

vincenzo lorubbio
the **best interests**
of the **child**

more than 'a Right,
a Principle, a rule of Procedure'
of International Law

editoriale scientifica

STUDI E DOCUMENTI
di
DIRITTO INTERNAZIONALE ED EUROPEO
fondata da Umberto Leanza
diretta da Ida Caracciolo

COMITATO SCIENTIFICO

Silvia Angioi, David Attard, Mariano Aznar, Paolo Bargiacchi, Angela Di Stasi, Francesca Graziani, Maria Chiara Malaguti, Federica Mucci, Bruno Nascimbene, Giuseppe Nesi, Massimo Panebianco, Roza Pati, Mauro Politi, Guido Raimondi, Maja Sersic, Giancarlo Scalese, Attila Tanzi, Talitha Vassalli di Dachenhausen

COMITATO DI REDAZIONE

Francesco Gaudiosi, Rita Mazza, Annachiara Rotondo

I volumi inseriti nella Collana “Studi e documenti di diritto internazionale ed europeo” diretta dalla Professoressa Ida Caracciolo, sono preliminarmente sottoposti ad un processo di referaggio anonimo, nel rispetto dell’anonimato sia dell’autore che dei revisori.

La valutazione è affidata a due esperti del tema trattato designato dal Direttore della Collana, anche fra i componenti del Comitato Scientifico, che rivestano, o abbiano rivestito, la posizione di professore universitario di prima fascia nelle università italiane o posizione equivalente nelle università straniere. I revisori giudicano sull’opportunità o meno di accogliere il lavoro scientifico nella Collana tenendo conto dei parametri valutativi di cui alla vigente legislazione. Sulla base di tali parametri i revisori, entro 60 giorni dal ricevimento dell’elaborato, formulano un giudizio motivato sull’opportunità della pubblicazione del lavoro – senza modifiche o previo apporto di modifiche – o di rigetto.

Nel caso di giudizio discordante tra i due revisori, la decisione finale è assunta dal Direttore della Collana. Il Direttore, infine, su propria responsabilità, può decidere di non assoggettare a revisione i lavori pubblicati su invito o comunque di autori di particolare prestigio.

Vincenzo Lorubbio

THE BEST INTERESTS OF THE CHILD

More than 'a Right,
a Principle, a Rule of Procedure'
of International Law

EDITORIALE SCIENTIFICA

TABLE OF CONTENTS

<i>Foreword</i>	9
<i>Introduction</i>	13

CHAPTER I THE BEST INTERESTS OF THE CHILD WITHIN THE UN CONTEXT

1. Children in International Legal Instruments before 1989	23
2. The Convention on the Rights of the Child of 1989: Travaux Préparatoires, Scope and Limitations	26
3. The Rules of the Convention	28
4. The Origins of the Best Interests of the Child	35
5. The UN Committee on the Rights of the Child	40
5.1. The Role of General Comments	42
5.2. Individual Complaints and Inter-State Communications: The Effectiveness of the Committee's Decisions	46
6. The Jurisprudence of the UN Committee on the Rights of the Child	53
6.1. Best Interests of the Child in Immigration and Asylum Cases	55
6.2. Best Interests of the Child: Other Relevant Issues	64
6.3. Recent Trends and Future Perspectives	70

CHAPTER II THE BEST INTERESTS OF THE CHILD: THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

1. Introduction	77
2. Best Interests of the Child and Right to Know One's Origins	87
3. The Right to Establish and Develop Relationships with Other Human Beings: Best Interests of Foreign Children and Family Reunification	93
4. The Child's Right to Have a Family or the Parents' Right to Have a	

Child? The Best Interests of the Child in Adoption Cases Between Old Issues and “New” Rights	103
4.1. Best Interests of the Child and Same-Sex Adoption	107
4.2. Best Interests in Surrogacy Cases: <i>Paradiso and Campanelli v. Italy</i>	112
5. Right to Maintain a Stable Relationship with Both Parents: Best Interests of the Child and International Child Abduction	118
5.1. The <i>Neulinger</i> Case: From a Theoretical Example to a Leading Case in the Child’s Best Interests	125
6. The Jurisprudence of the Court of Justice of the European Union: Is There a Shared European Approach to the Child’s Best Interests?	132

CHAPTER III

THE BEST INTERESTS OF THE CHILD: THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

1. Introduction	145
2. The Jurisprudence of the Inter-American Court and Advisory Opinion 17/2002 on <i>Condición Jurídica y Derechos Humanos del Niño</i>	149
3. <i>Interés Superior del Niño</i> and Gross and Systematic Violations: Best Interests of the Child Between Dictatorships, Enforced Disappearance and Mass Murder	153
3.1. The Mapiripán and Ituango Massacres	157
4. <i>Interés Superior del Niño</i> and Structural Violence	162
4.1. Rights to Nationality and Equal Protection	165
4.2. Are Indigenous Children Being Protected?	168
4.3. Indigenous Children and States Parties’ Obligations in Criminal Proceedings	172
5. <i>Interés Superior del Niño</i> and “New Rights”: Same-Sex Adoption	173
5.1. <i>Interés Superior del Niño</i> Between Adoption and Single Parenthood	181
6. Controversial Perspectives	184

CHAPTER IV
THE BEST INTERESTS OF THE CHILD:
TOWARDS A (NON) DEFINITION OF THE CONCEPT

1. Introduction	189
2. Best Interests Put to the Test: Cultural and Religious Factors, Limitations of International Law and the Need for a Multidisciplinary Approach	197
3. Best Interests of the Child Between International and Domestic Protection: Implementation of the Conventions, “Functional” Disobedience and the Role of Judges	203
4. Core Content of the Principle of the Best Interests of the Child	212
5. Best Interests of the Child: A Common Good? An Opportunity for International Law	217
<i>Bibliography</i>	227

"This timely and well-researched monograph on the concept of the best interests of the child, which underlines the rights and well-being of children, offers a valuable comparison between the jurisprudence of two of the three regional human rights systems, as well as the European Union and a range of sources from the United Nations. Lorubbio's goal is, through the clinical analysis of the dicta on the best interests of the child from all these institutions, to arrive at the core meaning which has emerged [...]. This monograph has the advantage of elegant writing. In a witty and fresh approach, which the author describes as 'towards a (non) definition of concept' of best interests, Lorubbio seeks to identify the core content of the definition of this diamond international legal concept [...]. Whether there is consensus by all readers as to the extent of the shared core to the lesser or the greater, it is clear that the evidence and analysis which Lorubbio has brought together in this valuable text will prove of great benefit to national and international fora considering the application of the best interests of the child. His common good approach and his warning about fragmentation should not be ignored."

(from the Foreword by Geraldine Van Bueren KC)

Vincenzo Lorubbio is Assistant Professor of International Law at the University of Salento (Lecce, Italy), where he teaches Human Rights Law and International Law of Vulnerabilities. He holds a PhD in Human Rights from the University of Palermo. Author of several refereed papers and book chapters on various topics of International Law, his research focuses chiefly on the rights of vulnerable persons (i.e., children, persons with disabilities, persons deprived of their liberty, migrants) and on the relationship between human rights and nature.

euro 18,00

