

Parental Separation and 'the Best Interests of the Child' at International Law: Guidance for Nation States in the 21st Century

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Abstract : During the twentieth century, the notion of child rights at the international level began with the League of Nations' Geneva Declaration of the Rights of the Child 1924, culminating in the development and adoption of the UN Convention on the Rights of the Child ('the Convention') in 1989. A key foundation of child rights lies in the development of the 'best interests of the child' principle and its subsequent incorporation into domestic legislation across the globe. This principle has become a key concept in child rights protection and has become a widely recognized principle in the protection of child rights. However, despite its status as the primary operating standard in child and family law and its 'deepening hold in domestic and international instruments', the meaning of the 'best interests of the child' principle has been criticised as open-ended and vague. This paper explores the evolution and development of the principle in the context of parental separation at international law throughout the 21st century and identifies opportunities for the Nation States to further improve legislative responses in associated child protection cases. An extensive review of relevant United Nations documentation (including instruments, resolutions and comments, jurisprudence, reports, guidelines and policies, training materials and so forth) explores: (i) what progress has been made to further develop the principle at the international level with regard to parental separation; and (ii) what developments participating the Nation States should consider as part of future legal and social policy reforms in this space. It will highlight opportunities for improvement and explore the benefit and relevance of international approaches for the Nation States moving forward.

Keywords : international human rights, best interests of the child, legal and social policy, child rights

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