

INTERNATIONAL ASPECTS OF THE PROTECTION OF CHILDREN'S RIGHTS IN THE CONDITIONS OF WAR IN A GLOBALIZED WORLD

Maryna TOPORKOVA

Utena University of Applied Sciences, Lithuania

Abstract. In the modern functioning and development of the world community, the problem of protecting the rights of victims during the war does not lose its relevance. At the same time, the issue of protecting the rights of the child is particularly acute, which requires close attention from lawyers, the development of new approaches and ensuring the practical application of existing legal norms designed to protect the child. The problem of the legal status of the child during armed conflicts is complex and combines a number of separate aspects related to individual categories of children who have become participants in the conflict. The aim of the research is to analyse and highlight some of the main regulatory and legal documents of an international nature in the field of protection children's rights. The following methods are used in the work: a search in the available methodological and scientific literature with an analysis of the material found, induction and deduction, clarification of cause-and-effect relationships, systematization, abstraction and concretization, analysis of documentation. The analysis of this article shows that it is necessary to develop international norms that will regulate the issue of eliminating the involvement of children in armed conflicts and to create an established system of monitoring compliance with international legal norms on the protection of children's rights during armed conflicts.

Keywords: children's rights, protection rights, armed conflicts, international law

INTRODUCTION

Modern society cannot ignore the problem of protecting children's rights, especially in the context of war. Preservation and protection of the rights of children is an integral part of humanitarian efforts and a task that requires deep analysis, scientific validity and high ethics.

War is one of the most destructive and negative phenomena of human civilization. Its impact on society as a whole and, on children in particular is unpredictable and multifaceted. Children are the most vulnerable category of war conditions; they feel its consequences most deeply and tragically. There is a violation of their physical, psychological, social and emotional rights, which is accompanied by a negative impact on their further lives.

In the context of war, children face numerous threats to their lives and health. They may become victims of direct military action, suffer from hunger, insufficient medical care and poor sanitation. Constant stress, lack of normal living conditions, and loss of loved ones – all this strongly affects the psychological state of children, leading to psychological injuries and long-term psychosocial maladjustment.

So, the problem of protecting children's rights in wartime is urgent and difficult. It requires an integrated approach based on scientific research, international standards and ethical principles. Understanding the impact of war on children's lives and developing effective mechanisms to protect them are key to ensuring a more humane and fair society.

The object of the research – international protection children's rights.

The aim of the research – to analyse and highlight some of the main regulatory and legal documents of an international nature in the field of protection children's rights.

Methodology of the research: a search in the available methodological and scientific literature with an analysis of the material found, induction and deduction, clarification of cause-and-effect relationships, systematization, abstraction and concretization, analysis of documentation.

FORMATION OF CHILDREN'S RIGHTS PROTECTION AT THE INTERNATIONAL LEVEL

The issue of separating children's rights from general human rights arose relatively recently. The disastrous consequences of the World War I for the civilian population and the growing interest in the problem of protecting children's rights in most countries of Europe and North America necessitated the League of Nations, which was founded in 1919, to create a committee whose purpose was to develop cooperation between nations and guarantee peace and security. This body was called the Child Welfare Committee. Its activities were aimed at providing assistance to homeless children, that is, activities related to children who were in a socially dangerous situation. It should also be noted that an important role in the development of social standards for the protection of children's rights was played by non-governmental organizations, in particular, the International Save the Children Union, which was founded after the end of the First World War by the British teacher and human rights activist Eglantyne Jebb. She formulated the Declaration of the Rights of the Child, which was adopted by the General Assembly of the League of Nations on September 24, 1924, and became popularly known as the Geneva Declaration of the Rights of the Child. It was the first international legal document in the field of protecting the rights and interests of the child.

The Declaration enshrined 5 principles that shaped the goals of international legal protection of children, and also emphasized that caring for and protecting children is the exclusive responsibility of all humanity, and not just the family and a separate state. These five principles include:

- 1) The child must be given the means requisite for its normal development, both materially and spiritually.
- 2) The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured.
- 3) The child must be the first to receive relief in times of distress.
- 4) The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation.
- 5) The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men. (Geneva Declaration of the Rights of the Child, 1924)

This document was valid until the collapse of the League of Nations in 1946.

However, the system of international protection of children's rights as a component of human rights was finally established after World War II within the framework of the United Nations, one of the fundamental principles of which was the proclamation of respect for human rights and freedoms without any forms of discrimination.

Appropriate and detailed development of means of protection of children's rights, due to the fact that the child, due to his physical and moral immaturity, required the allocation of international protection of children's rights in a special direction. For this purpose, in 1946 the UN created an emergency fund for children, UNICEF, which was later called the UN Children's Fund. The United Nations Children's Fund (UNICEF) believes that ensuring the rights of the child and caring for children around the world is the basis of human development. Working in more than 190 countries, UNICEF uses its global authority to cooperate with partners at all levels, trying to ensure the most optimal start in life for all children and their prosperity in conditions free from poverty, injustice, discrimination and disease (UNICEF: The United Nations Children's Fund, 1946). Since then, the problem of protecting children's rights has reached the international level and has taken real forms. Currently, UNICEF is the main mechanism for international assistance to children in difficult living conditions.

Consequently, a number of international documents aimed at regulating the protection of children's rights were adopted at the international level. Children's rights are enshrined in universal conventions and declarations on human rights, such as the Universal Declaration of Human Rights of 1948, International Covenant on Civil and Political Rights of 1966, and the International Covenant on Economic, Social and Cultural Rights. The Universal Declaration of Human Rights of 1948 emphasized: "that the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth" (Universal Declaration of Human Rights, 1948). These Covenants establish the right of the child to protection by the family, the State and society, the right to a name, nationality and protection in the event of family breakdown, and they also establish the prohibition of discrimination against children. Article 24, paragraph 1, of the Covenant on Civil and Political Rights states: "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." In the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, as well as in the Geneva Declaration of the Rights of the Child of 1924, the Declaration of the Rights of the Child of 1959, the Convention on the Rights of the Child and the three Optional Protocols of 1989, which have become the main legal acts regulating human rights issues and constitute a universal international instrument for the protection of children's rights, applicable to all children and in all circumstances.

The Declaration of the Rights of the Child of 1959 included ten articles that proclaimed social and legal principles aimed at protecting and safeguarding children's rights, both at the national and international levels. Article 1 states: "that the protection and safeguarding of children's rights shall be carried out without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family". The greatest significance of this document is considered to be that it showed the true situation of children in the world and for the first time sharply posed to the world community the problem of protecting children's rights, ensuring their survival and decent development. The Declaration drew attention to the problems of child protection by states and posed them with the need to create an international legal mechanism for regulating the protection of children. Later, it influenced the change in the policy of many states regarding the protection of the rights and freedoms of children, as the most vulnerable category.

The Convention on the Rights of the Child of 1989 was a logical continuation of the Declaration of the Rights of the Child, significantly expanding and specifying its principles, which were recommended by nature. It brought together into one international document the rights of the child, which, perhaps, had previously been found only by studying a large number of documents that regulated various features and sectoral rights and covered almost all spheres of the child's life.

The Convention on the Rights of the Child put forward a new concept that recognized that: "a child is a human being who is an independent subject of law; a child is not the property of his or her parents; a child is a person who possesses the full range of rights established by law." A great advantage of this Convention is that it has created mechanisms for protecting children and ensuring their rights, taking into account the national, cultural, economic, social and political conditions of development of different countries. This allows states to fulfil their obligations under the Convention without violating their national law. The role of this Convention at the historical level is determined by the

fact that it has united in one document everything that has been developed over many years in the field of children's rights and has become the main document in the field of protecting children's rights.

PROTECTION OF CHILDREN'S RIGHTS DURING ARMED CONFLICT

One of the biggest problems that arise in the event of an armed conflict is the protection of the civilian population, including children. Despite the fact that the protection of the civilian population is universally recognized in the international arena, this problem has become acutely relevant. Now more and more types of conflicts and wars are emerging, where the boundaries between combatants and the civilian population, as objects and subjects of war, are blurred, and more and more new types of weapons are used. As a result of modern armed conflicts, the main losses are the civilian population, including children, as its most vulnerable part.

International humanitarian law provides a wide range of measures to protect children. In the event of armed conflict – international or non-international – children benefit from the general protection afforded to civilians not taking part in armed conflict. Civilians who are not combatants are guaranteed humane treatment.

There were several main problems with the protection of children during armed conflicts. Firstly, children, as the most vulnerable category, have the right to special protection, but this principle was not clearly stated in any of the articles of the Geneva Convention IV. Secondly, the issue of the participation of children in armed conflicts became acute. That is why two Additional Protocols to the Geneva Conventions of 1949 were adopted: Protocol I concerning the protection of victims of international armed conflicts and Protocol II concerning the protection of victims of non-international armed conflicts.

Additional Protocol I for the first time clearly formulated the principle of special protection of children during international armed conflicts: "Children shall enjoy special respect and shall be protected against all indecent assaults. The Parties to the conflict shall ensure such protection and assistance as they may require by reason of their age or for any other reason". The participation of minor children in total war, especially in occupied territory, is unfortunately a fact that has long since taken place. Therefore, Protocol I obliges the parties to the conflict to take all possible measures to ensure that children who have not reached the age of fifteen do not take a direct part in armed conflicts. If this does happen and such children fall into the power of the opposing party, they continue to enjoy special protection, regardless of whether they are prisoners of war or not. In the event of arrest, detention or internment for reasons related to armed conflict, children shall be held in separate accommodation from adults unless they can be accommodated with their families. In the case of persons who were under the age of eighteen at the time of the commission of the offence, the death penalty for offences related to armed conflict shall not be carried out. The legal provisions governing the conduct of hostilities shall apply to them. Taking into account the particular vulnerability of children, the Geneva Conventions of 1949 and their Additional Protocols of 1977 establish a number of specific rules granting children special protection. Children who take a direct part in armed conflicts do not lose this protection. The Additional Protocols, the Convention on the Rights of the Child of 1989 and the recently adopted Optional Protocol to it establish limitations on the involvement of children in armed conflicts (Legal Protection of Children in Armed Conflict – ICRC).

Additional Protocol II is devoted to the issues of providing children with the necessary care and assistance. These include, in particular, promoting the reunification of temporarily separated families, prohibiting the recruitment of children under the age of fifteen into armed forces or groups, special protection for such children if they nevertheless participated in armed conflicts and were taken prisoner, and the temporary evacuation of children from the area of hostilities. The rights of persons deprived of their liberty for reasons related to the armed conflict, regardless of whether they are interned, detained or subject to criminal prosecution, are not restricted by Protocol II.

It is also worth mentioning the Optional Protocol of 2000 to the Convention on the Rights of the Child on the involvement of children in armed conflict. It certainly strengthens the Convention in a number of ways, but it should also be noted that it cannot be considered entirely satisfactory.

Although the minimum age for voluntary participation of children in armed conflict has been raised, the relevant obligation imposed on States Parties is limited to the need to take "all feasible measures" – a formulation that largely coincides with that already enshrined in Additional Protocol I of 1977. Furthermore, another fact that should be noted is that this obligation applies only to direct participation in armed conflict, and in this statement, it is even weaker than the obligation established in Additional Protocol II, which deals with participation in armed conflict in general. Thus, the Optional Protocol does not protect children from indirect participation in armed conflict, most forms of which are no less dangerous than direct participation. However, one of the great advantages of the protocol is the increase in the minimum age of compulsory conscription, since similar provisions of the Convention on the Rights of the Child and Additional Protocol I to the Geneva Conventions only state that States parties "shall endeavour to give preference to persons of older age". Despite a number of shortcomings present in the Optional Protocol to the Convention on the Rights of the Child, it is an important step towards ensuring that children are not involved in armed conflicts. This protocol obliges States not only to ensure the effective implementation of its provisions, but also to ensure the demobilisation of children, as well as their rehabilitation and integration into society, and to cooperate with each other for these purposes. As for monitoring the implementation of these obligations, it is entrusted to the Committee on the Rights of the Child, which is the supervisory body in relation to the Convention on the Rights of the Child itself.

Another equally important international document concerning the protection of the population, including children, is the Convention (IV) relative to the Protection of Civilian Persons in Time of War, adopted on August 12,

1949 in Geneva. An analysis of this Convention shows that children, as part of the civilian population, are subject to all the provisions of this international document. The main provisions define the general principle of humane treatment of people, including respect for life, physical and psychological integrity, respect for human dignity, the prohibition of contempt and degrading treatment, the prohibition of condemnation and punishment without trial. Also, in relation to the civilian population, including children, torture, corporal punishment, medical and scientific experiments, collective punishment, reprisals, measures of intimidation or terrorism, taking hostages, unlawful deportation, etc. are prohibited. Article 14 of the Convention states that children under the age of 15 and mothers of children under the age of 7 are included in the category of the civilian population for whom special sanitary or safe zones may be established. They must also be evacuated from areas under occupation (Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949).

The Rome Statute of the International Criminal Court of July 18, 1998 defines as a war crime the recruitment or enlistment of children under the age of fifteen into armed forces or groups or their use for active participation in armed conflicts.

Over the past decades, the UN Security Council has adopted a number of resolutions on the protection of children caught in armed conflict. In terms of scope, all modern effective international legal mechanisms can be divided into two groups:

1. Before a military conflict. At this stage, the parties to the conflict are obliged to take preventive measures to remove persons under the age of eighteen from participating in armed conflicts. Such measures include:

- limitation of the conscription age;
- evacuation of children;
- inadmissibility of recruiting children.

2. After the military conflict. During this stage, children who have suffered during the armed conflict are protected and supported. This stage is extremely important, since the mental and physical trauma that children receive in conditions of armed conflict is very difficult to heal. Such measures include:

- ensuring the return of children to their families after the armed conflict;
- the right to protection and care after the armed conflict.

One of the most problematic issues has been and remains how to provide children with proper protection during armed conflict, when the probability of their rights and freedoms being violated is extremely high. Despite the fact that mechanisms exist to protect children's rights during active armed conflicts, their actual functioning and proper implementation are insufficient.

During the UN Security Council briefing on children and armed conflict of 2020, the UN Secretary-General noted: "Children are not participants in conflicts." However, as Graça Machel said in her 1996 report: "Millions of children are caught up in conflicts in which they are not merely bystanders, but targets." Children under the age of eighteen make up more than 50 percent of the population in most war-affected countries and are among the most vulnerable, unable to protect themselves from its consequences. These violations cause irreparable harm to children themselves, their communities and societies. They can fuel resentments and frustrations that lead to extremism, creating a cycle of tension and violence" (Secretary-General's remarks to Security Council Briefing on Children in Armed Conflict, 2020).

Against the backdrop of the war between Ukraine and the Russian Federation, the European Union has decided to strengthen the protection of children in armed conflict. In particular, it is about preventing child trafficking, their recruitment by military forces and separation from their families. This statement was made in light of the systematic and gross violations of children's rights by Russian military forces in Ukraine.

The European Council of the European Union calls on Member States to improve the protection of children in emergency situations, in particular by:

- establishing reception procedures that provide shelter adapted to the needs of the child, guarantee their physical and mental health and ensure their access to essential services;
- providing assistance to unaccompanied children, including through the rapid appointment of a legal guardian or an appropriate representative;
- strengthening policies to combat child trafficking, defining strategies to identify victims of trafficking and raising awareness among children and their families about the risk of exploitation;
- ensuring that emergencies are not used as a tool for child protection, and in particular that adoption does not take place during armed conflicts.

The conclusions also cover the EU strategy on the rights of the child more broadly. In particular, the Council calls on Member States to develop comprehensive policies to realise the rights of all children without any discrimination, to step up efforts to prevent and combat all forms of violence against children, to strengthen justice systems to ensure that they are responsive to children's rights, and to increase opportunities for children to be responsible and resilient members of the digital society (Council conclusions on the EU strategy on the rights of the child, 2022).

During the war in Ukraine, which was unleashed by the Russian Federation, a large number of children were forced to leave their homes in search of a safe place to stay. Therefore, the application of international humanitarian law in relation to refugee children is no less important. In accordance with the principles and norms of international humanitarian law, a displaced person enjoys protection as a civilian affected by hostilities (international or non-international), regardless of the reasons for the change of residence, whether persecution, armed conflict or internal unrest. The Geneva Convention relative to the Protection of Civilian Persons in Time of War and its Additional Protocols aim to

prevent or at least limit the impact of conflicts in which civilians may find themselves. Article 44 emphasizes: “refugees who do not in fact enjoy the protection of any government shall not be treated as enemy aliens who are nationals of an enemy solely by virtue of their legal affiliation with an enemy State.” It also regulates guarantees of asylum in time of war. The Convention and its protocols oblige States participating in a conflict, as well as neutral States, to provide children with special protection from the effects of war, which usually results in a large influx of refugees. Article 24 of the Convention guarantees that “the Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances, their maintenance, the exercise of their religious responsibilities and their education” (Children and war. Special brochure. ICRC, Geneva, 1994).

Among the norms of the Convention on the Rights of the Child, there are also norms that affect and regulate the rights of refugee children. First of all, this is the provision on ensuring the best interests of the child, which must be guided in all actions taken in relation to children. Another provision of the Convention concerns unaccompanied and separated refugee children, who have the right not to be separated from their parents, if this does not contradict the best interests of the child. In the case of determining the best interests of the child, it is necessary if the reason for forced migration is the cruel treatment of the child by the parents. Children also suffer from separation from their families during war. When a child loses his/her parents, not only the probability that he/she will not be able to survive on his/her own, find a safe place, and even more so a refugee camp, increases, but also the probability that he/she will take up arms and commit various other crimes. The protection of unaccompanied children therefore includes their identification, their temporary custody by any organization or institution that could take care of them, the provision of all necessary facilities, the tracing of their parents, the reestablishment of contact with relatives and the maintenance of contact with them until at least one of the parents is found. If a child is separated from one or both parents, the State Party shall respect the right of the child to maintain relations with both parents and to provide information on the whereabouts of the absent family member(s). Unaccompanied and separated refugee children, being deprived of their family environment, may, in accordance with the Convention, be entitled to special protection and assistance provided by the State.

CONCLUSIONS

Child protection is the prevention of and response to abuse, neglect, exploitation and violence against children. The concept of child protection in situations of armed conflict covers a very wide range of issues that can vary depending on the specific context. Children are increasingly becoming one of the main victims of armed conflicts around the world. Unfortunately, according to estimates made by UNICEF, more than 250 million children are becoming victims of war today, which has not happened since the Second World War. Children are becoming refugees, losing their right to primary education, many schools have become objects of bombing or have ceased to exist, most children have been forced to leave their families and their homes.

Ensuring children's rights is one of the global and fundamental problems of our time that the international community faces and, in whose solution, the entire international community is interested. International protection of children's rights during armed conflicts is a system of mutually coordinated actions of states, international intergovernmental and non-governmental organizations aimed at developing and ensuring the rights of the child in order to form a full and harmoniously developed personality, to promote their consolidation in national legislation and to provide international assistance to children. International legal regulation provides for special protection of children as persons not participating in armed conflicts, and special protection as the most vulnerable persons. Moreover, children participating in armed conflicts are also subject to protection. During international armed conflicts, children are included in the category of persons protected by the Geneva Convention IV relative to the Protection of Civilian Persons in Time of War. This makes them subject to all provisions relating to the treatment of persons and establishes the fundamental principle of humane treatment of human beings, which includes respect for life, physical and mental integrity, and prohibits, among other things, coercion, punishment, torture, collective punishment and reprisals. As part of the civilian population, children are subject to all rules of international humanitarian law relevant to the conduct of war.

The protection of children's rights during armed conflicts cannot be ensured only by strengthening their legal autonomy. It consists of finding external mechanisms to protect the child's integrity from the encroachments of the family or public environment of which they are victims, and thus the protection of children places a direct responsibility on all participants in life, including the responsibility of representatives of humanitarian organizations in emergency situations.

During armed conflicts, international humanitarian law provides children with both the general protection provided for civilians not taking part in armed conflicts, and special protection, taking into account their particular vulnerability.

REFERENCES

- Children and war. Special brochure. ICRC, Geneva, 1994. P. 3–7.
Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August, 1949. URL: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949>

- Council conclusions on the EU strategy on the rights of the child. URL: <https://data.consilium.europa.eu/doc/document/ST-10024-2022-INIT/en/pdf>
- Geneva Declaration of the Rights of the Child, 1924 URL: <https://www.humanium.org/en/text-2/>
- International Covenant on Civil and Political Rights of 1966. URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- International Covenant on Economic, Social and Cultural Rights of 1966. URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>
- Legal Protection of Children in Armed Conflict – ICRC. URL: https://www.icrc.org/sites/default/files/document/file_list/children-legal-protection-factsheet.pdf
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children>
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I). URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and>
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and-0>
- Secretary-General's remarks to Security Council Briefing on Children in Armed Conflict: Introducing Practical Guidance on the Integration of Child Protection Issues in Peace Processes [bilingual, as delivered; scroll down for all-English] of 2020. URL: <https://www.un.org/sg/en/content/sg/statement/2020-02-12/secretary-generals-remarks-security-council-briefing-children-armed-conflict-introducing-practical-guidance-the-integration-of-child-protection-issues-peace-processes>
- UNICEF: The United Nations Children's Fund. URL: <https://www.un.org/youthenvoy/2013/09/unicef-the-united-nations-childrens-fund/>
- Universal Declaration of Human Rights of 1948. URL: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>