The Impacts of Interpretation on Human Rights Practices: Case of the Convention on the Rights of the Child

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Introduction

Human rights and the protection of these basic rights have been on the forefront of the international community's agenda. Yet, it has been one of the most puzzling goals for countries over the past few decades. With the steady decline of sovereignty, and the growing international jurisdiction in world politics, general awareness and attention regarding human rights has immensely risen, leaving states to be bound to higher moral standards. Despite these efforts, a great number of human rights violations and abuses still persist, proving that a lot of controversy is still raging and needs to be resolved. While human rights are a pressing issue in the area of world politics, it also is an important topic in international law, as "the judiciary plays a fundamental role in the implementation process, interpreting and applying international treaties" (Todres, 1998:160). Although questions of interpretation are only dealt with from a legal perspective, it nonetheless is a relevant issue to all aspects directly and indirectly affecting human rights.

Interpretation influences the understandings and conceptualizations one has on a certain question. Consequently, decisions and choices are made based on these perceptions. In the case of human rights, interpretation of a treaty results in legislation, policies, or programs. Since many concepts such as history or culture affect interpretation, treaties are almost never implemented in the same way from one country to the other. Hence, this raises the question as to how human right's practices are affected by interpretation. Little attention has been given to interpretation processes between human rights treaties and human rights practices from both fields of international law and international relations. Using interpretation as a tool, this thesis

will try to bridge the gap between the two areas of research to try and provide an answer.

To analyze the different outcomes interpretation has on human rights' practices, this thesis will use a comparative case study method. By comparing the articles as set in the Convention on the Rights of the Child (CRC) and the different implementations in two different countries will allow us to see if differences arise. The CRC being the most ratified human right treaty in history is an especially interesting case as it proves a certain universal agreement on the status of the child for the international community (Weissbrodt, 2006:209). Moreover, this investigation should make a great case for using interpretation as a tool in research in international relations.

Literature Review

International human rights have been ultimately considered as "political ends", and unfolding within the sphere of world politics (Monshipouri, Welch, 2001:370). Yet it is also clear that human rights fall within the scope of international law. Human rights, then, are relevant to both fields. Although for many years both fields were kept separate, they have for the past couple of decades been less exclusive from one another. Yet, the concept of human rights treaties interpretation and its effects on human rights practices remains a dark area within both fields. Diving right in the subject of human rights by looking at its nature and its history will allow us to understand the notion of interpretation, and the role it plays in conceptualizing a particular notion.

1- Human Rights

   a. *The concept of Human Rights*

The concept of human rights is a tricky one by the openness of the term. The term is quite broad and encompasses various fields of study within its usage. First, human rights suggest an affiliation with the legal stream, and are enforced through international conventions and treaties. Second, and arguably the most important part of the concept, human rights embrace a moral ground. They are understood as expectations of a certain standard of treatment individuals are entitled to. Human rights, therefore, combine both domains of law and morality. However, this combination often can create confusion. Indeed, 'having the right to' something can be confounded as a legal entitlement, or a claim about what the moral dictates. Though, Douzinas (2007:10)

argues that although confusion and ambiguity are characteristic to the discourse of human rights, it nonetheless is their "great power" and force.

The near unanimous ratification of human rights treaties by countries, evidenced by the Office of the UN as of 2015, proves that the international community shares the same view on human rights, and shows a type of international universal acceptance. However, human rights violations have increased by 70% since 2008 (Human Rights Risk Atlas, 2014). Powell and Staton (2009:149) indicate how states –democratic as well as autocratic- violate human rights treaties on a regular basis. Though, countries are not the only actors violating human rights, as non-states actors such as "individuals, corporations, armed groups and other organized entities" also abuse them (Hessbruegge, 2005:2). According to Simmons (2009:58), states ratify international human rights treaties for the following two reasons. First, states ratify as they are genuinely devoted to the principles enacted in the treaty, hence making governments "sincere ratifiers". Second, states follow their own interests, or wish to restore their international image, consequently making them "false ratifiers". Considering the proposition that governments ratify treaties out of legitimate concern, one can quickly identify a gap between the propensity for states to join the human rights system, and the violating practices states execute; therefore, questioning the different interpretations states give to treaties, and how those impact on human rights. Additional to infringing practices, a lot of indetermination still reigns on certain human rights. Human rights pleas often involve conflicting interpretations regarding what the claims mean, and consequently how these get implemented in practice (Grugel, Peruzzotti, 2012:180). Letsas (2004:279) gives the example of the right to a fair trial under the European Convention on Human Rights (ECHR), and how signatory states still debate on the 'real' scope of the right, consequently giving eight different understandings to it. As many

other rights also suffer from contentiousness on the interpretations associated with them, there is an urgent need to establish a single understanding applicable to all. However, Johnstone (1991:372) argues that the absence of an authoritative body to give a standard interpretation to all complicates the determination of a common understanding. This raises an important issue, as the lack of homogeneous interpretation can translate into deterioration of respect of human rights (Grugel, Peruzzotti, 2012:181). Nonetheless, the shortfall of adjudicative body is often compensated by the role of non-judicial actors within the global civil society who aim to improve human rights records, and attempt to "fill the interpretative gap" (Tobin, 2010:1). The problem of interpretation stays the same regarding non-state actors however, as they themselves interpret in a way that "reflect personal preferences" (Tobin, 2010:2).

b. History of Human Rights

The agenda of human rights has grown quite rapidly over the past few decades. Before the 1990s, human rights were not protected under international law, and NGO activism was non-existent (Cmiel, 2004:117). Though, the actual 'birth' of the movement has been widely disputed among scholars and particularly among historians. A small body of historians has defended the idea that the concept of human rights appeared as early as the 15th century, with the process of colonialism. Koskenniemi (2001:130) contends that human rights existed in a paternalistic way when pioneers colonized, because the colonized needed it, and that this specific perception of human rights affected the current discourse. In other words, the author believes that the actual human rights

discourse and policies are a new form of imperialism, and that the latter are used as a way to take advantage of the 'weak'. This understanding of the emergence of human rights shows a clear post-colonialist view of the situation, and it is complicated to consider human rights with such a negative light, when the concept, as mentioned before, is based on a principle of morality.

A second stream of historians has argued that the discourse of human rights can be tracked to the 17th century with the natural law tradition, from which natural rights followed (Haakonssen, 1996:326). Influenced by philosophers such as Hobbes and Locke, natural law, as explained by Aquinas, is the idea that human beings are rational, and should consequently behave in compliance with their rational nature. Natural rights, then, ensued from the law. Though, many other historians deemed the idea too philosophical and not legal enough to be considered as the 'birth' of the movement of human rights. Different historians, rendering of natural rights, claimed that ideas of human rights started emerging in the 18th century, and the first generation appeared with the American and French revolutions (Zuckert, 1996). While the American Declaration of Independence (1776), pervasively embedded the idea of natural rights to be in the hand of a higher power, the French Declaration of the Rights of Man and of the Citizen (1789) guaranteed rights such as freedom of opinion, right to live, etc. (Verhellen, 2015:46). A second generation of rights rose as populations wanted a more social responsibility from the state, which before, had to abstain from interference. As more social human rights were developed -such as right to minimum income, or to health care- the state had to act and have a certain role in exercising those rights (Verhellen, 2015:46). However, although states were important in ensuring social human rights, international law protecting human rights was close to non-existent before the end of World War II. Hafner-Burton and Tsutsui (2005:1374) explained how

governments restricted “legal obligations to declarations of intent and to a small number of treaties and conventions”. Hence, human rights mostly were a matter of national concern. Internationalization of human rights was attempted by the League of Nations in 1920, by focusing its efforts on avoiding abuses (Verhellen, 2015:47). Though, as argued by Pedersen, while the mandate system did, in theory, aspire to make a change in the international system with better cooperation, the results still ended up creating a new kind of domination and thus imperialism, with the League of Nations ‘legitimizing’ such mechanisms (Pedersen, 2015).

As internationalization spread, it changed the world order and with it, the end of the League of Nations. It is ultimately with the creation of the UN in 1945 that human rights became legally embedded internationally (Burgenthal, 1997:703). This event is considered by a third group of historians as the emergence of human rights. Many scholars such as Henkin (1990), mark the end of world war II and its aftermath as the development of human rights. The horrors of the war and the Holocaust created a global shift in the perception as to how to safeguard human life and dignity. The symbolic events following World War II launched new standards. Most notably, the UN Charter, written in 1945, was the first international document to emphasize respect for human rights. By lying down the foundation for international legal basis, the Charter transformed the structure of the international society, which now -in majority- binds itself to more and more treaties aiming to protect fundamental rights and expands its scope to new core human rights and specific groups.

A fourth notion bases the ‘birth’ of human rights as recently as the 1970s (Moyn, 2010:3). Similar to the ideas of Pedersen, and Koskenniemi, the author believes that human rights emerged out of self-interest from the US to further their policy agenda (Moyn, 2010:151). Though, Moyn does not consider human rights to be a new type of

imperialism, but rather as a utopia, and an aspiration to pursue. While it is true that human rights can be considered as an ideal to aspire to, marking its emergence with the birth of utopianism is not too convincing, as many accounts of movements pertinent to human rights are missing, namely the anti-slavery movement. His focus on the development of human rights appears to be mainly from an ideological perspective and does not seem to regard the political and economic events that may have marked human rights developments.

Simply looking at the different interpretations of the birth of human rights shows the different interpretations of what constitutes the field of human rights, and what events, languages, eras or perspectives are considered. Combined with the analysis of the concept of human rights, it is clear that interpretation of these rights goes beyond its history. Hence, it is fair to question how interpretation is dealt with.

2- Interpretation

a. International Law

As human rights law has been for the past few decades a legal discipline of its own, it is consequently embedded in the general field of international law, and therefore must be interpreted within that regime (Jardon, 2013:102). The issue raised by legal interpretation however, is inherent to its concept, as "the very subject of legal interpretation (…) is itself an interpretation" (Maftei, Coman, 2012:18). Generally speaking, the principles of interpretation are regulated by the Vienna Convention on the Law of Treaties of 1969 (VCLT), under articles 31, 32, and 33. While the VCLT is believed to have resolved some issues and provided a base regarding interpretation, there are

still debates over its efficiency. Authors such as Linderfalk (2007:3) and Villiger (2011) trust the VCLT to have finally resolved some controversies, proven by the increasing amount of countries joining the VCLT. However, scholars such as Waibel (2007:575) and Van Damme (2010:620) consider the VCLT to not be adequate to deal with contemporary interpretation due to its limited ambition. Yet, despite the many debates, a consensus –inherent to its creation- exists. Although the VCLT's general rule shapes the interpretative process, it still is "incapable of producing the determinate meaning of a treaty" (Tobin, 2010:3).

And while treaty interpretation proves to be complex in general, interpretation of human rights treaties is even more intricate (Fitzmaurice, 2008:102). Human rights treaties require additional characteristics and precautions to be taken into account. Primarily, these attributes consist of the special nature of human rights norms and obligations (Schlütter, 2012:263). Moreover, treaties are ratified by states and bind states together. Yet, human rights treaties grant rights to the individuals of these countries, who are not themselves signatory parties to the treaties. In other words, countries assume the obligations of the ratified treaty in relation to all individuals, but not towards other countries.

Consequently, this distinctive nature leads many scholars to expect special rules of interpretation. The special status of human rights is believed to be justification enough to depart from mainstream rules of interpretation. However, this would imply that interpretation of human rights would be based on the individual's interests, and would undermine state sovereignty (Jardon, 2013:114). This, according to Anghie (2004), is already the practice within the current order. The author fears that human rights law indoctrinates the character of sovereignty, as human rights law is conceived to be a tool used by 'the West' to reform and take advantage of the non-West, based on its own

interests and advantages (Anghie, 2004:135/256). While Anghie's view on the essence of the existence of human rights law is debatable, it is true that their mere existence can possibly contradict national sovereignty as these rights go beyond its authority. Nonetheless, such a debate can lead one to question what the focus of international law is: sovereignty, or human rights?

In addition, the evolutive characteristic of human rights further complicates interpretation of treaties. Human rights are not static and evolve through time in response to shifts in the economic, legal, political, technological and social sphere. Consequently, human rights might include the protection of new groups, the inclusion of new actors or new means that can provide protection, or creation of new rights. Efficient protection of such rights needs to be safeguarded and accounted for by law. This evolutive feature has most notably been recognized by the European Court of Human Rights, stating that human rights are a "living instrument, which must be interpreted in the light of the present day conditions" (ECHR Website, 2016). Though, while the evolutive component is recognized, in terms of interpretation, its practical application proves to be a real challenge. Consequently, providing *a* meaning, when interpreting human rights treaties is even less likely to occur than when dealing with other treaties. The many debates regarding treaty interpretation in general and interpretation of human rights treaties in particular, show the sensitivity and the prominence of the issue. Regardless of the motivations behind state ratification of treaties; which actors are entitled to interpret; if the VCLT is efficient or not; if human rights treaties should be given a specific set of rules regarding their interpretation, interpretation of treaties proves to be "one of the most difficult and contradictory issues" (Linderfalk, 2007:1). Even so some scholars have argued that the rules of interpretation of the VCLT are well adapted to human rights treaties, that the rules of interpretation of human rights

treaties were followed by treaty bodies, and that the VCLT rules provided great framework for including new developments in human rights interpretation, treaty interpretation does remain unable to provide a framework capable to produce homogeneity (Schlütter, 2012). While this issue is addressed from a legal perspective and encompasses many surrounding and underlying controversies, the focus remains juridical and no research expands onto other areas where the problem might be relevant. Although an important focal point within international law, the concept of interpretation needs to be looked at from different perspectives to better be understood when actually dealing with treaty interpretation. Human rights being a prominent topic within international relations, it is interesting to review how the field deals with interpretation.

b. International Relations

Within the field of international relations, the concept of interpretation is not an actual area of research. Generally speaking, the term 'interpretation' is mentioned and used in its everyday purpose and context. Namely, interpretation is characterized by the action of giving a meaning, or explaining something specific. Hence, interpretation is not analyzed as a concept in international relations.

Nonetheless, interpretation is still adopted by a few international relations scholars. Interpretation, or interpretative analysis, has been used as an alternative method to positivist approaches to explain certain phenomenon (Price, 1993:201). The main argument regarding the use of interpretative approaches as opposed to positivist ones, is that of the subject of study. Namely, is the subject of human consciousness better

conceptualized as the “meanings which human subject attach to behavior”, or as “the product of collective self-interpretations and self-definitions of human communities” (Neufeld, 1993:41/44). While positivists do not account for the evolutive nature of human consciousness, interpretive theorists understand the world order as a “web of meaning” and a source of interpretation (Neufeld, 1993:43). In other words, the focus of the method is not to provide causal explanations, but rather to understand the meaning of a social practice. In conclusion, much of the interpretive analysis is based around the human. Although considered conflicting approaches by many scholars, both methods do not appear completely contradictory to one another and could be treated and used together as to offer complementary analysis and explanations (Price, 1993:204). Interpretive analysis then is not so much a concept but rather a tool used to ask and answer the different questions raised in international relations and social sciences. This method poses different questions than the ones predominant modes of research utilize. Instead of answering the questions ‘why’ or ‘what’, the interpretive analysis seeks to answer the questions ‘how’, or ‘so what’. The interpretive question hence is one concerned with understanding rather than explaining (Hollis, Smith, 1990). While the method of interpretive analysis may be useful to answer and assess different questions and events, it remains an instrument within the general field of international relations. Interpretation should be considered as its own subject of research within international politics. International relations principally dealing with states as the main actors of the international scene makes it obvious why interpretation does not hold a more prominent role within the study. Yet, the development of the method of interpretive analysis proves the need for the subject to open itself in order to answer to more questions, to discuss more issues, to address more actors, and to globally give a more complementary overview to world politics. Giving a role and researching interpretation

as its own topic of research could offer alternative ways to view, comprehend and explain changes in the international order. Interpretation as a social process could most notably help explain developments where human intervention is implicated.

c. The Gap

Treaties being legal texts, treaty interpretation is without a doubt an area of study under the scope of international law. Though, most of the research within the legal sphere remains quite limited to questions of functioning. Thus, the question of interpretation revolves around legal issues, and is not open to other areas of study it can affect. The study of international relations barely gives a role to interpretation, yet giving it a function could help explain and account for change in world politics. The study of interpretation could provide a wider scope for international relations. Indeed, the current issue in international relations is the fact that the theories it offers, may them be mainstream or critical, tend to paint the world order with one brush, and account for one single and global view of the world. Accounting for interpretation, triangulated with existing methods in international relations, might help understand the different visions that exist in world politics and how other concepts are affected by interpretation. Even so the defense of human rights is at the center of the world's current efforts, violations still remain a major issue and source of debate in international relations and world politics. Looking at interpretation might help understand the different understandings and consequently different practices that occur worldwide.

The lack of research on the topic is surprising as the issue is highly relevant to our political and social systems. Yet, this shortfall can easily be explained by the fact that

there is a missing connection between international law and international politics. As mentioned by Koskenniemi, law cannot replace politics. Law might offer tools and regulate certain concepts, but ultimately, politics are what articulates and governs understandings. Consequently, as interpretation does not 'exist' as an area of research in international politics, the question never quite arose. Moreover, the specific question of interpretation of human rights treaties is even more intricate considering the novelty of the concept and all the on-going debates related to it. Indeed, the very basic question of the 'birth' of human rights is still unanswered, and the moral nature of those rights is questioned. The literature review of the concept and history of human rights has shown the sensitivity of the issue at hand, and how different understandings of the notion affect its conceptualization, and one can wonder, its possible applications across the world. The historical account of human rights, although contested and debated, was a useful step to demonstrate how interpretation influences development, may it be negative, or positive. The review of interpretation both from legal and international relations perspectives provided clear account for the importance of such a concept in world affairs. The next part will try to determine the consequences of interpretation of human rights treaties on human rights practices through time. To do so, the section will focus on one particular human rights treaty: the CRC.

Methodology

To answer the question above, this thesis will use a comparative case study method of the CRC with the countries of Italy and Sweden.

The CRC being "one of the nine core human rights treaties" (Reynaert et al, 2015:5), and "the most quickly and most widely ratified human rights treaties in history" (Weissbrodt, 2006:209), the selection of this specific treaty appeared as obvious. The near-unanimous ratification of the treaty proves a global consensus on the statement that children and their rights should be protected. Being universal, the CRC provides a great framework for understanding how interpretation impacts on human rights practices. Moreover, children's rights are at the forefront of human rights efforts, which proves the prominence of the treaty internationally (Weissbrodt, 2006:209). Being a transformative instrument at the center of human rights law confirms the importance of understanding how interpretation of the treaty changes through time in order to stay efficient within the sphere of international human rights, and how these changes affect practice.

Considered as one of the countries to offer the best conditions for children to grow up in, and the country's usual outstanding performance in social progress and human development, Sweden's case is interesting for this research. Moreover, the important role the country played regarding the development of the Convention, along with being the first country to sign and ratify it allows us to place the particular case of Sweden as a base for comparison when discussing children's rights efforts. The comparison will be made against Italy's case. Italy was chosen based on the similarities it shares with Sweden, as to obtain results that should not be completely antipodal. As both relatively wealthy, developed, industrialized and European countries, Sweden and Italy should, in

theory, have similar resources to guarantee children's rights and interpret these rights in a like manner. Moreover, both countries have civil law dualist systems, emitted no reservations when ratifying the Convention, and signed the CRC the same year. Yet, the practical implementation of the CRC into both domestic systems shows important differences that should help us assess what impacts interpretation has on the practice of children's rights. Since both countries have very different cultures, history and political systems, the hypothesis is that these factors might be the origin of various interpretations. Indeed, while Italy is a parliamentary republic with a rich history and culture influenced by the Roman Empire and the papacy, Sweden is a constitutional monarchy with a relatively younger history and a very liberated culture, especially regarding sexuality and gender equality.

This part will look at each of the country's reports to the Committee and compare it to the conclusions that ensued from the latter, and if changes occurred at the domestic level following the Committee's recommendations. Doing so will allow us to assess the evolution of interpretation through time, and should further permit us to conclude what positive and negative effects interpretation may cause on a practical level. Then, both cases will be contrasted against another in order to give the results a more international dimension, and prove that interpretation not only evolves and has an effect through time, but also across countries.

This review is not an exhaustive comparison of all the case-by-case differences of interpretations that can be found. Rather, we will use the CRC and the comments by the Committee to set standards and a framework to discuss how interpretation affects children's rights.

1- Country reports and Committee's recommendations

a. Sweden

Sweden ratified the Convention in 1990 after only fifteen minutes discussion in Parliament (Ek, 1998:263), and was the first in the world to present a report to the Committee, which was congratulated for its thoroughness. This commitment to the cause of children's rights reflects the political and cultural framework in place. Facilitated by a left-wing government, Sweden's foreign policy mainly focuses on promoting human rights abroad, and especially within its boarders as to set the example. Culturally and historically, Sweden has had very strong political popular involvements through movements to advance the people's rights, with for example, the labor movement, or the women's movement. Consequently, the Swedish population, along with its government and the high involvement of NGOs, are truly dedicated to the advancement of human and children's rights.

In its initial report, Sweden expressed that no amendments to its law were necessary, though, it recognized that "certain deficiencies were observed in the practical implementation". After submitting its report, Sweden was heard by the Committee, as mentioned in the rules of procedure. During these hearings, dialogues and discussions unfold regarding concerns the Committee may have, if the country addresses these concerns, and if alternative ways to answer these concerns exist (General Guidelines). Contrarily to Sweden's perception that it was in full compliance with the CRC, the Committee's recommendations asserted that some laws were in conflict with the articles of the Convention. For example, the Committee found that the article 3 of the Convention –regarding the best interest of the child- was not fully respected, as Swedish legislation allowed that minors be incarcerated with adult offenders (First Concluding

Observations). By the next report, Sweden had taken measures regarding the above issue by proposing prisons intended for younger inmates, and the introduction of 'special approved homes' specifically for children (Second Reports). While this specific discord in interpretation was resolved without trouble, other incidences of disagreements can also occur based on clear divergent understandings. Indeed, in its second concluding observations, the Committee recommended to gather more data on disabled children, which Sweden disagreed to do, as it believed it would "violate the integrity of the individual" (Fourth Reports). This pushed both parties to discuss and find alternative ways to address the concern of the Committee.

Other differences of interpretation can also be witnessed but are less noticeable. Usually, they concern the extent to which legislations and actions are undertaken to protect children's rights. For example, while Sweden took initiative in appointing an Ombudsman for children and created legislation to empower and regulate his responsibilities (Third Reports), the Committee clearly considered these measures to not be enough, since in its observations, it recommended for Sweden to take additional actions regarding the latter's role (Third Concluding Observations). Certain topics are also recurring throughout several reports and concluding observations. This is the case, for example about the role of municipalities. As Sweden believes municipalities can play an important function for children's developments (Second, Third, Fourth Reports), the Committee considers the latter too decentralized and able to cause disparities for children (Second, Third, Fourth Concluding Observations). As a response, Sweden adapts legislations and implements means to better coordinate its system, but the Committee continues to recommend extra measures, as it probably feels that what is done is not enough.

b. Italy

To better grasps the context under which Italy interprets the Convention, it is interesting to understand the framework of the country. Politically, the country has been quite unstable since its transition to the Second Republic, with shifts from right-wing to left-wing governments at each general election. This instability not only negatively affects the country's economic development, but also the effectiveness of policies implemented (Morlino, 2013:337). This often results in debt and consequently in budget cuts for social policies. Culturally, Italy is known to have inefficient bureaucracy and administrative and public services (Golden, 2000:1). This lack of organization clearly affects children's rights, as huge delays and inconsistencies occur in the implementation of the legislations concerning children's rights. Moreover, Morlino (2013) argued that this bureaucratic inefficiency led to political corruption in Italy. Socially and economically, the non-negligible drift between the North and Southern regions in Italy causes huge disparities, and social fragmentations.

As in the case of Sweden, Italy and the Committee's divergences in interpretations generally occur where the Committee considers that more can be done in regards to safeguarding the articles of the CRC, as opposed to the steps taken by the country. For example, and this is a recurring recommendation made by the Committee throughout its three concluding observations (Initial, Second, Third Concluding Observations), the latter upheld Italy to allocate more financial resources and increase the budgets in all areas related to the child. Following the recommendations on this topic, Italy has increased its budget and created funds to finance projects linked with children's development (Second, Third Reports). However, more can still be done, since the last concluding observations were still concerned with the allocation of resources. As poor

budget allocation and financial support has been representative of the political climate in Italy since the 1990s, the financial crisis of 2008 has left the country in economic austerity and consequently allocation of resources for social policies has been scarce. Hence Italian interpretation that their budget allocation is enough is clearly influenced by their economic context.

A clearer difference of interpretation can be noticed when looking at the initial reports made by Italy, the country stated that the Italian legislation "already to a great extent complies with the Convention's principles", and that no substantial changes were required in the current system. Though, the Committee disapproved as it believed that the provisions regarding non-discrimination, and the best interest of the child were not reflected in the national legislations and policies (First Concluding Observations). While Italy took some extra measures to comply its law with the CRC, the Committee continues to advise Italy to further review its legislation to ensure full conformity, especially in the case of discrimination (Second Concluding Observations).

c. *Effects of Interpretation*

The interpretation of the Committee of what the articles of the CRC are, and what they imply concerning legal and domestic implementation to comply with the CRC are, in some cases, clearly different from the State Parties' own interpretation. In both Italy and Sweden's cases, divergences of interpretations occur in the same areas. While a country believes it has taken all necessary steps to implement efficiently the Convention, the Committee might recommend that further actions be taken through more laws, research, policies or programs. As certain authors argue that "acts of interpretation are

often influenced by political interests", it is understandable that differences of interpretation occur between States and the Committee, which is free from such incentives (Michaels, 1982:248). While this may be true to a certain extent, it is important to stress that countries interpret based on their own circumstances and consequently based on the means available to their situation; a framework the Committee might not fully comprehend when making its recommendations. Regardless, the Committee's recommendations are thoroughly considered and appropriate legislative measures to address these observations are usually taken in the countries assessed -accordingly to their own political, economic and cultural context- even in the case of sensitive topics recurring throughout several reports. Hence, efforts are made, and noticeable changes are occurring in both countries regarding the protection and the advancement of children's rights.

This perfectly illustrates the positive effects that interpretation can have. Diverse interpretations regarding one single article can provoke sensible discussion that can lead to advancement through various actions. One can see how different interpretations have contributed to change and consequently to the bettering of children's rights practices. In the case of Sweden, improvement of practices based on interpretation, can also be witnessed with the adoption of a specific practice on the domestic level, which is later taken as a model for other countries. Thus, interpretation can trigger development and progress. In return, development can also foster interpretation to evolve.

In both Italy and Sweden's cases, one can see the evolution of interpretation that goes with the evolution of the society we live in, and the different cultural, economic and political conditions. As the migratory flow and the amount of foreign children has increased in both countries, additional legislations – based on the recommendations of the Committee, as well as the country's own realization of the situations- have been

needed to address and implement efficiently the articles of the Convention. For example, the interpretation of article 17 of the CRC regarding access to suitable information has had to change for all parties. As the article generally regarded TV, radio and paper media in reports dated 1998, it had to evolve to account for internet. With these developments, many other areas are affected. In the case of internet, for instance, additional care and attention must be given to issues such as sexual exploitation, child pornography and child trafficking (Third, Fourth, Fifth Reports Sweden). Interpretation evolves and adapts to the current situations and changes that occur in the society, to reflect those.

2- Comparison Italy and Sweden

a. The reports

Comparing these two countries in light of two key articles and their implementation will shine light on the interpretative differences that exist, and how these create variations in children's rights.

First, it is interesting to mention that although both countries signed the CRC the same year, Sweden has produced five different periodic reports to the Committee, while Italy only supplied three. While this can appear like a small detail, it can also attest of the implication both countries have regarding the protection and the advancement of children's rights. As Italian bureaucracy is renown to be a cultural and political plague, its effects might help explain the lack of commitment to produce effective and regular reports.

By reviewing the reports made by Italy and Sweden, one can see how both countries interpret differently the writing task. Sweden focuses mainly on all the steps it still has

to undertake to continue improve children's rights (Initial Reports), namely by using various means to implement the different legislations in place, by raising more awareness about children's rights and the CRC in all areas of the society (Second, Third, Fourth Reports), or by developing efficient national strategy plan or action plan (Fourth and Fifth Reports). Sweden's interpretation seems to be viewing children as the future, and as a result models its legislations and actions on what it can do extra to keep improving children's rights. This perception may be explained by the political aspiration of the country to set example in the field of human rights around the world, along with the high involvement of the NGO sector. Italy, however, centers its reports around enumerating all the existing or newly implemented legislation and policies that comply with each of the articles of the Convention, along with giving extensive data, figure and information on the diverse elements related to the CRC. The country appears to be taking literally the recommendations of the Committee regarding new legislation and data collection, and therefore to be doing 'just enough'. As Italy faces "a lack of political attention and of economic and human resources", these irregularities and difficulties in the productivity of the reports are not unexpected (UprItaly, 2014).

By looking at the general focus of the reports, it is distinct that both countries have different interpretations about the actions to undergo to preserve children's rights. These different interpretations are also noticeable when analyzing specific articles of the CRC and its domestic implementation.

b. Article 1

Article 1 of the CRC is the basis of the Convention and defines the child as "every human being below the age of eighteen years", unless the age of the majority in the country specifies a lower age. The definition of the child in each country is different according to the many set of laws that attribute rights to minors.

In Italy, the child is defined as a full legal person until maturity at the age of eighteen years, and gains possibility to exercise some rights with the progression of age (Initial Reports). In Sweden, while maturity of the child is also set at the age of eighteen years, the child is considered as "legally incompetent" (Initial Reports). Though the term "legally incompetent" disappears throughout the years, the child is still considered as an individual without "full powers of determination", and under guardianship of the parents (Third Reports). Like in Italy, with age and development, children are granted more rights.

These rights acquired with specific age limits are a full part of what the definition of the child is, as the exercise of rights constitute what a human being is. Accordingly, age limits regarding entry into employment, marriage, sexual consent, or voluntary enlistment in the armed forces, among others, are set by legislation, and are complementary to the definition of the child and the rights he or she can enjoy. Though, age limits and certain rights differ from Sweden to Italy, and this clearly shows the different views regarding what constitutes a child. For example, in Sweden it is completely prohibited for children under the age of 15 to have sexual intercourse (Third Reports). In Italy, however, the age limit for sexual consent is set at 14 years, and other specificities are also added to regulate sexual activities accordingly to age and who the 'participants' are (Second Reports). Other differences arise in age limits regarding

military service enrolment, purchase of tobacco, purchase of alcohol, and marriage. The attribution of these rights are consistently set at a lower age limit in Italy.

Furthermore, considerable differences regarding the authorization or not to exercise a certain right occur. This is for example the case in regards to medical treatment of children without parental consent. While in Italy the minor is to give his or her consent before undergoing surgery or treatment (unless for small children) (Second Reports), it is not allowed in Sweden (Fourth Reports). These divergences can potentially be explained by the socio-economic, political and historic context of each country. Indeed, the situation in Italy is characterized by a great north-south divide leading to social differentiations in terms of poverty, and economic disadvantages in terms of employment opportunities and public investment (OECD, 2001). Consequently, and in parallel with the historic influence of Fascist Italy, children are needed to help support the family (Everyculture, 2016). Hence, children may be acquiring rights younger to adapt to the socio-economic situation of the country and help families survive. In Sweden, however, the socio-political environment allows for children to be 'children for longer' and acquire rights later on. The strong history of the country based on social movements triggered the children's movement and all the political and social policies that come along (Sweden.se, 2013). By providing more support to families thanks to well-resourced government programs and policies, childhood has the potential to be guaranteed for longer.

Although all these differences in the definition of the child may appear as small, they illustrate distinctly that both countries have different interpretations of what the child is, and what his or her rights are or should be. Many of these dissimilarities can be explained by each of the country's culture and current social, political and economic contexts, and is reflected in the laws, policies and practices of children's rights.

c. Article 2

Article 2 of the Convention declares that States shall not discriminate against children or their parents, based on "race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status", and that appropriate measures be taken to protect against discrimination. In Sweden, discrimination on the basis of race, ethnicity or gender is completely prohibited by the Constitution (Instrument of Government). The Italian Constitution (1948) is more extensive and states that all citizens are equal "without distinction of sex, race, language, religion, political opinions, personal or social conditions".

The issue of discrimination can be witnessed in Italy in the case of children born out of wedlock. Up until 2012, 'illegitimate children' were only allowed to inherit from the parents who acknowledge the child, but not from the entire family of that parent (Valongo, 2015:90). Moreover, 'legitimate children' were entitled to decide how 'natural children' were to take the settlement of their inheritance (property or financial) (Valongo, 2015:90). While the law (Normattiva, 2012) changed to eradicate these inequalities, the expressions 'legitimate' and 'natural' were still being used. After a decree (Normattiva, 2013) the terms 'natural' and 'legitimate' have been changed to children, with the denominations of 'born inside marriage and 'born outside marriage'. In Sweden, however, the legislation guarantees equal inheritance regardless of children being born 'in' or 'out' of wedlock. Moreover, any terms signifying any difference between children are no longer used in any legislation. Schadbach (1998:388) even argued that Sweden was so effective in providing equality for children born out of wedlock, that their legal concept was imported to other European countries. Differences of interpretation of a single and same article is clear with this example. Sweden

understands and implements in its legislation all steps necessary to completely avoid any kind of discrimination in the case of children born out of wedlock. In Italy, even with the most recent legislative development, the legislation still considers important to specify if children are born inside or outside of marriage, which consequently implies a differentiation and inequality. This specific difference of interpretation can be put in perspective by looking at the social context in both countries. While Italy has one of the lowest illegitimacy rates in Europe –representing only 17% of births- Sweden's rate is one of the highest in Europe with 55% of children (OECD, 2011). This social situation may be a reflection of the cultural background of each country. Indeed, Italy's illegitimacy rate mirrors the heavy Catholic population (80.68%) –Catholicism being state religion until 1984- and the 'pressure' of the papacy where having children out of wedlock is not well perceived (ARDA, 2012). In Sweden although more marriages occur, over 40% of the population still lives in consensual unions and have children before marriage. This social liberalism is representative of Sweden's cultural context, and has even been supported by its Church (Sweden.se, 2014).

Different interpretations can also occur from a lack of legislation, policies or programs thereof. The absence of law concerning a specific article, in this case anti-discrimination laws, can either mean that the State considers its legislation to already address the issue and as a result to be enough, or can also mean that the State does not consider the issue to be relevant. However, this primary interpretation resulting in the non-existence of adequate actions can lead to practices that are not in line with the Convention. For example, in the case of discrimination in Italy, although some laws are enacted, a lot of policies and programs are missing to effectively implement the legislation, which results in discrimination. The PIDIDA, a national group of NGOs and associations acting for the protection of the rights of children in Italy, reported the occurrence of extreme

discrimination against Gypsy and Roma children and their families (Gruppo, 2001:14), leading them to having poor health, poor housing, not attending school, and living below the poverty line (OECD, 2014). As most of the Italian population rejects the Roma people and favors their expulsion out of the country, favorable governmental backing would cause a huge popular support decline (Berkleycenter, 2012). Consequently, this social framework, along with political 'fear' might explain why the government does not implement policies regarding discrimination against Roma children. This example depicts perfectly the politics of the issue of interpretation; namely that interpretation is itself a political act. As mentioned above, interpretation is "influenced by political interests", but also has political consequences (Michaels, 1982:248). While not implementing policies might fit the country's political interests, the consequences of it remain to deal with the Roma population on other aspects, along with the international and non-governmental sector pressure.

d. Effects of interpretation

Both examples of the comparison of articles 1 and 2 of the CRC in Sweden and Italy depict the negative effects of interpretation on children's rights practices. By having disparities between the way children are treated, there are clear inequalities in actual children's rights practices. While these different interpretations are based on the different cultural, social, and political contexts, they nonetheless exist, and represent a prominent issue domestically and internationally. Domestically, children that should be given certain rights or be protected a certain way might not be because interpretation has 'gotten in the way' of the conception of what is good or what needs to be done for

the child. Internationally, different practices among countries actually weaken the international system by undermining the scope of the international treaty. The issue of interpretation may even have more 'harmful' consequences from the fact that certain acts of interpretation are political acts, and are therefore deliberate. Consequently, this can raise concerns surrounding the intention and/or the agenda of the country to ratify the treaty.

This comparison concerned two European countries that rank very well in the field of children's rights, and that are relatively close in the means and resources put towards children. Despite this, we were able to observe noticeable differences. This European comparison can allow us to understand certain issues Europe, as a whole, faces. The European community being composed of all these culturally, politically and historically different States, with each one having diverse interpretations, can in fact lead to problems of unity and common responses. For example, the current migration crisis can illustrate issues of different interpretations, leading to the lack of a common and unified European response. While obvious differences of interpretation are expected at an international level, such divergences can be more surprising in the case of a communitarian union. Hence, if issues of unity occur at a European level, it is clear that controversies, especially in the case of human rights, are even more contentious at the international level. Beyond the issues of unity and universality interpretation causes, there is a clear need to study and address its effects in politics, and international relations.

Conclusion

The aim of this thesis was to understand what impacts interpretation can have on children's rights practices, and on a larger scale international human rights practices. On one hand, the existence of many diverse interpretations can launch discussions and often results in the evolution of the topic and practice in hand. As seen in the case of the CRC, dialogue and exchange of interpretation have led to better practices and triggered developments to better protect and safeguard children's rights. On the other hand, interpretation also has negative effects on human rights practices. Although interpretation provokes progress globally speaking, there nonetheless remains disparities in the way this progress is implemented domestically. As a result, human rights practices are unequal from a country to another. What this can entail is the weakening of human rights treaties and the human rights field as a whole. In theory, international human rights treaties are meant to set international rules and standards that are meant to guarantee equal rights to all. With interpretation 'in the way', the scope and the aim of the treaty, along with the promise it is meant to bring, can be undermined. Furthermore, the fact that interpretation can sometimes be a political act can make one question the moral ground and political agenda of a country. Unfortunately, it might be idealistic to believe that the international order might succeed in having a single interpretation, and consequently guarantee equal rights to all, based on each country's own history and culture. Indeed, interpretation reflects the society it lives in, and this is why interpretation changes from a country to another. Moreover, interpretation is not static and can evolve and change to mirror the changes in the society.

The case of Sweden and Italy's implementation of the CRC attested to the different levels where interpretation has a role; may it be in the writing task, the country's legislations, the Committee's perceptions, or the country's actual implementation. Although Sweden is commonly regarded as a model in the field of children's rights, one can see how the Committee still believes the country can do better. In Italy, even so much legislation exists to guarantee children's rights, many reports by NGOs prove that implementation is not always enforced. Non-application of laws can attest of interpretation, in the sense that even if countries adopt legislation but do not implement it, it might be, as Simmons (2009:58) explained, that countries create legislation to have good moral conscience and portray a positive image to the international community, but do not actually follow through to effectively enforce its laws.

Undertaking this thesis under the lens of interpretation was enriching and allowed to understand, above the effects of interpretation, the importance of its role. As of now, interpretation occupies a negligible part in the field of international relations. Though, further research should try and account for an interpretive approach of international relations as to potentially explain change and the various visions of the world. Moreover, this thesis being non-exhaustive and limited in the length, it might be interesting for further research to explicitly look at the roles culture and history have on interpretation.

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