

## ***Can the Child be protected through Recourse to a Cross – Cultural Conception of the Best Interests of the Child?***

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The paper asserts that courts' application of the Best Interests principle, often involving indiscriminate judicial recourse to socially accepted notions of child treatment or to a de-contextualized notion of cultural sensitivity, is liable to be characterized by ambiguity and to result in failure to protect the child's interests. It is further asserted that this ambiguity enables the promotion of others' interests and concerns under the guise of the child's best interests, thus allowing the principle's misuse.

Hence, the need to ask whether and how the principle can function less as a welcoming container to different and contradictory ideas, whether and how it can offer the child better protection.

The consolidation of a minimalist rights regime phrased in general language in the UN Convention on the Rights of the Child (hereafter: the Convention) is not a panacea: The principle's misuse may be perpetuated despite the Convention and sometimes even *through* its promise, though, on the whole, to a more limited extent than in the pre Convention era.

Nevertheless, it is suggested that the record breaking rapidity of the Convention's almost universal ratification has symbolic power and could be utilized as an impetus to develop and implement a cross-cultural conception of the child Best Interests (Hereafter: Best Interests Conception) drawing not only on the Convention's wording but also on its *raison d'être*.

The paper utilizes the distinction between commitment to multiculturalism and endorsement of a stance of cultural relativism to explain how traditional cultures may enrich human rights discourse and empower child advocacy efforts through the proposed Best Interests conception and need not pose a threat to the child's authentic interests.

The paper is concluded with an examination of the ongoing process of transition from interpersonal law to territorial law in different jurisdictions. It is shown how this process has the potential of promoting either mutual cultural transformations- towards greater harmonization between human rights culture and the local culture(s) in dialogue with it - or intercultural tension and alienation. The paper suggests how the process may be purposefully utilized to empower the proposed Best Interests conception through cultural transformations. The value of law as education- i.e. the value of utilizing different acts in the process of legislation and adjudication as educational messages-is recognized and exemplified throughout the paper.