

## INTERNATIONAL LEGAL REGULATION OF PREVENTING THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

## МІЖНАРОДНО-ПРАВОВЕ РЕГУЛЮВАННЯ ПРОТИДІЇ ЗАЛУЧЕННЮ ДІТЕЙ ДО ЗБРОЙНИХ КОНФЛІКТІВ

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**Abstract.** The article is devoted to defining the essence and peculiarities of application of the norms of international law in cases of involvement of children in armed conflicts. The article establishes that in the course of development of international law, a number of international instruments, both legally binding and non-binding, have been adopted in order to minimize the risks to which children involved in armed conflicts are exposed. Such instruments pay special attention to the issue of the minimum age of children involved in hostilities and the types of actions that should be prevented in this regard. The gradual process of codification of the international legal protection regime for children has undoubtedly improved their overall protection from the impact of armed conflict. The author draws the following conclusions. The recruitment of children under the age of 15 is directly prohibited by the Convention on the Rights of the Child, the I and II Additional Protocols to the Geneva Conventions, as well as customary international humanitarian law. In addition, the recruitment of children into armed forces is a crime under the Rome Statute. Military duty and the forced recruitment of children under the age of 18 are prohibited by the Optional Protocol and International Labor Organization Convention No. 182. States must take comprehensive measures at the national level to fulfill their obligations regarding the recruitment of children and their participation in hostilities. The implementation of international obligations at the national level undoubtedly begins with the adoption of laws, which are then followed by regulatory and practical measures. Effective protection of the rights of the child, in particular with regard to the involvement of children in armed conflict, is based on such legal documents.

**Key words:** children's rights, protection of the rights of a child, armed conflict, international legal regulation, international humanitarian law, international treaty, international crime.

**Анотація.** Стаття присвячена визначенню сутності та особливостей застосування норм міжнародного права у випадках залучення дітей до збройних конфліктів. У статті встановлено, що у процесі розвитку міжнародного права було прийнято ряд міжнародних інструментів, як юридично обов'язкових, так і таких, що не мають обов'язкової сили, для того, щоб звести до мінімуму ризику, на які наражаються залучені до збройних конфліктів діти. У таких інструментах особлива увага приділяється проблемі мінімально допустимого віку дітей, що

залучаються до бойових дій, та типам дій, які слід у зв'язку з цим запобігати. Поступовий процес кодифікації режиму міжнародно-правового захисту дітей, безсумнівно, покращив їхній загальний захист від впливу збройних конфліктів. Автором зроблені наступні висновки. Вербування дітей, які не досягли 15-річного віку, безпосередньо заборонено Конвенцією про права дитини, I і II Додатковими протоколами до Женевських конвенцій, а також міжнародним звичаєвим гуманітарним правом. Крім того, залучення дітей до збройних сил є злочином відповідно до положень Римського статуту. Військовий обов'язок та примусове вербування дітей, які не досягли 18-річного віку, заборонені Факультативним протоколом та Конвенцією Міжнародної організації праці № 182. Держави повинні вжити всебічних заходів на національному рівні для виконання своїх зобов'язань щодо вербування дітей та їхньої участі у бойових діях. Імплементация міжнародних зобов'язань на національному рівні, безперечно, починається з ухвалення законів, на основі яких потім здійснюються нормативні та практичні заходи. Саме на цих правових документах ґрунтується ефективний захист прав дитини, зокрема щодо протидії залученню дітей до збройних конфліктів.

**Ключові слова:** права дітей, захист прав дитини, збройний конфлікт, міжнародно-правове регулювання, міжнародне гуманітарне право, міжнародний договір, міжнародний злочин.

**Introduction.** The international legal protection of civilians in armed conflict is a complex issue. The recruitment of children into armed forces or armed groups and their forced involvement in hostilities is a constant feature of modern armed conflicts. The humanitarian consequences are often tragic for the children themselves, as well as for their families, communities and states as a whole. Children who participate in armed hostilities and witness or participate in crimes and acts of violence unknowingly destroy their childhood, leaving irreparable consequences for the whole of their lives, which must be addressed with consistent rehabilitation and assistance. For many decades, the issue of child protection in international and non-international armed conflicts has been a source of serious concern.

At the same time, certain practical difficulties have arisen, since, depending on the legal systems applicable in each individual case, the type and level of obligations of the parties involved in the conflict may significantly change. In addition, in the absence of practical implementation measures developed at the national level, generally accepted rights and obligations often remain unimplemented, i.e., formal.

Given the above, this study is important for scientific and practical purposes.

**The purpose of the article** is to define the essence and peculiarities of application of international law in cases of involvement of children in armed conflicts.

**Literature review.** Particular issues of international legal regulation of the protection of children in armed conflicts have been the subject of research by such scientists as Belevtseva V.V., Buromenskyi M.V., Korzh I.V., Kryvoviaz O.V., Kuderska I.O., Lehka O.V., Malyshko I.V., Manuilova K.V., Simakova S.I., Sirant M.M., Tarasevych T.Y., Turchenko O.G. and others.

**Main results of the research.** The problem of child protection during armed conflict is complex and includes a number of aspects: both general and related to specific categories of children who have become involved in armed conflict, that is, involved in the conflict as direct participants. These categories include child soldiers, children separated from their families, refugee children, and children in detention (*Simakova S.I., Malyshko I.V., 2023*).

International legal acts regulating this issue reflect its complexity. First of all, the following acts should be mentioned: The Geneva Conventions of 1949, especially the Convention Relative to the Protection of Civilian Persons in Time of War, their Additional Protocols of 1977, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the Worst Forms of Child Labor Convention, 1999, and even the Convention on the Rights of the Child, 1989, and the Rome Statute of the International Criminal Court, 1998 (*Lehka O. V., 2022*).

International humanitarian law provides comprehensive protection of children, their rights and interests. In the event of an international or non-international armed conflict, children enjoy the protection afforded to civilians not involved in hostilities. Given the special vulnerability of children, the Third and Fourth Geneva Conventions of 1949 and their Additional Protocols of 1977 establish a

number of rules that provide them with special protection. Children directly involved in hostilities are not deprived of this special protection. In particular, the 1977 Additional Protocols, the Convention on the Rights of the Child of 1989 and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 2000 impose restrictions on the recruitment of children and their participation in hostilities (*Turchenko O.G., Pylypyshyna I.I., 2022*).

In the event of an international armed conflict, children who are not members of the armed forces of a state enjoy the protection afforded to civilians by the Fourth Geneva Convention and its First Additional Protocol. They are subject to the fundamental guarantees provided by these treaties, including the right to life, the prohibition of coercion, corporal punishment, torture, collective punishment and reprisals (*Articles 27-34 of the Fourth Geneva Convention, 1949*).

In the event of a non-international armed conflict, children are subject to the basic guarantees applicable to persons who are not directly involved in hostilities or who have ceased to take part in them (*Article 3, common to all four Geneva Conventions, and Article 4 of the Second Additional Protocol thereto*).

As noted above, children are often involved in hostilities. The degree of their involvement varies from assisting combatants (for example, by carrying weapons and ammunition, performing intelligence tasks, etc.) to recruiting them as combatants of the armed forces or fighters of armed groups. Article 77 of the First Additional Protocol to the Geneva Conventions obliges states to take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities. The Protocol explicitly prohibits the recruitment among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavor to give priority to those who are oldest (*Additional Protocol I, 1977*). The provisions of the Second Additional Protocol to the Geneva Conventions extend this provision, in particular, by prohibiting the recruitment of children (directly or indirectly) who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities (*Additional Protocol II, 1977*). Members of the armed forces (including children) taking part in an international armed conflict are considered combatants and, if captured, are entitled to the status of prisoners of war in accordance with the Third Geneva Convention and other provisions of international humanitarian law. The Additional Protocols to the Geneva Conventions provide that children who take direct part in hostilities and who have not reached the age of fifteen are entitled to preferential treatment: in case of captivity, they continue to enjoy the special protection afforded to children by the provisions of international humanitarian law (Article 77(3) of the First Additional Protocol and Article 4(3)(d) of the Second Additional Protocol to the Geneva Conventions) *Ilona Topa (2007)*.

The term “recruitment” should be understood as the process of recruiting military personnel for armed forces or armed groups, including all stages of selection and training (*ICRC, 2003*).

In addition, according to Article 3(a) of the International Labor Organization's Worst Forms of Child Labor Convention, 1999, forced recruitment of children is a form of slavery and is among the worst forms of child labor. According to Article 7, States Parties have the obligation to take all measures necessary to ensure the effective application and observance of the provisions of the Convention (*ILO Convention №182, 1999*).

The Convention on the Rights of the Child of 1989 also contains specific provisions prohibiting the involvement of children in armed conflict. In particular, Article 38 requires States Parties to ensure that persons under the age of 15 do not take a direct part in hostilities (paragraph 2) and that older persons are given preference in recruitment among persons who have reached the age of 15 but have not yet attained the age of 18 (paragraph 3) (*Convention on the Rights of the Child, 1989*).

This article applies to all States Parties, regardless of whether or not hostilities are taking place on their territory. The Convention on the Rights of the Child does not contain any reservations regarding the restriction of the rights of the child during armed conflicts (*UN, 1996*). In addition, the provisions of the Convention on the Rights of the Child also provide for a monitoring mechanism that imposes an obligation on States parties to submit reports on the measures they have taken at the national level (*Article 44*).

The 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict strengthens the protection of children involved in armed conflict by, *inter alia*

1) imposing on States Parties the obligation to take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities (*Article 1*);

2) persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces (*Article 2*);

3) the obligation of states parties to raise the minimum age for voluntary conscription to be higher than 15 years. The requirement to raise the age does not apply to schools operated by or under the control of the armed forces of the States Parties (*Article 3*);

4) upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced (*Article 3(2)*);

5) armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use (either compulsorily or voluntarily) in hostilities persons under the age of 18 years. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices (*Article 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000*).

The Optional Protocol imposes an unconditional obligation on States Parties to raise the minimum age of voluntary recruitment to be above 15 years, and to consider a gradual differentiated transition to a “hard age of 18”. It should be borne in mind that the concept of “strict compliance with the criterion of attaining the age of 18” is based on the principle that persons under the age of 18 are entitled to special protection." Also, States Parties should take all possible measures to prohibit and criminalize the recruitment and use in hostilities of children under the age of 18 by armed groups other than the armed forces of the State (*Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000*).

A State that intends to prohibit the recruitment of children under the age of 18 into the armed forces and their direct participation in hostilities may do so by acceding to the Optional Protocol and depositing (in accordance with Article 3) a binding declaration setting 18 years of age as the minimum age for voluntary recruitment. The declaration should include a commitment not to conscript children under this age either within its territory or in the territory of another state, even if they enlist voluntarily (*ICRC, 1993*). The statement should also set out the safeguards adopted by the state to ensure that such a call is not of a forced or coercive nature. Such safeguards should ensure that such a call-up is voluntary, that it is carried out with the informed consent of the person's parents or legal guardians, that those who call up are fully informed of the duties associated with such military service, and that there is reliable evidence of the age of the persons recruited for military service (*Kryvoviaz I. V., 2017*).

Military authorities can enhance the protection of children through at least two measures:

1) medical examinations to ensure that the child is able to perform military service;

2) psychological tests to determine the child's suitability for military life. With the right questions, it is also possible to determine whether the child really wants to join the military and what the reason for this determination is (*Ilona Topa, 2007*).

Special attention should be devoted to the international legal aspects of regulating the issue of bringing to justice those who have involved children in armed conflicts. In this context, it is necessary to note the provisions of the Rome Statute of the International Criminal Court, 1998 (hereinafter - the Rome Statute), which includes a list of war crimes over which the Court has jurisdiction. These war crimes include the use of children under the age of fifteen years in active participation in hostilities or their recruitment or enrollment in national armed forces during international armed conflicts (Article 8 [2(b)(xxvi)]), or in armed forces or other armed groups during non-international armed conflicts (Article 8 [2(e)(vii)]) (*Rome Statute of the ICC, 1998*). This war crime also appears in the Statute of the Special Court for Sierra Leone.

In accordance with the principle of complementarity, on the basis of which the Rome Statute was established (Articles 17-19), the Court's jurisdiction comes into effect when a state is unwilling or unable to conduct an investigation or initiate a prosecution properly. In order to implement this principle and ensure that such crimes are prevented at the national level, States Parties must adopt legislation that empowers them to prosecute criminals in a judicial procedure (*Rome Statute of the ICC, 1998*). Since the Court focuses on prosecuting the most serious crimes and the most dangerous criminals, some criminals may escape prosecution in the absence of relevant national law. The commitment of war crimes entails individual criminal accountability, which means that the perpetrators will be prosecuted. Their military commanders will also be held accountable for failing to prevent or punish the criminal acts of their subordinates (accountability of commanders) (*Lehka O. V., 2022*).

As a result of the practical activities of the ICC in this area, the prosecution and conviction of Thomas Lubanga for the recruitment and conscription of children under the age of fifteen can be mentioned.

In addition, the above-mentioned Special Court for Sierra Leone had earlier, based on customary international law, criminalized the recruitment of children and implemented it in the case of Prosecutor v. Sam Hinga Norman, Appeals Chamber Judgment, May 31, 2004. Moreover, while having jurisdiction over children aged from fifteen years, the Special Court has not prosecuted a single child, using them only as witnesses.

It should be noted that the UN Security Council in 2005 established the Monitoring and Reporting Mechanism (MRM) on grave violations committed against children in times of armed conflict under Resolution 1612, to ensure the systematic collection of accurate, timely and reliable information on grave violations committed against children in armed conflict. In addition, in 2017, the position of the Special Representative of the Secretary-General for Children and Armed Conflict was established, with the active participation of the Special Representative, who developed a Practical Guide for Child Protection Mediators in Armed Conflict in 2019.

**Conclusions.** Consequently, after conducting a study of the international legal regulation of preventing the involvement of children in armed conflicts, we can summarize the following conclusions. The recruitment of children under the age of fifteen is expressly prohibited by the Convention on the Rights of the Child, the First and Second Additional Protocols to the Geneva Conventions, and customary international humanitarian law. In addition, the involvement of children in armed forces is a war crime under the Rome Statute and other international judicial institutions. Military obligation and the forced recruitment of children under the age of eighteen are prohibited by the Optional Protocol and International Labor Organization Convention No. 182. According to the Optional Protocol, the minimum age for voluntary recruitment of children should be raised to be above fifteen years. When recruiting from among persons who have attained the age of fifteen but have not yet attained the age of eighteen, States should endeavor to give preference to older persons. States should take comprehensive measures at the national level to fulfill their obligations with regard to the recruitment of children and their participation in hostilities. The implementation of international obligations at the national level clearly begins with the adoption of laws, which are the basis for regulatory and practical measures. Effective protection of the rights of the child, in particular with regard to the involvement of children in armed conflict, is based on these legal documents.

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