following interpretative declaration:

> ‘The Republic of Singapore considers that articles 19 and 37 of the Convention do not prohibit … the judicious application of corporal punishment in the best interests of the child’ (CRC/C/2/Rev.8, Singapore).

Not being a reservation, this declaration forms part of the context for interpreting UNCRC. In this regard, the interpretation given in CRC's *General comment No. 8* must also be recognized as being unlawful and *ultra vires*. Such interpretations, as Article 6 of the *San Jose Article* rightly notes, 'do not create any legal obligations for states parties to the treaty, nor should states accept them as contributing to the formation of new customary international law'.

Likewise, attempts to interpret Article 37 of UNCRC as forbidding any kind of corporal punishment, including parental, contradicts the interpretation of international norms given by ECHR. Specifically, in directly follows from ECHR judgments on *Tyrer v. the United Kingdom* (Application No. 5856/72, judgment of 25 April 1978) and *Costello-Roberts v. the United Kingdom* (Application No. 13134/87, judgment of 25 March 1993) that not all types of corporal punishment can be regarded as 'inhumane' or 'degrading'. Moreover, the idea of harmful consequences of any kind of corporal punishment of children fails to take into account the whole range of existing scientific data on the matter[16].

Nevertheless, drawing on its unjustified interpretation, CRC, having had published its *General comment No. 8*, has repeatedly demanded of states to outlaw all kinds of corporal punishment of children, including parental. To cite but a few examples: concluding observations on reports by the Russian Federation (2005, CRC/C/RUS/CO/3, paras. 36, 37 (a), (b)), Uganda (2005, CRC/C/UGA/CO/2, paras. 39-40), Guatemala (2010, CRC/C/GTM/CO/3-4, paras. 53-54), Czech Republic (2011, CRC/C/CZE/CO/3-4, paras. 39-40), Cuba (2011, CRC/C/CUB/CO/2, paras. 36-37), Cambodia (2011, CRC/C/KHM/CO/2-3, paras. 40, 41 (a, b)), Belarus (2011, CRC/C/BLR/CO/3-4, paras. 39-40), et. al. (ref. Appendix[17]).

In view of the interpretative declaration the Republic of Singapore made acceding to UNCRC, demands aimed at this state look particularly surprising. For example, in the concluding observations on its report (2011, CRC/C/SGP/CO/2-3, para. 40 (a)), the Committee points out that

> '40. In light of the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee recommends that the State party:
>
> (a) Prohibit unequivocally by law, without any further delay, all forms of corporal punishment, including caning, in all settings'.

Given the Republic of Singapore's declaration, such recommendations must be recognized as clearly violating the principle of the sovereign equality of states provided under Article 2 of the UN Charter.

In this context, even more portentous is its General comment No 13 *The right of the child to freedom from all forms of violence* (2011, CRC/C/GC/13). Therein CRC does not restrict itself to recommendations, but proceeds to exert direct and severe pressure on states, noting in its Paragraph 41 that

> '41. State parties that have not yet done so must:
>
> (d) Review and amend domestic legislation in line with article 19 and its implementation within the holistic framework of the Convention, establishing a comprehensive policy on child

[16] See. for example: Larzelere R., Kuhn, B., Comparing Child Outcomes of Physical Punishment and Alternative Disciplinary Tactics: A Meta-Analysis, Clinical Child and Family Psychology Review, vol. 8 Num. 1, 2005, p. 1-37

[17] Due to the wide extent of CRC's promotion of this norm, only selected texts are adduced therein.

> rights and ensuring absolute prohibition of all forms of violence against children in all settings and effective and appropriate sanctions against perpetrators'.

Herein the Committee goes on to demands that states parties do not merely review their national legislation in accordance to its unlawful interpretation of UNCRC, but also prosecute each and every person acting contrary to this interpretation. Such a demand constitutes a clear and definite violation of the principle of sovereign equality.

Irrespective of views on corporal punishment of children, these CRC acts must be recognized as being *ultra vires* and undermining the international human rights law framework. They violate the principle of legal certainty, because states parties to the agreement can not foresee its future legal consequences.

This interferes with the Rule of Law, one of the fundamental principles of the law. In her briefing given at September the 6th 2006 in UN Headquarters, Dr. Krisztina Morvai, LL. M, Ph.D., a legal expert and, between 2003-2006, a member of the UN Women's Anti-discrimination Committee, describes this conflict:

> 'One of the basic principles of the Rule of Law is that interpretations of the law must be coherent and consistent, and decisions based on the law must be predictable and foreseeable. However, when the body/collection of interpretations of the different Articles of UN Human Rights Treaties … available in the form of concluding comments, recommendations or observations by the treaty-based bodies to the States Parties – are examined, they are *largely incompatible with this fundamental principle of the Rule of Law*'[18].

Acting in such a manner, the Committee turns UN bodies into some sort of 'global government' imposing on states new norms and obligations irrespective of their consent and the opinion of their sovereign peoples.

f) Exerting pressure on states in matters of their ratification of new international agreements and violating the sovereignty of UNCRC state parties

As it was noted above, it does not follow from UNCRC text and, in particular, from the Committee's mandate that it has the authority to in any way interfere in matters of ratification of new international agreements by a state. A number or UNCRC norms do imply encouraging 'international cooperation', which, however, does not presume desirability or commitment to ratify new international agreements. The only direct reference to new international treaties is to be found in its Article 27 (4):

> 'States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements'.

[18] Dr. Krisztina Morvai, LL.M, Ph.D., Respecting National Sovereignty and Restoring International Law: The Need to Reform UN Treaty Monitoring Committees, September 6, 2006 – Briefing* at United Nations Headquarters, New York, http://fota.cdnetworks.net/pdfs/Krisztina-Morvai-statement-final.pdf (retrieved 21.03.2012).

Taking this into account, only cases where the Committee recommends states parties to ratify international agreements on the support of the child by parents living in a different state, including maintenance payments, can be regarded as being within CRC authority.

UNCRC provides no justification for the Committee to recommend its states parties to ratify other international agreements obligation to accede to which does not directly follow from UNCRC or the intergovernmental consensus.

The Committee, however, has repeatedly recommended states parties to ratify various international agreements directly unrelated to UNCRC; in a number of instances, rather insistently.

For example, in its concluding observations on the report by the Republic of Singapore (2011, CRC/C/SGP/CO/2-3, para. 49 (c)) CRC demands that the state party must

> '(c) Ratify, without delay, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption'.

In 2005 similar recommendations to ratify new international agreements were directed at Russia (CRC/C/RUS/CO/3):

> '43. The Committee recommends that the State party ratify the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. …'.
>
> '69. … The Committee further recommends that the State party further its efforts to clear mines and ratify the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction'.
>
> '83. The Committee encourages the State party to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the Council of Europe Convention on Action against Trafficking in Human Beings'.
>
> '87. The Committee welcomes the State party's signature and planned ratification of the Optional Protocol to the Convention on the involvement of children in armed conflict and notes that the State party is considering signing the Optional Protocol on the sale of children, child prostitution and child pornography. The Committee urges the State party to pursue and complete its plans in this respect and to ratify the two Optional Protocols to the Convention'.

It should be noted that it was probably due to these recommendations that in 2011, in spite of serious objections and questions raised by representatives of the parent and family community, Russia did ratify the 1993 Hague Convention.

In 2011 no fewer than 11 states received CRC recommendations to ratify new international agreements contained in its concluding observations (ref. Appendix).

Particular concerns are raised by the phrasing adopted by CRC in its General comment No 13 *The right of the child to freedom from all forms of violence* (2011, CRC/C/GC/13). Therein (para. 41) the Committee went from a language of recommendation to that of demand:

> '41. State parties that have not yet done so must:
>
> (a) Ratify the two Optional Protocols to the Convention, and other international and regional human rights instruments that provide protection for children, including the Convention on the Rights of Persons with Disabilities and its Optional Protocol and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
>
> (b) Review and withdraw declarations and reservations contrary to the object and purpose of the Convention or otherwise contrary to international law'.

By using such phrasing and making on states parties unjustified demands to ratify new international agreements, CRC is in clear violation of the principle of sovereign equality documented in Article 2 of the UN Charter. In this instance the Committee, in effect, without any justification acts as a regulative body superior to state parties.

Introducing in its general comments new norms by means of UNCRC interpretation, imposing them on states parties through its concluding observations on their reports, demanding of them ratification of new international treaties, the Committee, in effect, begins to substitute the Convention with its own decisions and opinions.

This causes serious concern and, should it continue this line of action, questions CRC's credibility. There is no doubt that in these circumstances new powers granted to CRC through the Optional Protocol to the Convention on the Rights of the Child on a communications procedure would be used by it to further impose upon states through direct of indirect pressure new norms not following from UNCRC[19].

As a result, granting the Committee new powers by signing and ratifying the Protocol poses a threat to the sovereignty of states parties and the standing of the family therein.

[19] Unlawful acts by UN treaty monitoring bodies, including CRC, received negative feedback from Russian and Ukrainian civil society representatives, who found them containing 'anti-family tendencies'. Following international public hearings, in their *Saint Petersburg Resolution* adopted on 24 April 2011 and endorsed by 126 NGOs from Russia and Ukraine, they call upon world governments to abstain from endorsing, signing, and ratifying the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Cf. http://blog.profamilia.ru/docs/Saint-Petersburg-Resolution-UN-English.pdf (retrieved 21.03.2012)

3. Possible action by UNCRC states parties

Aforementioned *ultra vires* acts by CRC raise serious questions concerning the role of this treaty monitoring body and its future credibility if left as it is.

To remedy this situation states parties to UNCRC may employ various means at their disposal:

a) Refusing to ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure

In this situation, recognizing additional CRC powers granted under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure can, as was noted above, pose a danger to the sovereignty of states parties, cultural identity of their peoples, and the standing of the family.

In these circumstances, signing and ratifying the Protocol by states parties makes a dangerous and impractical step. States parties may, referring to some or all of the aforementioned ultra *vires* acts by CRC, abstain from signing and ratifying said Protocol. Reforming this and other UN treaty bodies to give their activities greater transparency and accountability to states parties, and reviewing their procedures (through amendments to UNCRC or otherwise) to exclude the possibility of further *ultra vires* acts exceeding the Committee's mandate can be presented as the condition for recognizing its new powers.

b) Using interpretative declarations

States parties can also use another international legal instrument, namely, interpretative declarations to UNCRC. In its interpretative statement, a state party can document its understanding of the treaty's relevant provisions. In contrast to reservations that must precede or be tied to the ratification of a treaty, international treaty law provides no such limitations to the states' discretion to make interpretative declarations even after a treaty is ratified. Though not legally binding for other states parties, such a declaration may prove a valuable contribution to forming the context of UNCRC interpretation. Moreover, these declarations can be a potent counterforce to *ultra vires* interpretations by CRC.

Interpretative declarations may pave the way for achieving a universal understanding of international human rights instruments that would exclude from the sphere of human rights controversial concepts and notions, and give international legal norms an interpretation serving the interests of the natural family, which is 'the natural and fundamental group unit of society and is entitled to protection by society and the State' (Article 16 (3) of The Universal Declaration of Human Rights).

c) Exercising the possibility to denounce the Convention

Article 52 of UNCRC provides each state party the possibility to denounce it. When a treaty monitoring body reverts to *ultra vires* acts to promote controversial means, concepts, and notions with no established intergovernmental consensus behind them, this possibility can prove an important instrument of making an impact on the situation.

A state party can notify the Committee of its intention to invoke UNCRC Article 52 unless the activities of the respective treaty body are not brought into line with UNCRC norms and general principles of

international law. Such a note may provide serious incentive for the relevant reform of the said treaty body to take place.

Exercising this right, undoubtedly, has certain risks and penalties, but when state sovereignty, cultural identity of its peoples, and the family, the 'natural and fundamental group unit' of any society, is under threat, they may be regarded as justified.

d) Exercising their right to point out the limits of the Committee's mandate replying to its requests for additional information for use in periodic reports

Under Article 44 (4) of UNCRC, the Committee is entitled to 'request from States Parties further information relevant to the implementation of the Convention'. Each time these requests contain references to its interpretations of UNCRC or demands that exceed its authority, states parties may identify these issues in their submissions. This enables them to indicate the need to bring the Committee's activities back into limits prescribed by UNCRC while staying within the procedure of periodic report review. Pointing out limits to CRC's mandate can be employed each time its requests contain the usual *ultra vires* demands. For example, in reply to a request demanding why has no review of national legislation concerning abortion, incorporation or expansion of sexuality education in the school curriculum, ban on parental corporal punishment of children, etc. took place, a state party can clearly point put that there is no international legal obligation for it to do so.

e) Actively participating in reforming UN treaty bodies

It seems obvious that states parties need to press for making the international human rights law framework and the respective UN treaty bodies free from misuse aimed at imposing artificial 'rights' and 'obligations' not following from international agreements and with no intergovernmental consensus behind them.

International agreements must guarantee those human rights and human rights standards that are indeed universal and unanimously accepted by states parties to them. They must not be used for exerting pressure on states parties with the aim of making them accept systems of values, policies, and practices alien to their cultures and contrary to the will of their sovereign peoples. Otherwise the international human right framework will cease to be an instrument of peace and stability and become an instrument of cultural neo-colonialism and ideological abuse of sovereign states.

This demands from states a more active and consistent commitment to reforming UN treaty bodies to

- prevent them turning from supporting bodies into supranational structures, a form of undemocratic and authoritarian 'global government';
- give their activities greater transparency and consistency;
- guarantee they act within the authority of their mandates;
- prevent their *ultra vires* acts being given legally binding character;
- ensure their accountability to states parties;

- guarantee that their activities correspond to the interests of the family, 'the natural and fundamental group unit of society and is entitled to protection by society and the State' (Article 16 (3) of The Universal Declaration of Human Rights).

Unless concerned states parties implement these measures, *ultra vires* acts by UN treaty bodies can become a real threat to the sustainability of the whole international human rights framework and the whole of international community.