

Children's rights and educational policy in Europe: the implementation of the United Nations Convention on the Rights of the Child

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This article aims to shed light on the impact of the United Nations Convention on the Rights of the Child (CRC) on education policy in Europe. The findings are based on a documentary analysis of the published reports of the Committee on the Rights of the Child (the Committee) on the implementation of the education rights in the CRC in every EU state. This included: a review of the state of children's rights to education in Europe as perceived by the Committee; a summary of the Committee's key recommendations for governments; and an assessment of whether the CRC can be considered to have influenced domestic education law and policies. The findings suggest that the CRC is having an impact on domestic education policy and that the child rights framework could be harnessed further by those seeking to influence government. The article concludes by reflecting on the factors which affect the processes of translating the CRC into policy and practice and explores the role that educationalists, both academic and practitioners, might play in its implementation.

Keywords: *children; rights; policy; Europe*

Introduction

The United Nations Convention on the Rights of the Child (the CRC) (UN, 1989) has been in force for over 20 years, a time span which encompasses the lives of a complete generation of school children. Give that the CRC contains the most comprehensive international statement of rights to and in education and is also the

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most widely endorsed human rights treaty in the world, it might be expected that it will have engendered positive changes in the experience of children's lives at school in the signatory nations, a group which includes every member of the European Union (EU). While these 27 states have diverse social, economic and political profiles, they provide an interesting and relatively coherent group of countries in which to reflect upon the impact of children's rights on education policy. All have compulsory education systems and all are facing similar challenges in education in terms of improving access and academic attainment as well as addressing issues of equality and cultural diversity. While some of the challenges which are affecting the education systems within individual states are a product of the EU itself (in particular, the founding principle of the free movement of people and its implications for the education of the children of migrant workers), Europe has its own regional human rights instruments, most notably the European Convention on Human Rights (ECHR), which have been influential in shaping common understanding of children's rights and education (Kilkelly, 1999). These factors combine to make the region an interesting sub-set of United Nations (UN) countries in which to reflect upon the implementation of children's rights within education.

While it is common practice in discussions of children's rights to contrast the rhetoric of duty-bearers (states' promises) with the reality on the ground for rights-holders (in this case children's experience) there continues to be a dearth of research investigating the extent to which the principles of the CRC are being implemented in practice: empirical evidence of human rights implementation is scarce generally (Coomans *et al.*, 2009) and particularly rare in the context of education (Tomashevski, 2003). Given that the ultimate worth of a rights framework lies in the way in which its values are internalised and replicated by signatory states, this article aims to shed light on the efficacy and impact of the implementation of the CRC within the particular context of education. It begins with an overview of what is distinctive about the rights specific to education and the ways in which these are protected within the CRC. This is followed by a documentary analysis of the published reports of the Committee on the Rights of the Child (the Committee) on the implementation of the education rights in the CRC in every EU state. The focus of this analysis is three-fold: to review the state of children's rights to education in Europe as reported by the Committee; to identify the Committee's key recommendations for governments; and to assess whether the CRC has in fact influenced education law and policy. The article concludes by reflecting on the factors which impact on the processes of translating the CRC into education policy and practice and explores the role that educationalists, both academic and practitioners, might play in its implementation.

At the outset, it should be stated that the discussion which follows proceeds on two basic premises. The first is that the CRC is not a perfect vehicle for the realisation of children's rights in education, neither in its substantive articulation of those rights nor in its procedures for enforcement (Kilkelly & Lundy, 2006). Like all human rights instruments, the CRC is a politically negotiated compromise of

what governments were prepared to accept as minimum standards of provision to children (Freeman, 2000). However, even though the substantive rights to education are often worded broadly and in some cases qualified heavily, it remains the most comprehensive, widely known and generally accepted articulation of school children's rights across the world. Thus, notwithstanding its limitations, the article assumes that international human rights law should make a difference to the way in which states choose to provide schooling to children living within their territories. Human rights may be only one of a number of values frameworks that seek to address inequity and promote social justice. However, the added value of human rights *law* is that it provides a potentially very powerful vehicle for impacting on public policy. This is because the international conventions are binding legally on the states which ratify them and have integral frameworks for monitoring and review which enable states to be held to account in international fora for their failure to comply with their international commitments. In the light of this, the article aims to explore the extent to which this process does in practice influence state action in the context of education.

Education rights and the CRC

The right to education is one of the most widely accepted of all human rights provisions, having been a consistent feature of international human rights treaties since the establishment of the UN (Beiter, 2006). The multi-faceted nature of the right means that it cannot properly be described as a simple right 'to' education in the way that there is a right to an adequate standard of living or access to health-care. Rather, it has become common to refer to it as a collection of rights which taken together constitute rights *to*, *in* and *through* education (Verhellen, 1993). Prior to the CRC, the most comprehensive statement of the right 'to' education was in the International Covenant on Economic, Social and Cultural Rights (ESCR), Article 13 of which places obligations on states to make elementary education widely available and to develop different forms of secondary education (UN, 1966). However, the most influential articulation of the right within Europe has been the ECHR, not least because this provides for a right of individual petition to the European Court of Human Rights (ECtHR). Article 2 of the First Protocol of the ECHR states that 'no-one shall be denied a right to education'. This negative formulation was interpreted by the ECtHR in a series of cases to mean that the right is one of access to whatever the state provides not to any particular form of education, the net effect of which is that few education cases taken under the ECHR have been successful (Bradney, 1999; Harris, 2005).

In contrast, the CRC makes provision for education rights in a way that reflects more fully its complexity and significance. The right 'to' education in Article 28 is not phrased in the negative as in the ECHR. Rather it expands on Article 13 of the ESCR through an additional provision requiring states to encourage regular attendance at school and reduce drop-out rates. It also addresses a significant aspect of children's rights 'in' education by requiring states to take measures to

ensure that school discipline is administered in a manner consistent with the child's human dignity and other CRC rights. Likewise, Article 29 expands on children's rights 'through' education: not only must education be directed to the development of the child's personality and respect for human rights and preparation for life in a free society in a 'spirit of understanding, peace, tolerance, equality of the sexes and friendship among all peoples', but it must also develop respect for the child's parents and culture as well as the country in which they are living, the country from which they originate and for civilisation different from his or her own (Article 29(c)).

Within the rest of the CRC, 'education' is mentioned a further five times in relation to particular groups of children (the disabled, child workers and those in detention) and in relation to particular forms of education (health education and education about drugs). Moreover, and this is perhaps most significant of all, each of the other rights in the CRC are enjoyed by the child wherever they are and, in particular, are not lost because a child enters the school gate (UN, 2001). So for instance, students enjoy their civil rights to freedom of conscience, privacy and expression as well as protection from abuse and neglect and cruel, inhuman and degrading treatment. Moreover, all of this must be provided without discrimination (Article 2); must give his or her views due weight (Article 12); and his or her best interests must be a primary consideration in all decisions affecting him or her (Article 3). While these provisions, like other human rights standards, are often worded very broadly, their remit and force is strengthened by the fact that they need to be applied collectively and interpreted teleologically, a process supported by the fact that the Committee issues detailed General Comments expanding on their meaning (its first was on the aims of education in Article 29) (Kilkelly & Lundy, 2006).

In sum, the extent of rights in, to and through education as detailed in the CRC is significant and places a substantial burden on those who have agreed to implement its principles in domestic law and policy. The ongoing evidence of breaches of children's rights throughout Europe (European Commission, 2010) begs the question as to how states can sign up to international commitments such as those in the CRC when they are either not able or not willing to deliver them, the so-called abyss between 'should' and 'is' identified by Katarina Tomaševski, the UN's first Special Rapporteur on the Right to Education (Tomaševski, 2001). The answer lies in part in the legal concept of 'progressive realisation', an overriding principle of the CRC which requires states to implement rights 'to the maximum extent of their available resources and, where needed, within the framework of international cooperation' (UN, 1989, preamble). While this means that states have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realisation of the right, what can be expected of the state will vary in particular contexts and over time (UN, 2000). A crucial factor in the success of a strategy of progressive realisation is a set of enforcement mechanisms which ensure that there is a process for identifying breaches, compliance is being monitored independently and that there is sustained international pressure

to advance. For the CRC, this is intended to be achieved primarily through periodic reporting to the Committee on the Rights of the Child.

Monitoring the implementation of the CRC in the EU

Periodic reporting by the Committee is the primary enforcement mechanism of the CRC, as it is for most other UN Human Rights Treaties. Every five years states are required to reflect on their progress in implementing the CRC according to reporting guidelines which specify the information that the state is required to submit (Article 44). In education, the Committee asks for relevant and updated information in respect of laws, policies and their implementation, quality standards, financial and human resources, and any other measures to ensure the full enjoyment of the respective rights from early childhood to tertiary and vocational education and training, in particular by children in disadvantaged and vulnerable situations (UN, 2010). Specific issues to be addressed by the states party are: the right to education, including vocational training and guidance (Article 28); the aims of education (Article 29) with reference also to quality of education; the cultural rights of children belonging to indigenous and minority groups (Article 30); and education on human rights and civic education. The Committee also welcomes submissions from other interested parties, including non-governmental organisations, many of whom work collaboratively to produce an alternative report often involving children meaningfully in the process of compiling it (see, for example, Children's Rights Alliance for England, 2008). The Committee conducts a hearing where it questions state officials on their progress and takes evidence from other parties, at the conclusion of which it publishes its 'concluding observations'—reports about the individual state's progress in implementation. While the scope and depth of the reports is limited by the time and space available, the observations, along with the states parties' self-evaluations, provide rich insights into the state of children's rights and educational policy in each signatory state.

For the purposes of this paper a documentary analysis was conducted of the 27 most recent concluding observations for each EU state. The date of reports range from 2000 to 2011. For most states, it was their second periodic report, although some states have only been reported upon once and others have had their fourth periodic report (Sweden, Denmark, Romania and the UK, although the latter two combined their third and fourth). The concluding observations provide a reliable focus for documentary analysis: they are official documents, written by a single body of experts and publicly available online.¹ This facilitated access to a complete sample of all of the countries within a specific geopolitical region—the EU. The analysis concentrated on the Committee's observations about education identifying (a) common areas of criticism in relation to education and (b) recurring recommendations for education law and policy. In each case, a set of themes was identified (shaped to a large degree by the CRC itself and the Committee's reporting guidelines). Within these, comments were quantified and issues specific to individual countries were noted. Where something was commended or something

distinctive noted a follow-up analysis was conducted of the states parties' own report for further detail about the legal or policy development. In this way, a straightforward content analysis was able to address the first two research questions: 'What is the current state of children's rights in education in Europe from the perspective of the Committee on the Rights of the Child?' and 'What are the Committee's key recommendations for education policy-makers?'. The third question ('What impact has the CRC had on education law and policy on Europe?') required further analysis and interpretation as it is not addressed directly in the reports. Rather, evidence of this was inferred from changes noted across time in both the concluding observations and the self-evaluations of individual states parties.

While the Committee's reports present an independent evaluation of policy and practice against an agreed framework of international standards, their evidential basis, their purpose and their audience has to be borne in mind (Prior, 2003). Not only do they need to be concise and accessible to fulfil their role in publicising breaches amongst rights-holders but they are to a large extent dependent on the information presented to them by states parties and others which can be both *ad hoc* and lacking in independence and criticality. They cannot therefore be regarded as a complete factual account of the state of children's rights in signatory states but a reliable evidence base of independent expert *opinion* on the issue. The states parties' self-reports are similarly, if not more, limited. Both sets of documents are social products which entail deliberate presentations and interpretations of a reality (Prior, 2003) produced by their authors for particular audiences and purposes which in both cases are inherently political. States will be conscious of the need to present themselves as making meaningful progress in the implementation of the CRC. For the Committee, its key function is to hold the state to account, while encouraging realistic progress and conveying consistent messages about the requirements of the CRC. Nonetheless, while bearing this in mind, the analysis of the published UN reports still yields valuable insights into: the perceived state of children's rights in education across the EU ('what is'); the expectations the Committee has of individual states ('what should be'); and ultimately the extent of the effect the CRC has been having on domestic educational policy ('bridging the abyss').

What is

It is widely accepted that the first step towards addressing human rights abuses lies in identifying and exposing them, a process which is premised on the concept of the 'mobilisation of shame' (Drinan, 2001). The publication of information on recalcitrant states' records on human rights is a deliberate strategy employed frequently in human rights regime design. Thus, in the context of children's right to education, the Committee's monitoring process plays the key role: identifying areas where the signatory state is falling short of the promises made in the CRC and then publicising this for the country itself and its peers within the UN. Given

that states report to a common set of reporting guidelines and the Committee reports in a common format, all of which is guided by the standards in the CRC itself, it is not surprising that the analysis identified a set of recurring themes in the reports, including most commonly: access to education; children with disabilities; minority rights issues; and protection from abuse at school. The frequency of the Committee's comments in the most commonly identified areas is summarised in Table 1.

It should be noted that the most commonly criticised areas are not necessarily the areas where there are the most egregious breaches of rights. For example, the reporting guidelines require states to report on the implementation of children's rights education so this receives comment in every report: this can vary from the state having no provision for it to the state being urged to extend existing provision to particular state actors (such as teachers). However, the analysis provides some insight into the prevalence of ongoing issues as well as the particular nature of the problem in different locations. So for example, a key global challenge is to ensure that all children have access to free elementary education. In general, it might have been expected that access to education is not a problem for children in the EU given that all states have systems of free compulsory education, often extending well into secondary education. However, in spite of the availability of schooling, issues persist, often in the forms of high dropout rates from school (identified, for

Table 1. Summary of the Committee's criticisms by States Party

Issue	States Parties receiving criticism
Access	Belgium, Bulgaria, Estonia, France, Greece, Ireland, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom
Disparities in Attainment	Belgium, France, Italy, Latvia, United Kingdom
Bullying	Belgium, Bulgaria, Denmark, Finland, Ireland, Italy, Latvia, Lithuania, Malta, Slovenia, Spain, United Kingdom
Disability	Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Sweden
Minorities	Belgium, Bulgaria, Denmark, Finland, France, Germany, Greece, Ireland, Luxembourg, Netherlands, Romania, Slovakia, Slovenia, Spain
Respect for child's views	Austria, Bulgaria, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Poland, Slovakia, Sweden, United Kingdom
Children's rights education	Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, United Kingdom
Abuse and corporal punishment	Czech Republic, Estonia, France (territories), Hungary, Malta, Netherlands (Antilles), Poland, Romania.
Discipline	France, Latvia, United Kingdom

example, in Italy, Greece, Belgium, Portugal, Slovenia and Slovakia). Moreover, a recurring theme in the observations was the impact of poverty on children's right to education. While education throughout the EU is free, the Committee drew attention to *de facto* and hidden costs (in, for example, Ireland, Latvia, Romania and Belgium) which made it more difficult for poorer children to access education. While the Committee's comments in each instance are brief, they are effective nonetheless in identifying the fact that all is not always as it appears on the face of the States Parties' own accounts of educational access and that the challenges faced vary on a country to country basis.

One issue which may be disproportionately represented in the EU reports is the education of children from minority groups; ethnic and linguistic minorities, asylum seekers and unaccompanied children are mentioned in various ways in 24 of the reports. Europe is increasingly diverse and these populations are more likely to be mobile. The fact that this has generated challenges for most states in securing compliance with the CRC is apparent throughout the country reports. The most common issues raised were related to equality of access and outcome for children from minority groupings. In many countries this was contextualised within broader concerns about racism and xenophobia in the general public (France, Sweden, Germany, Italy) but also among teachers and students (Czech Republic, Greece). The single biggest issue identified was in relation to the education of Roma children (mentioned in 11 reports). Concerns were expressed about their access to school (Czech Republic), poor early years provision (Hungary, Romania), and the segregation of education (Bulgaria). Attention was drawn to the fact that in many countries Roma children are disproportionately represented in special schools (Belgium). The Committee reinforced criticisms made by other UN human rights treaty bodies, including the Human Rights Committee and the Committee on the Elimination of Racial Discrimination (see for example, its commentary on the Czech Republic). In this way, the Committee can use its commentary on the current state of children's rights as a platform for setting out its expectations about rights-compliant policy in education, a feature considered further in the following section.

What should be

One of the key roles for the Committee is in articulating and elaborating on human rights norms. As stated at the outset, many of the provisions of the CRC are very broad and, while these can be fleshed out in combination with other norms (Kilkelly & Lundy, 2006), the Committee plays an important role in developing the jurisprudence of the CRC, particularly through its General Comments—expanded articulations on particular themes (such as the aims of education in Article 29 (UN, 2001)). These are then integrated into the monitoring reports with the expectation that the CRC will be used as a blueprint for policy and law in signatory states, thus building an international expectation of the way in which states should behave towards school children. The most common recom-

mendations of the Committee in relation to education are summarised and synthesised in Table 2.

Looking at one of these issues in more detail, it is apparent that the Committee has delivered fairly consistent messages for education policy makers. For example, in relation to the education of children with disabilities, the Committee has emphasised continuously the need for children to be educated in mainstream settings. Comments in the concluding observations reflected a broad spectrum of progress in terms of the degree of integration. On the one hand, countries such as Bulgaria, Hungary and Latvia were criticised for high levels of institutionalisation

Table 2. Summary of Committee's recommendations for governments

Issue	Committee's policy recommendations
Access	Research to identify the root causes of non-participation and low attendance; positive incentives to attend school for low income families; specially adapted curricula; prohibiting use of fees and providing financial support for books, transport etc.
Attainment	Analysis of root causes of underachievement and attainment disparities; ensuring sufficient resources for teacher training and school equipment; expand vocational opportunities.
Bullying	Comprehensive strategies for creating a culture of tolerance, peace and non-violence; awareness raising; prevention and sensitisation programmes; participation of children in periodic surveys of peer relationships and programme development.
Disability	Inclusion of children in mainstream schools; legislation prohibiting discrimination; develop early identification and intervention programmes; resources for specialised teacher training and equipment; stability in teacher employment; removal of physical barriers to enable effective access; public awareness campaigns.
Minorities	Data on participation and attainment disaggregated by race; legislation prohibiting discrimination and supporting education in mother tongue; curricula which respects diversity and involves minorities in developing curricula sensitive to their culture; access to pre-school education; teacher training on multi-culturalism.
Participation	Training and awareness raising for staff and students; legislation requiring school councils and children's participation in school decision-making both in terms of school administration and classroom education; regular review of the extent to which children's views are taken into consideration and impact on policies and programmes.
Children's rights education	Adequate and systematic training on the CRC for staff and students including child-friendly material and initiatives to reach marginalised groups; inclusion of CRC in curricula and principles of the CRC integrated into the structure and practice of schools; engagement of children in projects where human rights standards are implemented in practice.
Abuse and corporal punishment	Teacher training; legislation prohibiting corporal punishment in schools and private day-care and nurseries; awareness raising with children and the public; enforcement of existing legislation.
Discipline	Use exclusions as a last resort; monitor to ensure that they are non-discriminatory; provide support to children in conflict with school.

of children with disabilities, while countries such as the Czech Republic and Ireland were commended on good legislative protection but encouraged to continue with their efforts to ensure that children were in fact integrated in mainstream settings. Weakness in implementation was linked variously to ongoing prejudices towards children with disabilities, lack of resources (France) and lack of availability of integrated provision (Luxembourg). In each case, the committee's recommendations are for public awareness campaigns, legislation prohibiting discrimination in access and investment in teacher training. Once again, the Committee made repeated reference to other supporting documentation for the principle of integration, including for example the UN Rules on the Equalisation of Opportunities for Persons with Disabilities (UN, 2003) and more recently the UN Convention on the Rights of Persons with Disabilities (UN, 2006). In this way, it is both strengthening and expanding its statements and thus reinforcing an international policy position on integrated education for children with disabilities.

While the Committee is clear and consistent as to what is needed to respect and protect education rights, the question remains as to whether there is anything distinctive about the recommendations from a children's rights perspective since many of these goals are ones that states might perhaps aspire to ordinarily, irrespective of their international obligations. The analysis would suggest that there are some issues in which there are policy options which have differing approaches depending on whether a rights-based approach is adopted or not. For example, clear messages were delivered about what is and is not considered to be an acceptable approach to the enforcement of attendance from a children's rights perspective. Belgium and France, for instance, were both criticised for penalising parents financially for their children's poor attendance, as this was identified as having a disproportionate impact on the poorest families and children themselves. Rather, states were encouraged to monitor and encourage attendance and to provide incentives to education such as vocationally appropriate curricula, affordable transport arrangements as well as financial support for poorer students. Thus, while the policy imperative of enforcing school attendance is common to most EU states, the Committee's articulation of what is appropriate from a rights-perspective has the potential to influence the translation of the principle into policy. What is deemed best or most effective in practice is not always in children's best interests and may therefore not be appropriate from a children's rights perspective.

Bridging the abyss?

The periodic monitoring process provides a valuable role in identifying some of the major breaches in terms of children's rights to education and in articulating the expectations as to what is needed to redress these. The question remains as to whether the process in fact plays a part in changing state practice from what *is* to what *should be*—bridging the abyss. While the policy-making process is complex and the factors which impact on it varied, there is recognition that global discourses on education can impact on policy in national settings (Ball, 1998; Perry

et al., 2010). However, little attention has to date been paid to the impact of the UN human rights regime. This is in spite of the fact that a reading of the concluding observations of the Committee suggests that the CRC, as a widely accepted articulation of state responsibilities in education with an integral scheme for periodic self-evaluation and external monitoring, is part of the global discourses which are shaping educational policy throughout Europe, especially if we accept the states' published reviews of their laws and policies from a children's rights perspective at face value. So, for example, the issue of bullying in school is commonly raised by the Committee in its recommendations. In the most recent reports concerns were expressed about high levels of bullying (manifested as a culture of 'violence' in, for example, Lithuania) and bullying of particular groups, including children with disabilities (e.g. in Finland) and ethnic minority children (e.g. in Denmark) as well as particular forms of bullying (e.g. peer-mobbing in Bulgaria) and the use of new technologies (such as mobile phones in the UK). An analysis of these states parties' reports highlights extensive policy, legal and public awareness initiatives to address the issue. For example, Italy includes three pages detailing the ways in which it has addressed the Committee's recommendations in its previous reports including a new website, toll free help-lines, and educational and media initiatives. However, while this suggests that states are taking issues identified by the Committee seriously, it is still difficult to say from the documentary analysis whether these policy initiatives would be happening anyway irrespective of the CRC standards or Committee's monitoring. In some instances, the policy developments are linked to the CRC but in most they are not, even though they are reported explicitly as the government's responses to the Committee's last recommendations.

More substantial evidence of the impact of the monitoring is best gleaned through a reading of the states party reports over time. The UK provides an interesting example as the contrast in the UK's three reports to date is stark. The first report in 1994 has only eight pages on education and these read like a recitation of existing policy developments in education, reflecting the Conservative government's emphasis on accountability and parental rights as way of raising educational standards, without any apparent focus on children's rights (UN, 1994). The second report in 1998 reflects New Labour's plans to deliver its 1997 'Education, Education, Education' manifesto commitments, with ambitious targets for equality of access and achievement (UN, 1999). However, once again, the report reads like a list of already established policy agendas which happen to link to some of the broadly stated core aims in Article 28 and 29. The third report is, however, qualitatively different from the previous two and begins by addressing specifically the measures which had been adopted in order to meet the specific policy recommendations in the Committee's second report (UN, 2007).

For example, in response to the recommendation that the UK ensured that children in detention have an equal statutory right to education in its 2002 recommendations, the government listed a range of legal and policy developments in this area, including: new legislation in England and Wales prohibiting schools from

deleting children from their rolls who are serving less than four months; the quadrupling of the Youth Justice Board spend on education of children in youth justice; and a major review of education for children in youth justice. In a similar vein, in response to criticism about education for children in care, the UK reported: a new obligation in the Children Act 2004 to promote the education achievement of the children they look after and an obligation in the Education and Inspections Act 2006 for schools to take a looked after child in beyond their enrolment number if the school best meets his or her needs. Other policies, although not legal developments, are listed for Wales, Scotland and Northern Ireland, albeit that provision in Scotland in this area was acknowledged to be very poor. Thus, while not everything is addressed in full, the most recent state party report reads as if there has been a serious attempt to change legislation and policy in direct result of the previous report. Even so, the question remains as to how to disentangle the effects of the CRC monitoring process with what might have been existing, independent policy initiatives. Most governments will have education policy agendas and many of these will be linked to goals which can be connected to the broad themes of the CRC. That said, there are two issues which feature in the reports which might be considered to be distinctively driven by the CRC and therefore shed further light on its implementation.

The first of these relates to children's participation in decision-making in schools, a recent educational policy imperative which is widely recognised as having been driven to a significant degree by Article 12 of the CRC (Lundy, 2007). For many years, education remained outside the realm of this and education law and policy in the UK was widely regarded as having been skewed towards parents' rights at the expense of children's rights (Monk, 2002; Harris, 2009). The 1994 state party report does not address the issue at all. By 1998, the government discussed it in the context of citizenship education rather than in its own right. Moreover, mechanisms for ensuring children were heard in school were equated to school councils and the report acknowledges that schools councils are a good thing but asserts that there was no wish to introduce a statutory obligation on schools to have one on the basis that it 'did not wish to overburden them at this time of change' (UN, 1994, para. 9.12.12). By 2008, the report provides a list of quite detailed policy initiatives which require schools to consult with pupils, including, for example, statutory requirements for governing bodies to consult on behaviour policies and obligations on inspectors to have regard to children's views in the inspection process as well as a range of other curriculum-related initiatives such as personalised learning and assessment for learning (UN, 2007, p. 463). In this instance, the growing body of evidence about the value of student voice being generated by educational researchers (see in particular, Flutter & Rudduck, 2004) aligned with the legal and moral imperative in the CRC to generate formal commitment from government.

Similar progress can be observed in relation to children's rights education. Article 42 of the CRC requires states to make the provision of the Convention widely known to children and adults alike. This article, unique to the CRC, is considered

to be crucial to the implementation of the convention since it requires the duty-bearers to build the capacity of the rights-holders (children) to claim their rights (Howe & Covell, 2005). The UK's first report pointed to the fact that children were taught in history about the origin of the UN, including the Universal Declaration of Human Rights—with no mention of the CRC. The 1998 report referred to the development of citizenship education including 'opportunities' for schools to teach about the main human rights charters and convention, including the CRC (9.12.9). However, by 2007, it was addressed as a specific recommendation. The government outlined topics across the four jurisdictions all of which give opportunities to teach about the CRC. The government also discussed its support for UNICEF-UK's rights respecting schools-award programme, which is designed to implement the CRC in schools, and this was later commended by the Committee as an example of good practice. In both of the latter instances, the impact on policy and in some cases legislation can be tracked not just in UN documentation but in the subsequent policy literature, even though in each instance it is apparent that more needs to be done to ensure full compliance with the CRC.

Translating the CRC into educational policy: conclusions and reflections

Many states which have signed up to the education rights commitments of the CRC do not appear to be integrating it fully in domestic law and policy. The reasons for this are varied but must include, to some extent, limitations in its measures for implementation. For example, some critics of the CRC point to its 'weak' enforcement mechanisms and in particular its lack of a right of individual petition to a court (Lyon, 2007). However, it is submitted that this is based on a somewhat narrow assumption about how law is translated into practice and in particular a view that law is only 'real' law when it has a court-based remedy for enforcement. In contrast, an analysis of the concluding observations would suggest that, in spite of ongoing issues in each signatory state, there has not just been progress in implementing the CRC through education policy but that the monitoring process has played a part in this. Given these findings it might be questioned why states might strive to comply with the CRC in the absence of court-based enforcement mechanisms and what might be done to encourage further implementation.

Goodman and Jinks (2004, 2008) suggest a typology for the implementation of international human rights treaties which identifies three social processes which are thought to encourage states to comply with their international human rights commitments: coercion, persuasion and acculturation. Coercion brings about compliance with the standards through rewards and sanctions (e.g. court-based fines). Persuasion results in acceptance or internalisation of the values usually after a process of convincing, teaching and what they describe as 'cuing'. Coercion and persuasion are widely accepted to be the key mechanisms for influencing so-called bad or reluctant actors (states which are not willingly rights-compliant). However, Goodman and Jinks argue cogently that there is a third process—acculturation—which is important to our understanding of what influences states in this

context. Acculturation describes the process whereby the state adopts the beliefs and behavioural patterns of the surrounding culture without necessarily having inculcated the values, through social or cognitive pressure, i.e. a perception 'that an important reference group harbours the belief or engages in the practice' and that they therefore should do so as well (2004, p. 642). In effect, states might comply with international norms which they would otherwise be reluctant to or indifferent to because they are forced to (coercion), convinced to (persuasion) and/or just feel that they ought to because their peers do (acculturation).

This typology of states' responses provides a helpful framework for consideration of the implementation of the CRC in the context of education. As discussed earlier, the role for coercion in the implementation of the CRC is weak as there is no mechanism of sanction or reward such as the court-based remedy in the ECHR. The persuasive effect is potentially very high as Goodman and Jinks would recognise the discussion in the context of periodic reporting to be part of that process. The fact that educational issues have been so high profile for the Committee in its General Comments, states party reports and the concluding observations also adds to the persuasive impact. The prospect of acculturation is also potentially significant—especially as the near universal membership of the CRC generally and total membership of EU countries helps to amplify the social and political pressure and substantiate the claim that the principles of the regime are, indeed, universal (2004, p. 667). While the CRC not only allows but indeed requires respect for cultural differences in education (albeit not to the same extent as the African Charter on the Welfare and Rights of the Child), on the key policy issues which are a focus across EU education systems, the pressure on states to conform to general norms is very high. Moreover, the process of direct naming and shaming in the periodic reports and the fact that direct comparisons with the education systems of near neighbours (such as EU states) are so readily available also puts pressure on states to reflect this or aspects of this in educational policies even though they may not yet be fully convinced.

A good example of these processes at work is the prohibition on the use of corporal punishment in schools, a common practice throughout Europe until the 1980s. The turning point was a case taken to the ECtHR in which it was argued that the use of corporal punishment breached parents' rights to have their child educated in accordance with their philosophical convictions. The UK, along with other countries throughout Europe, was forced to change the law and to prohibit the use of corporal punishment in schools, a decision which did not rhyme generally with public opinion on the issue at the time. The Committee has picked up the baton on this issue and has continued to put pressure on states, urging those without legislation to enact it and those with legislation to enforce it. For example, within the UK, the Committee's recommendations focused on banning it in private schools (eventually forcing even a recalcitrant Northern Ireland to comply with this issue) and there is ongoing pressure to ensure that children's rights are protected in this respect in UK dependencies. The initial catalyst may have been the coercive effect of the ECtHR judgement but the Committee's comments and

monitoring reports have undoubtedly contributed to the persuasive and acculturative effects on states parties and subsequently policy, practice and public opinion.

Conducting the analysis of CRC reports over a ten-year period shows that the Committee has attempted to play a role in defining and shaping education policy, keeping children's rights at the forefront of policy-makers' attention, while ratcheting up the pressure and degree of specificity in its comments over time. It is apparent that this is at its most effective where the violation is highlighted specifically for the individual state, the recommendations are concrete and they are founded in a body of agreed norms and acceptable practice elsewhere. While the influence of the CRC can be hard to trace directly into many aspects of educational policy (participation and children's rights education agendas aside, perhaps), an analysis of the CRC documentation demonstrates that the CRC: is presented routinely by governments as having had an impact on domestic education policy; is having discernible impact on certain issues which are integral to the CRC itself; and is likely to be having some effect in other substantive areas of policy. Moreover, it is apparent that the CRC and its monitoring processes provide a little known but potentially highly influential end and means for those wishing to influence government decision-making. In the light of this, it is interesting to observe how little attention is paid to the issue of children's rights by those seeking to affect domestic education policy.

For instance, teachers have a vested interest in the realisation of children's rights in education as one of their primary interests is to work in a well-resourced system that enables children to develop to their full potential. However, the relationship between teachers' and children's rights is, at best, ambiguous, with teaching unions at times at odds with children's rights related initiatives (see, for example, reaction to pupil participation in teacher selection panels). However, this contrasts with the way in which teachers' and children's rights are conceived in international human rights discourse. The ESCR Convention states that 'the material conditions of teaching staff shall be continuously improved' and the ESCR Committee has expressed concern that the general working conditions of teachers have deteriorated, and reached unacceptably low levels in many States in recent years since this is not only inconsistent with Article 13(2)(e) but is also a 'major obstacle to the full realisation of students' right to education' (UN, 2000, p. 14). The CRC Committee has also consistently drawn attention to under-resourcing of teacher education. In spite of this, instances of children's rights rhetoric being used by teachers to influence educational policy are exceptional: for example, a recent call by a Trade Union for the abolition of SATS on the basis that they breach children's rights to a broad and balanced education under the CRC (see Elwood & Lundy, 2010). Nonetheless, there is an emerging consciousness that aligning the rights of teachers and children can be in the interests of both and that children's rights are not a zero sum game in which teachers inevitably lose out. For teachers and their representatives to harness this fully, there is a need for more awareness of the CRC and its uses, distinguishing its policy-making function from the perceived rise in individual litigation pursued by students against teachers in domestic

law. As it stands, the potential symbiosis is currently stymied by a lack of understanding of the substance, nature and process of the international legal frameworks and their import to government. That said, the increasing number of child rights education programmes which are cited in states party reports (such as UNICEF-UK's Rights Respecting School Award), should eventually have an impact on this as these are aimed at increasing understanding of the CRC not just in children but also for their teachers.

Further engagement with the substantive provisions of the CRC also provides an opportunity for those 'educational' researchers who wish to influence policy (Whitty, 2006). The ultimate efficacy of the reporting process is dependent upon the availability of information on the state of children's rights in the signatory nation. Tomaševski observed that: 'what happens in schools is seldom examined through the human rights lens, the most important reason being that the notion of rights in education is new. Evidence of abuses of education and in education is not systematically collected' (2001, p. 43). While much research is being carried out on issues which *per se* have human rights implications (such as equality of access, bullying and child abuse), there is an absence of an explicit rights-based framing which would enable it more readily to inform the international reporting processes (Lundy & McEvoy, 2012). The more the educational research community not just collects relevant data but frames its research questions and findings in terms of children's rights, the greater the persuasive effect and acculturative pressure will be. Likewise, the more that this is done on the basis of international, in particular European, comparisons, the more likely it is that states may look to their neighbours and seek to adopt policies recognised and validated as appropriate by their peers.

While education academics and practitioners may be important advocates for children's rights, they are not the only stakeholders who are likely to have an impact on a government's attitude to children's rights. Parents and children are the major rights-holders under the CRC and the views of the former (as important voting constituencies) might be expected to be particularly influential. This could be thought to operate as a barrier to the implementation of rights-based policy since parents' rights and children's rights are sometimes portrayed as at odds with each other. However, in law and in practice there are few instances where their interests in education do not in fact align (Lundy, 2005). While some parents (and politicians) might balk at the language and idea of children's rights, there are very few who object to the type of policies (such as those summarised in Table 2) which are supported by the CRC. Moreover, there are good examples of parents using the language of rights to effect change (the abolition of corporal punishment discussed earlier is a good example of this) particularly in relation to certain groups of children such as those with disabilities. Likewise, many children's organisations work with parents and children to effect policy change and there are interesting recent examples of direct action by young people themselves (such as the protests on the lack of free education in Chile and the marches and protests about higher education funding in the UK). Increased education and training for

children and parents on children's rights (as required by Article 42) may encourage and inform further action of this nature.

In conclusion, it has been seen that commitments to children's rights principles which are initially lukewarm can generate deeper reform over time. The gap between rights promised and rights delivered creates room for 'rightful resistance'—opportunities to harness the legal and moral imperative of official rights-discourse to advocate for and effect change in the behaviour of signatory states (O'Brien, 1996). It is submitted that the education rights in the CRC provide a framework for transformation for those who seek change and are committed to its values, an ever-open window of opportunity that is hampered currently by a general lack of awareness of the CRC and its links to domestic policy among educationalists. This paper seeks to demonstrate both the ongoing influence and untapped potential of children's rights discourse in the hope that the significant opportunities for advocacy and impact that it offers are understood and harnessed. The cumulative effect of an increased 'nudging' towards children's rights compliance by educationalists and others could help to close the abyss between 'should' and 'is' (Tomaševski, 2001, 2006) between the apparently generous human rights guarantees in international human rights law and the reality for many school children.

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Notes

1. The concluding observations are available online in English, French and Spanish (as well as in more recent reports in Chinese and Arabic) on the UN's Human Rights Treaty Body data-base: <http://tb.ohchr.org/default.aspx>.

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References

- Ball, S. (1998) Big policies/small world: an introduction to international perspectives in education policy, *Comparative Education*, 34(2), 119–130.
- Beiter, K.D. (2006) *The protection of the right to education by international law* (Leiden, Martinus Nijhoff).

- Bradney, A. (1999) The convention right to education and the Human Rights Act 1998, *European Human Rights Law Review*, 4, 395–410.
- Children's Rights Alliance for England (2008) *UK implementation of the UN Convention on the Rights of the Child, England. Alternative report to the UN Committee on the Rights of the Child* (London, CRAE).
- Coomans, F., Grunfeld, F. & Kamminga, M.T. (2009) *Methods of human rights research* (Antwerp, Intersentia).
- Drinan, R. (2001) *The mobilisation of shame: a world view of human rights* (Yale, Yale University Press).
- Elwood, J. & Lundy, L. (2010) Revisioning assessment through a children's rights approach: implications for policy, process and practice, *Research Papers in Education*, 25(3), 335–353.
- European Commission (2010) *Qualitative Eurobarometer: the rights of the child* (Brussels, European Commission).
- Flutter, J. & Rudduck, J. (2004) *Consulting pupils: what's in it for schools?* (London, Routledge-Falmer).
- Freeman, M. (2000) The future of children's rights, *Children and Society*, 14, 277–293.
- Goodman, R. & Jinks, D. (2004) How to influence states: socialisation and international human rights law, *Duke Law Journal*, 54(3), 621–702.
- Goodman, R. & Jinks, D. (2008) Incomplete internalisation and compliance with human rights law, *The European Journal of International Law*, 19(4), 725–748.
- Harris, N. (2005) Education: hard or soft lessons in human rights, in: C. Harvey (Ed.) *Human rights in the community* (Oxford, Hart Publishing), 81–112.
- Harris, N. (2009) Playing catch-up in the schoolyard? Children and young people's 'voice' and education rights in the United Kingdom, *International Journal of Law, Policy and the Family*, 23(3), 331–366.
- Howe, B.R. & Covell, H. (2005) *Empowering children: children's rights education as a pathway to citizenship* (Toronto, University of Toronto Press).
- Kilkelly, U. (1999) *The Child and the European Convention on Human Rights* (Aldershot, Ashgate).
- Kilkelly, U. & Lundy, L. (2006) The Convention on the Rights of the Child: its use as an auditing tool, *Child and Family Law Quarterly*, 18(3), 331–350.
- Lundy, L. (2005) Family values in the classroom? Reconciling parental wishes and children's rights in state schools, *International Journal of Law, Policy and the Family*, 19(3), 346–372.
- Lundy, L. (2007) Voice is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child, *British Educational Research Journal*, 927–942.
- Lundy, L. & McEvoy, L. (2012) Childhood, the United Nations Convention on the Rights of the Child and research: what constitutes a 'rights-based' approach? in: M. Freeman (Ed.) *Law and childhood* (Oxford, Oxford University Press).
- Lyon, C. (2007) Interrogating the concentration on the UNCRC instead of the ECHR in the development of children's rights in England? *Children and Society*, 21(2), 147–153.
- Monk, D. (2002) Children's rights in education—making sense of contradictions, *Child and Family Law Quarterly*, 14, 45–56.
- O'Brien, K. (1996) Rightful resistance, *World Politics*, 49(1), 31–55.
- Perry, A., Amadeo, C., Fletcher, M. & Walker, E. (2010) *Instinct or reason: how education policy is made and how we might make it better* (London, CfBT Education Trust).
- Prior, L. (2003) *Using documents as social research* (London, Sage).
- Tomaševski, K. (2001) *Removing obstacles in the way of the right to education: right to education primers no.1* (Right to Education project).
- Tomaševski, K. (2003) *Education denied: costs and remedies* (London, Zed Books).
- Tomaševski, K. (2006) *State of the right to education worldwide: fee or free* (Copenhagen, University of Lund).

- United Nations (1966) *United Nations Convention on economic, social and cultural rights* (Geneva, United Nations).
- United Nations (1989) *UN Convention on the Rights of the Child* (Geneva, United Nations).
- United Nations (2006) *UN Convention on the Rights of Persons with Disabilities* (Geneva, United Nations).
- United Nations, UN Committee on Economic, Social and Cultural Rights (2000) *General comment: the right to education, E/C.12/2000/4 CESCR* (Geneva, United Nations).
- United Nations, UN Committee on the Rights of the Child (1994) *Consideration of reports submitted by states parties under Art. 44 of the Convention: United Kingdom of Great Britain and Northern Ireland* (UN Doc. CRC/C/11/Add.1) (Geneva, United Nations).
- United Nations, UN Committee on the Rights of the Child (1999) *Consideration of reports submitted by states parties under Art. 44 of the Convention: United Kingdom of Great Britain and Northern Ireland* (UN Doc. CRC/C/83/Add.3) (Geneva, United Nations).
- United Nations, UN Committee on the Rights of the Child (2001) *General comment no. 1 on the aims of education, CRC/GC/20001/1* (Geneva, United Nations).
- United Nations, UN Committee on the Rights of the Child (2003) *General comment no. 5 Implementation UN/CRC/GC/2003/1* (Geneva, United Nations).
- United Nations Committee on the Rights of the Child (2007) *Consideration of reports submitted by states parties under Art. 44 of the Convention: United Kingdom of Great Britain and Northern Ireland* (UN Doc. CRC/C/GBR/4) (Geneva, United Nations).
- Whitty, G. (2006) Education(al) research and education policy making: is conflict inevitable? *British Educational Research Journal*, 32(2), 159–176.
- Veerman, E. (2010) The ageing of the United Nations Convention on the Rights of the Child, *International Journal of Children's Rights*, 18(4), 585–618.
- Verhellen, E. (1993) Children's rights and education, *School Psychology International*, 14(3), 199–208.

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