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International protection of children's rights: political aspect

Abstract. *The subject matter of this article is the institute of international protection of children's rights as a set of international legal norms regulating the cooperation of the States aimed at ensuring and protecting the rights of the child and as an integral part of the modern system of international human rights protection. The singling out of issues concerning children's rights into a separate subject in the larger framework of international human rights protection was done for objective reasons: firstly, resulting from historical conditions, the social status of children is lower than that of adults, therefore, international children's rights protection has as its objective the promotion of their rights and opportunities on equal terms with those of adults; secondly, due to physical and mental immaturity of children they are in need of special rights and supplementary protection. The modern system of international protection of children's rights, which is an element of international protection of human rights, was formed within the framework of the United Nations Organisation, one of the basic principles of which is the proclaimed respect for human rights and freedoms and reprobation of any sort of discrimination.*

Keywords: *International humanitarian law, law of human rights, principles of children's rights, rights of the child, freedoms of the child, International protection of children's rights, cooperation of States, several norms, modern system, Universal Declaration of Human Rights.*

The institute of international children's rights protection as a set of international legal norms regulating the cooperation of the States, aimed at ensuring and protecting the rights of children in all spheres of life, was formed after the end of the Second World War.

Several norms concerning the protection of children's rights, however, had been brought under international legal regula-

tion even before the World War II. During this period the international cooperation of the States, concerned with children's rights, was conducted in three directions: fighting slavery; settling the issue of traffic in children and women; establishing international regulation of child labour. There were adopted such conventions as: the Slavery Convention (1926), the Convention for the Suppression of the Traffic in Women

and Children (1921), the ILO Maternity Protection Convention (No. 3), the ILO Conventions Fixing the Minimum Age for Admission of Children to Employment at Sea (No. 8) and to Industrial Employment (No. 59), the ILO Convention concerning the Age for Admission of Children to Non-Industrial Employment (No. 60), which along with other conventions were aimed at settling the issue of trafficking in children and using them with the purpose of prostitution as well as ensuring the protection of maternity and the observance of minimum age for admission of children to various kinds of employment. And yet, the international cooperation dealt only with some of the existing aspects of the legal situation of children. The States did not bring up the question of drafting a universal international document that would contain at least a minimal list of children's rights and norms of ensuring these rights. The only exception was the Declaration of the Rights of the Child adapted by the League of Nations in 1924. Yet, it imposed no responsibilities on the States but only declared the duty of everybody to take care of children's welfare. The distinguishing feature of this period is that it was domestic law that served as the base for international cooperation regarding the rights of the child and human rights in general.¹ Thus, the States' engagement in cooperation regarding the rights of the child, the lack of unified principles of interaction and mechanisms for the implementation of norms bring us to the conclusion that at that time the international protection of children's rights as a system of international legal norms did not yet exist.

The modern system of international protection of children's rights, which is an element of international protection of human rights, was formed within the framework of the United Nations Organisation, one of the

basic principles of which is the proclaimed respect for human rights and freedoms and reprobation of any sort of discrimination. Starting from 1945 the evolution of international human rights protection has passed through a number of stages.² The first stage of international cooperation in the sphere of human rights protection lasted from 1945 to the beginning of 1980 and was marked by the accumulation of international human rights standards. The United Nations Charter signed in 1945 recognised in general the principles of respect for human rights. According to the Charter, one of the main goals of the United Nations Organisations' activities is the achievement of international cooperation "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (Article 1, Paragraph 3). The Universal Declaration of Human Rights, adopted in 1948, was aimed at encouraging respect for human rights and defining the list and contents of basic human rights. These rights were fixed in the International Covenant on Human Rights adopted in 1966, which, along with the Universal declaration of Human Rights, formed the International Bill of Human Rights. The further development of international standards involved specification and clarification of the terms of the above-mentioned documents. More than 80 international treaties covering important spheres of human rights implementation had been signed by the end of 1980 which enabled some scholars to infer that the system of basic international human rights standards had already been established. However, this process has not yet come to an end even now.

The second stage, which started at 1980, was marked by the development of interna-

¹ Zharovska I. M.: *International humanitarian law: Textbook.*— Kyiv: "Atica", 2010.— P. 25–28.

² Skakun O. F. *Theory State and Law: Textbook.*— Kharkiv: Konsum, 2001.— 215p.

tional control mechanisms and procedures aimed at increasing the effectiveness of the already accumulated human rights standards. Such mechanisms and procedures had appeared before but it was in the 1980-s that the general tendency of their development began to manifest itself, indicating the aspiration for institutionalisation of international relations in this sphere. International control mechanisms consist of conventional and non-contractual controlling bodies. International procedures are divided into several categories: examining situations involving human rights violation, considering the States' reports on the fulfilment of their duties according to the international treaties, ratified by them, as well as their mutual and individual complaints about international standards violation committed by a state.¹

Thus, the adoption of the United Nations Charter in 1945 created the legal basis for the establishment of international human rights protection. Its further development proceeded in such directions: formulating international legal principles and norms in the sphere of human rights protection and creating controlling bodies concerned with their observance. It should be mentioned that, although the term "international human rights protection" became wide-spread, there existed several meanings ascribed to this notion. A number of scholars emphasize that the sphere of international human rights protection includes "the drafting of international treaties and other documents on human rights as well as facilitation of their promotion".² A. Movchan, for example, uses the term "international protection" to refer to international cooperation of the States aimed at encouraging universal respect and observance of human rights

and freedoms. He also points out that the activities, directed at international human rights protection, comprise the setting of general recommendations concerning human rights, the drafting of international treaties in this sphere and the formation of a special mechanism of supervising the fulfilment of international obligations on human rights by the States. Other scholars, such as Y. Reshetov and H. Mielkov, define the term "international human rights protection" as a set of principles and norms, which constitute one of the branches of modern international law. Several lawyers, such as S. Chernychenko, understand international human rights protection as the States' activities aimed at fighting gross large-scale violations of human rights (genocide, apartheid, racism etc.).³ There are even authors who argue against the use of this term, referring to the lack of legal definiteness of the notion "protection" itself, existing in international law. Some scholars consider international protection to be one of the elements of international cooperation in the sphere of human rights, while others narrow it down to the functioning of international controlling bodies or use this term describing the process of drafting international standards recommendations obligatory for the States and supervising their observance. The last point of view may be considered to be the closest to the truth for it consistently reflects the process of development of international human rights protection. In other words, international human rights protection may be understood as a system of international institutional bodies and procedures of both universal and local character, the functioning of which is directed at the development of international standards in the sphere of human rights and freedoms and at the supervision over their observance by the

¹ International law. study guide. / Redaction of M. V. Buromenskiy — Kyiv: Urincom Inter, 2005. — P. 186–191.

² Repezkiy V., Lysyk V. International humanitarian law: Textbook. — Kyiv: Znannya, 2007. — 467 p.

³ Kartashkin V. A. Human rights in international and domestic law. Moscow, 1995. — P. 36–58.

States. This protection is put into effect by means of drafting recommendations on human rights and international standards in this sphere as well as by means of controlling the observance of these international standards by the States.

Since international children's rights protection is a component of international human rights protection, all of its principles apply to the international protection of rights of the child as well. The singling out of issues concerning children's rights into a separate subject in the larger framework of international human rights protection was done for objective reasons: firstly, resulting from historical conditions, the social status of children is lower than that of adults, therefore, international children's rights protection has as its objective the promotion of their rights and opportunities on equal terms with those of adults; secondly, due to physical and mental immaturity of children they are in need of special rights and supplementary protection. Thus, international children's rights protection as well as the protection of human rights developed in terms of drafting international standards in the sphere of children's rights protection and creating ad hoc controlling bodies charged with supervising the observance of those standards. The process of legislation in the sphere of children's rights was conducted in following directions: 1) the fixation of rights of the child in universal declarations and conventions on human rights (The Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966)); 2) the fixation of rights of the child in international treaties, which regulate the rights of social groups, closely connected with the child (e.g. the rights of women, refugees), or the rights of people in various spheres of life (e.g. in the domain of education, family and labour relations

law) (the Convention Relating to the Status of Apartheid (1954), the Convention on the Elimination of All Forms of Discrimination against Women (1974), the Convention on Consent to Marriage, Minimum Age for Marriage, and registration of Marriages (1962), the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)); 3) the drafting of declarations and conventions regulating the rights of the child (the Declaration of the Rights of the Child (1959), the Convention on the Rights of the Child (1989)). In the framework of the Convention on the Rights of the Child there was created a special mechanism of controlling the observance of the terms of the Convention — the Committee on the Rights of the Child, authorized to examine the States' reports on the measures taken for the fulfilment of the terms of the Convention. Furthermore, children's rights protection may also be implemented with the help of other international controlling mechanisms concerned with human rights.¹

In the framework of the UNO there exist special institutional bodies dealing with children's rights in various spheres of life, such as: the International Labour Organisation (ILO), the World Health Organisation (WHO), the United Nations Educational, Scientific and cultural Organisation (UNESCO). The United Nations Children's Fund (UNICEF), created in 1946, provides international aid and technical assistance for the States in protecting children and their rights.

All the above-said allows us to formulate the following definition of international children's rights protection: it is a system of international institutional bodies and procedures, which protect children by establishing international standards in the sphere of children's rights and by developing special mechanisms

¹ Tiuiniv O.I. International humanitarian law: Textbook.— Moscow, 1999.— 112 p.

controlling the observance of these rules by the States. Thus, alongside the development of international human rights protection in its framework developed international protection of the rights of the child, which led to the distinguishing of a body of international legal norms regulating the cooperation of the States in this sphere. As a result there appeared the institute of the rights of the child regulating children's rights protection. In the works of legal literature an opinion is expressed that there has been formed a special branch of law, consisting of a system of principles and norms, which deal with the sphere of human rights. What attracts our attention is the difference in terminological denomination of these branches: "international human rights protection" (Y. Rechetov, H. Tunkin), "international humanitarian law" (H. Ihnatenko, Y. Kolosov, S. Chernichenko), "international law of human rights" (I. Lukashuk, A. Saidov) etc.

There are two points of view on this. Many scholars agree that "international humanitarian law" is divided into two sub-branches: the international humanitarian law of war conflicts and the law of human rights. The reason for this is the fact that both these sub-branches have one and the same subject of regulation, namely the promotion, encouragement and protection of human rights. P. Biriukov defines international humanitarian law as "a set of international legal norms and principles regulating the issue of promoting and encouraging the rights and freedoms of the man both in the time of peace and in the time of war, the norms and principles regulating the cooperation of States in the humanitarian sphere, the legal status of all categories of individuals as well as the ones establishing the responsibilities for the violation of human rights and freedoms".¹ Most Western schol-

ars, especially the representatives of the International Committee of the Red Cross, and a number of other lawyers (S. Isakovych, I. Artsybasov, I. Lukashuk) believe that international humanitarian law and the law of human rights are two separate branches of law; they understand international humanitarian law as the law relating to war conflicts only. Furthermore, some scholars, such as A. Saidov, define international humanitarian law as an element of international law of human rights and consider it to be "the law of human rights in the time of war".² He also emphasizes that international humanitarian law is an element of international law of human rights, which is concerned with the norms of controlling war conflicts, state of neutrality, regime of occupation etc. For the sake of achieving the goal set before us we should agree with the opinion of those scholars who use the term "the law of human rights" to define this branch, thus drawing a line between it and the branch of "international humanitarian law", and understand it as a set of principles and norms regulating the States' cooperation aimed at the promotion of human rights.³

The institute of international protection of the rights of the child is based on the same legal grounds as the branch of "the law of human rights". This institute comprises both universal and specific principles regulating exclusively the legal status of the child. The main principles of human rights include the principle of respect for human rights and freedoms, the principle of equality and non-discrimination, the principle of universality of human rights and the principle of equality of peoples. As for the principle of non-discrimination, which is one of the main principles of the law of human rights concerned with children, it is best explained

¹ Theory State and Law. Academic Course: Textbook / Redaction of O. V. Zaychyk, H. M. Onischenko. — Kyiv: Urinkom Inter, 2006. — 593 p.

² Saidov A. H. International law of Human rights. — Moscow, 2002. — 72 p.

³ Lukashyk I. I. International law. The special part: Textbook. — Moscow, 2002. — P.16–24.

in the Convention on the Rights of the Child, which emphasizes that the States are to respect and ensure the rights set forth in the Convention to each child “without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status’ (Article 2 (1)). The principle of the top priority of promoting the interests of the child indicates that in all cases, when the actions of public bodies or private individuals may interfere with the interests of the child, the top priority must be given to the observance of the rights of the child. This principle was first mentioned in the Declaration of the Rights of the Child (1959), which says that the child must be provided with special protection, opportunities and favourable conditions, that would enable the child to develop physically, mentally etc. This principle was also touched upon in the Convention on the Elimination of All Forms of Discrimination against Women (1957). Article 5 (b) of the Convention lays the States under an obligation of taking all necessary measures in order to “ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases”. Article 16 of this very Convention stipulates that in all matters relating to marriage and family relations “the interests of the children shall be paramount”. The 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally also contains this principle: “In all matters relating to the placement of a child outside the care of the child’s own parents, the best

interests of the child should be the paramount consideration” (Article 5). Moreover, the Human Rights Committee refers to this principle in its General Comment on Article 24 of the International Covenant on Civil and political Rights, recognizing the right of the child to receive the protection required. The Committee also declares that if the marriage is dissolved, steps should be taken, keeping in view the paramount interest of the children, to give them necessary protection and, so far as is possible, to guarantee personal relations with both parents. These documents, though, serve only as a basis for enforcing this principle, since some of them were advisory in their nature (e.g. the 1959 Declaration of the Rights of the Child), whereas others were concerned not with the protection of the rights of the child but of those of other social groups (e.g. women). As a true principle this norm was first fixed in the Article 3 (1) of the Convention on the Rights of the Child: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” The principle is also mentioned in other articles of the Convention. At the regional level this principle was set in Article 4 (1) of the African Charter on the Rights and Welfare of the Child (1990) declaring that “in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration”. The Charter of Fundamental Rights of the European Union (2000) also includes this principle in the Article 24 (2), having borrowed it from the Convention on Human Rights.

The principle of children’s freedom to express opinions designates the right of every child to express his/her own views freely and to voice his/her opinion on all matters concerning his/her life. These opin-

ions are to be taken into consideration by parents, authorities and public bodies which should, however, be mindful of the age of the child. This norm became a principle in the Convention on the Rights of the Child. According to the Article 12 (1), the States are to assure “to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”. This right is closely connected with the right of the child to express his/her opinions (Article 13). This principle was set at the regional level in the African Charter on the Rights and Welfare of the Child (1990) and in the Charter of Fundamental Rights of the European Union (2000). The above-mentioned principles were confirmed in 1993 at the World Conference on Human Rights, during which it was declared that “in all actions concerning children, non-discrimination and the best interest of the child should be primary considerations and the views of the child given due weight” (Paragraph 21) as well as in the Declaration “A World Fit for Children” signed in course of the Special Session of the General Assembly in 2002.

The principle of observance of the right of the child to survival, health and development indicates that not only are the States to ensure the child’s right to life but they must also always act so as to sustain and prolong the child’s life and to ensure his/her full and sound physical and mental development. This principle first appeared in the Convention on the Rights of the Child. The term “survival” was introduced in the process of drafting the Convention by the UNICEF and WHO officials who understood it as the measures

taken by the States in order to reduce infant mortality, keep child diseases under control etc. This principle was confirmed in the World Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children in 1990.

The principle of special protection of children. The need for special protection of children was mentioned for the first time in the Declaration on the Rights of the Child of 1924. After the end of Second World War this principle was fixed in the Universal Declaration of Human Rights, which recognized the right of mothers and children to special protection. This principle was further developed in the Covenant on Human Rights signed in 1966. The Covenant on Economic, Social and Cultural Rights indicates that special measures of protection and assistance should be taken on behalf of all children and young persons (Article 10). It also emphasizes the right of the child to such measures of protection taken by family, society or authorities as would be called for due to his/her status as a minor (Article 24). The Declaration of the Rights of the Child (1959) declares that “the child shall enjoy the benefits of social security”. The above-mentioned principles form the basis for concrete norms of children’s rights protection. Thus, we may draw a conclusion that the institute of international children’s rights protection is a set of international legal principles and norms, regulating the rights and freedoms of the child, stipulating the States’ obligations concerning the promotion and implementation of these rights and freedoms as well as determining international controlling mechanisms supervising the fulfilment of international obligations by the States.

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