



PRESENTAZIONE DEL VOLUME

Informazioni generali

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Informazioni sul volume

This book is part of the series *Studi e documenti sul diritto internazionale ed europeo* edited by Ida Caracciolo. It aims to provide a contribution to the international debate on the traditional issue of the “best interests of the child”, whose juridical content has been widely explored by scholars and in the field of jurisprudence. As Geraldine Van Bueren KC has pointed out in her foreword to this book, “The absence of reservations and the widespread global acceptance of the principle of best interests of the child are historically traced back to a wide range of secular and religious laws, which provides conclusive evidence that the best interests of the child has attained the normative status of *jus cogens*. [...] However, simply concluding that the best interests of the child is *jus cogens* offers only limited assistance [...]”. It has been ten years since the UN Committee on the Rights of the Child drafted *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, which describes the best interests of the child as a threefold concept, simultaneously being a subjective right, an interpretative principle, and a procedural rule. However, following such an attempt to put an end to the debate over the theoretical content of the “best interests”, judicial practice has continued to

show significantly asymmetrical approaches to the use of this formula, at both a domestic and international level.

Setting aside the theoretical dispute temporarily, this study will try to identify the core content of the best interests of the child *in action*, through an analysis of relevant case law in global and regional international contexts. To this end, the quasi-judicial decisions taken by the UN Committee on the Rights of the Child will be investigated (chapter one), and the judgments issued by the European Court of Human Rights (chapter two) and by the Inter-American Court of Human Rights (chapter three) will be examined, without disregarding the perspective provided by the Court of Justice of the European Union. Although the contexts taken into account differ in terms of jurisdiction and circumstances, the analysis of the case law will show evidence of some specific, immutable characteristics of the best interests of the child (chapter four). Both the Committee and the Courts seem to consider the best interests of the child to be mainly an inter- and intra-systemic objective to achieve, a 'common good', which highlights the urgent need to overcome any fragmentation of the concept. Finally, an analysis of some recent case law concerning the relationship between climate change and children's rights will demonstrate the need for a 'common good' approach to be adopted, since the protection of the "best interests" of younger generations coincides with the protection of the "best interests" of the whole world.