

## EVOLUTION OF INTERNATIONAL LEGAL REGULATION PROTECTION OF CHILDREN'S RIGHTS AT THE UNIVERSAL LEVEL

### ЕВОЛЮЦІЯ МІЖНАРОДНО-ПРАВОВОГО РЕГУЛЮВАННЯ ЗАХИСТУ ПРАВ ДИТИНИ НА УНІВЕРСАЛЬНОМУ РІВНІ

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The article examines the main stages and peculiarities of the evolution of international legal protection of children's rights. It is established that initially the norms on legal protection of children's rights began to be enshrined in national legislation, in particular, in the legislation of France in the middle of the XIX century, and later in the Weimar Constitution of 1919 and the Austria the Federal Constitutional Law of 1920 as amended in 1929.

The author establishes that with the development of international law, the norms on the protection of children's rights have also been formulated in international legal acts of a universal nature. Thus, the first international legal instrument on the protection of children's rights was the Convention relating to the settlement of guardianship of minors of June 12, 1902, which was prepared at the 3rd session of the Hague Conference on International Law.

It is determined that within the framework of the League of Nations, the Geneva Declaration of the Rights of the Child of 1924 was adopted, which became the first international legal catalog of children's rights. The draft of this Declaration was developed by the Eglantyne Jebb, the founder of the International Charitable Foundation "Save the Children". It is emphasized that the International Labor Organization was the first among international intergovernmental organizations to adopt special legal acts on the protection of children's rights within its competence.

It's proved that the modern international legal regulation of child rights protection is formed within the framework of the United Nations. The first international legal catalog of children's rights within the UN is the Declaration of the Rights of the Child of 1959. The basis of modern international legal protection of children's rights is the Convention on the Rights of the Child of 1989 (entered into force for Ukraine on September 27, 1991) and its three optional protocols: on the involvement of children in armed conflict, adopted by UN General Assembly resolution A/RES/54/263 of May 25, 2000 (entered into force for Ukraine on August 11, 2005); on the sale of children, child prostitution and child pornography, adopted by UN General Assembly resolution A/RES/54/263 of May 25, 2000 (entered into force for Ukraine on August 3, 2003) and on a communications procedure, adopted by UN General Assembly resolution A/RES/66/138 of December 19, 2011 (entered into force for Ukraine on December 2, 2016).

**Key words:** children's rights, child protection, treaties, Eglantyne Jebb, League of Nations, ILO, UN.

У статті досліджуються основні етапи та особливості еволюції міжнародно-правового захисту прав дитини. З'ясовано, що початково норми про правовий захист прав дітей почали закріплюватися у національному законодавстві, зокрема у законодавстві Франції в середині XIX сторіччя, згодом в Конституції Веймарської республіки 1919 р. і в Конституції Австрійської республіки 1920 р. (в редакції 1929 р.).

Встановлено, що з розвитком міжнародного права норми про захист прав дитини почали також формулюватися і в міжнародно-правових актах універсального характеру. Так, першим міжнародно-правовим документом про захист прав дитини була Конвенція, що регулює опіку над неповнолітніми, від 12 червня 1902 р., яка була підготовлена на 3-й сесії Гаазької Конференції з міжнародного права.

Визначено, що в рамках Ліги Націй, було прийнято Женевську декларацію прав дитини 1924 р., яка стала першим міжнародно-правовим каталогом прав дітей. Проект цієї Декларації розробила англійка Еглантайн Джебб, засновниця Міжнародного благодійного фонду «Save the Children». Підкреслюється, що Міжнародна організація праці почала першою серед міжнародних міждержавних організацій приймати в межах своєї компетенції спеціальні правові акти про захист прав дітей.

Доведено, що сучасне міжнародно-правове регулювання захисту прав дитини сформовано в рамках ООН. Першим міжнародно-правовим каталогом прав дітей в рамках ООН є Декларація прав дитини 1959 р. Основу сучасного міжнародно-правового захисту прав дитини складає Конвенція про права дитини 1989 р. (набрала чинності для України 27 вересня 1991 р.) і три факультативні протоколи до неї: щодо участі дітей у збройних конфліктах, прийнятий резолюцією Генеральної Асамблеї ООН A/RES/54/263 від 25 травня 2000 р. (набрав чинності для України 11 серпня 2005 р.); щодо торгівлі дітьми, дитячої проституції і дитячої порнографії, прийнятий резолюцією Генеральної Асамблеї ООН A/RES/54/263 від 25 травня 2000 р. (набрав чинності для України 3 серпня 2003 р.) і щодо процедури повідомлень, прийнятий резолюцією Генеральної Асамблеї ООН A/RES/66/138 від 19 грудня 2011 р. (набрав чинності для України 2 грудня 2016 р.).

**Ключові слова:** права дитини, захист прав дитини, міжнародні договори, Еглантайн Джебб, Ліга Націй, МОП, ООН.

**Problem statement.** In international human rights law, children traditionally belong to the most vulnerable groups (in addition to children, the most vulnerable groups are women, refugees, forced migrants and displaced persons, as well as persons with incurable diseases). For children, such vulnerability is explained by objective factors, in particular, their biological, intellectual and social immaturity. At the same time, it is obvious that it is children who will determine the future of human society and human civilization when they become adults. Therefore, society should create appropriate conditions for children for their full and harmonious mental, spiritual, moral, psychological and social development, upbringing and education. At the same time, ensuring and protecting the rights of children should be based on the relevant international legal norms of a universal nature (international standards for the protection of the rights of the child).

**Overview of recent research.** The issues of international legal regulation of the protection of children's rights were stud-

ied in their dissertations by such scholars as: O. I. Vinhlovska [1], Y. V. Derkachenko [2], N. V. Linyk [3], Mohammad Abdel Karim Mussa Al-Nsour [4], N. V. Plakhotniuk [5], O. V. Shevchenko-Bitenska [6], and others.

**Previously unexamined aspects of the problem.** At the same time, in our article we will focus on the study of the main stages and peculiarities of the evolution of international legal regulation of the protection of children's rights at the universal level, which is the goal of the article.

Based on this goal, we can formulate the following objectives of the article:

- to determine the impact of national law on the formation of international legal norms on the protection of children's rights;
- to establish the role of the League of Nations and the International Labor Organization in the development of international legal protection of children's rights;

– to determine the role of the United Nations in the development of modern international legal regulation of child rights protection.

#### **Presentation of the main material.**

*The origin of the concept of legal protection of children's rights.*

The idea of protecting children's rights began to emerge through the direct participation of children in "adult" [primarily labor] social relations, which led to the formation of children's legal personality and, as a result, to the objective need to protect children's rights. Since the late 1700s and early 1800s in Europe (particularly in England), and later in the United States, industrial machines began to replace manual labor, and children began to be considered "small adults" and involved in work in factories, plants and factories. As a result, the first measures to protect children's rights were introduced at the national level – the first legislation to improve working conditions for children was adopted in France in 1841, as well as the right of children to education was first enshrined in France in 1881 [7]. Over time, certain rights of the child began to be enshrined in national constitutions – first in the Weimar Constitution of 1919 [8, Art. 7, Art. 121, Art. 145], and later in the Austria the Federal Constitutional Law of 1920 as amended in 1929 [9, Art. 65].

The first international legal document on the legal protection of children's rights was the Convention Governing relating to the settlement of guardianship of minors of June 12, 1902, prepared at the 3rd session of the Hague Conference on International Law [10]. The said Convention expired almost 100 years later – under the Article 51 of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children of October 19, 1996 (entered into force on January 1, 2002) [11, Art. 51].

In 1919, the Eglantyne Jebb, together with her sister Dorothy Buxton, founded the "Save the Children" organization in London to help German and Austrian children who suffered during the First World War. Subsequently, "Save the Children" began to open offices in other countries and in 1920, with the support of the International Committee of the Red Cross, it acquired the status of an international foundation [12].

It was Eglantyne Jebb who drafted the Declaration of the Rights of the Child, which was approved by the "Save the Children" international foundation on February 23, 1923, and submitted to the League of Nations on February 28, 1924 [12].

*The Geneva Declaration of the Rights of the Child of 1924. The role of the League of Nations and the International Labor Organization in the establishment of legal protection of the rights of children and adolescents.*

On September 26, 1924, the General Assembly of the League of Nations adopted the Geneva Declaration of the Rights of the Child on the basis of Eglantyne Jebb's draft [13], which is called the Geneva Declaration after the place of its adoption.

The 1924 Declaration is the first international legal catalog of children's rights, although structurally it is a fairly compact document consisting of only five main program points:

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 succored.
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 [13].

In fact, the 1924 Declaration defines the responsibilities of adults towards children [14].

In 1934, the General Assembly of the League of Nations re-approved the 1924 Declaration, and the member states of the League of Nations promised to incorporate the provisions of the Declaration into their national legislation, but without making legal commitments to do so for certain [12].

In this regard, the question of the legal force of the Declaration of the Rights of the Child of 1924 quite logically arises [13].

Given that the preamble to the 1989 Convention on the Rights of the Child [15] contains a reference to the 1924 Declaration of the Rights of the Child [13], it can be reliably concluded that it was this Declaration that initiated the modern international legal regulation of the protection of children's rights, and therefore remains in force and is currently considered a document of "soft law".

Another relevant international document on the rights of the child, concluded under the auspices of the League of Nations, is the International Convention for the Suppression of the Traffic in Women and Children of September 30, 1921 [16]. After the founding of the UN, this Convention was amended by the Protocol of November 12, 1947 [16], so the Convention is currently in force.

Of particular importance for the establishment of legal protection of children's rights is the activity of the International Labor Organization (ILO), which was established in 1919 within the League of Nations as a specialized agency of this organization, and since 1946 has been a specialized agency of the United Nations [17].

The ILO was the first among international intergovernmental organizations to adopt special legal acts on the protection of children's rights within its competence. In particular, ILO conventions set the minimum age for children and adolescents to be hired in various sectors of the economy, and states parties to such conventions had to implement these norms in their national legislation. At the same time, standards and working conditions for children and adolescents were gradually improving. For example, ILO Convention No. 5 of October 29, 1919, fixed 14 years as the minimum age for admission of children to industrial employment [18, Art. 2], and ILO Convention No. 59 of June 22, 1937, fixed 15 years as the minimum age for admission of children to industrial employment [19, Art. 2].

Over time, some of the first ILO Conventions have already expired, for example, Convention Fixing the Minimum Age for the Admission of Young Persons to Employment as Trimmers or Stokers No. 15 of November 11, 1921 [20]. Some of the first ILO Conventions, although formally still in force, are either considered outdated instruments and are not practically applied, for example, as the Convention Fixing the Minimum Age for Admission of Children to Industrial Employment No. 5 of October 29, 1919 [18], or are instruments to be revised, for example, Convention concerning the Night Work of Young Persons Employed in Industry No. 6 of November 28, 1919 [21], or have an interim status, such as the Convention Fixing the Minimum Age for the Admission of Children to Employment at Sea No. 58 of October 24, 1936 [22].

*Declaration of the Rights of the Child of November 20, 1959.*

Recognizing the important role of the League of Nations in the development of legal protection of the rights of the child, it should be noted that the modern international legal protection of the rights of the child was regulated within the framework of the UN.

In 1957, the UN Commission on Human Rights began work on the draft text of a new Declaration on the Rights of the Child, which was developed by ECOSOC with the participation of a number of NGOs. On November 20, 1959, the Declaration of the Rights of the Child was adopted by the UN General Assembly in the form of Resolution 1386 (XIV) [23]. It

should be emphasized that this Declaration [23] was adopted unanimously. Given that none of the documents, not even the Universal Declaration of Human Rights [24], had been adopted unanimously before [14], this fact demonstrates the significant moral authority of the 1959 Declaration and the great importance that the international community attaches to the protection of the rights of the child.

The 1959 Declaration of the Rights of the Child [23] was the first international legal catalog of children's rights within the UN. According to the preamble, the 1959 Declaration of the Rights of the Child [23] was proclaimed to ensure that children have a happy childhood and enjoy the rights and freedoms provided for in it for their own benefit and for the benefit of society [14]. In general, the 1959 Declaration of the Rights of the Child contains 10 principles [23].

Compared to the Geneva Declaration of 1924 [13], the 1959 Declaration [23] is a more advanced and broader document. The main idea of the 1959 Declaration is: "good to children", since the child, due to his or her physical and mental immaturity, requires special care and attention, including legal protection, both before and after birth. The 1959 Declaration calls on parents, NGOs, and local and national authorities to recognize these rights and ensure their fulfillment through legal reform and other means. This is the horizontal effect of the 1959 Declaration.

This Declaration addresses not only the child's vital needs, but also the child's need for love and understanding; emphasizes the need to preserve the unity of the family, pre- and postnatal care for mother and child, and proclaims the right to a name and nationality for the child. In addition, the 1959 Declaration provides for compulsory and free primary education, the prohibition of child labor up to a certain age, and the child's right to play and creativity [23].

According to the letter of the Ministry of Justice of Ukraine dated September 19, 2015, No. III-16216/10.2 [25], the 1959 Declaration of the Rights of the Child [23] is a "soft law" document and from a formal legal point of view is not a hard law that obliges the state to act in a certain way. At the same time, the Declaration is recognized as a universal and effective mechanism and instrument for protecting the rights of the child on a global scale and has been in force since the adoption of the UN General Assembly Resolution of November 20, 1959 [23].

The UN General Assembly, by Resolution 836 (IX) of December 14, 1954, recommended that all countries introduce the International Children's Day in 1956 and choose a date that is acceptable to all [26]. Most countries have chosen the date of November 20. That is why both the 1959 Declaration of the Rights of the Child [23] and the 1989 Convention on the Rights of the Child [15] were adopted on November 20 [27].

Thus, Universal Children's Day is celebrated annually on November 20. In addition to the international holiday, in Ukraine, under the Presidential Decree No. 568/98 of May 30, 1998 [28], a national Children's Day was established, which is celebrated annually on June 1.

*Convention on the Rights of the Child of November 20, 1989 and its three optional protocols.*

The Convention on the Rights of the Child (CRC or UNCRC) was signed on November 20, 1989 [15] and entered into force on September 2, 1990 [29]. At the time of writing, 196 subjects of international law are parties to the Convention on the Rights of the Child [29]. For comparison, 193 states are currently parties to the UN Charter and UN members [30].

For Ukraine, the 1989 Convention on the Rights of the Child [15] entered into force on September 27, 1991 [29].

What is new for the legal protection of the rights of children and adolescents introduced by the UN Convention on the Rights of the Child of 1989 [15]?

First of all, Article 1 of the Convention on the Rights of the Child enshrines the basic international legal definition of the concept of a "child": a child means every human being

below the age of eighteen years unless under the law applicable to the child, majority is attained earlier [15, Art. 1].

The main idea of the Convention [15] is that children are not small adults with small rights, but full members of society who have their own special rights, including the right to play, to family upbringing, and to communicate with their peers, in addition to many adult rights. The Convention embodies the progressive view that childhood is not only preparation for adulthood, but also an important and valuable stage of human life [14].

The Convention on the Rights of the Child [15] is based on four guiding principles, or general requirements for the fulfillment of all the rights enshrined in this Convention [31]:

*Principle 1: Non-discrimination (Article 2).* The non-discrimination article is absolute: it not only prohibits discrimination on the grounds listed in Article 2, but also prohibits other possible forms of discrimination. Equal opportunities should be provided to girls and boys, able-bodied children and children with disabilities, Muslims, Hindus and Christians, rich and poor, etc. [15, Art. 2].

*Principle 2: The best interests of the child (Article 3).* This principle recognizes children as full human beings whose interests must be taken into account. This principle does not simply state that children's needs are important, it means that consideration of the child's interests should be the main factor in deciding whether to exercise a particular subjective right of the child. At the same time, there is no obligation to satisfy all the wishes of the child and for any reason – such wishes should be assessed in the light of the comprehensive satisfaction of the child's rights and interests, especially in their long-term perspective [15, Art. 3].

*Principle 3: The right to life, survival and development (Article 6).* This principle is much broader than it seems at first glance: it imposes an obligation on the signatory states to monitor not only the physical development of children, but also their mental, spiritual, moral, psychological and social development. Governments must "create the environment" best suited to prepare each child for independent life in a free society [15, Art. 6].

*Principle 4: Respect for the views of the child (Article 12).* States parties to the Convention, in their report to the Committee on the Rights of the Child, should emphasize the need to provide children with the opportunity to express their views on family life, school life, social welfare institutions, and provisions for the homeless [15, Art. 12].

Structurally, the Convention on the Rights of the Child [15] consists of 54 articles grouped into 3 parts.

Part I of the 1989 Convention [15] provides for the rights of children, which can be grouped into 4 categories [32]:

1) *Guiding Principles* – general requirements for all rights: definition of the child (Article 1), non-discrimination (Article 2), best interests of the child (Article 3), right to life, survival and development (Article 6), and respect for the views of the child (Article 12);

2) *Survival and development rights* – basic rights to life, survival and development of the child's potential: Protection of rights (Article 4), right to parental guidance (Article 5), right to survival and development (Article 6), right to registration, name, citizenship, guardianship (Article 7), right to preserve individuality (Article 8), right to contact with parents (Article 9), right to family reunification (Article 10), freedom of thought, conscience and religion (Article 14), parental responsibility and state support (Article 18), the rights of the child deprived of a family environment (Article 20), the rights of refugee children (Article 22), the rights of children with mental or physical disabilities (Article 23), the right to health care and treatment (Article 24), periodic evaluation of treatment provided to the child (Article 25), the right to social security (Article 26), the right of the child to an adequate standard

of living (Article 27), the right to education (Article 28) and the goals of the child's education (Article 29);

3) *Safety rights* – protection from harm: protection of rights (Article 4), protection from abduction (Article 11), protection from all forms of violence (Article 19), protection of children deprived of their family environment (Article 20), adoption (Article 21), protection of refugee children (Article 22) and child labor (Article 32);

4) *Participatory rights* – the right to actively express one's position: protection of rights (Article 4), respect for the views of the child (Article 12), right to freely express one's views (Article 13), freedom of thought, conscience and religion (Article 14), right to freedom of association (Article 15), right to privacy (Article 16) and right to access to information (Article 17) [32].

Part II of the 1989 Convention [15] introduces a monitoring mechanism for compliance with the Convention – the Committee on the Rights of the Child (CRC). The Committee on the Rights of the Child adopts general comments, which are not formally legally binding, but are perceived by the parties to the 1989 Convention on the Rights of the Child [15] as authoritative comments and recommendations [33].

Part III of the 1989 Convention [15] contains formal conditions for its entry into force.

It should also be noted that three Optional Protocols were adopted to the 1989 Convention [15]:

1) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted by UN General Assembly resolution A/RES/54/263 of May 25, 2000 [34]. This Protocol entered into force for Ukraine on August 11, 2005 [34, Art. 10(2)];

2) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted by UN General Assembly resolution A/RES/54/263 of May 25, 2000 [35]. The

Protocol entered into force for Ukraine on August 3, 2003 [35, Art. 14(1)] and

3) Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, adopted by UN General Assembly resolution A/RES/66/138 of December 19, 2011 [36]. The Protocol entered into force for Ukraine on December 2, 2016 [36, Art. 19(2)]. The said Protocol [36, Art. 5(1)] allows for the consideration of communications from or on behalf of individuals or groups of individuals under the jurisdiction of a State Party claiming to be victims of a violation by that State Party of any of the rights set forth in the Convention on the Rights of the Child 1989 [15], the Optional Protocol on the involvement of children in armed conflict [34], and the Optional Protocol on the sale of children, child prostitution and child pornography [35].

#### Conclusions:

1. Initially, the norms on legal protection of children's rights began to be enshrined in national legislation, and with the development of international law, they also began to be formulated in international legal acts of a universal nature.

2. The first international legal instrument on the protection of children's rights was the Convention relating to the settlement of guardianship of minors of June 12, 1902.

3. The first international legal catalog of the rights of the child is the Geneva Declaration of the Rights of the Child of 1924, adopted within the framework of the League of Nations.

4. The International Labor Organization was the first among international intergovernmental organizations to adopt special legal acts on the protection of children's rights within its competence.

5. The first international legal catalog of the rights of the child within the UN is the Declaration of the Rights of the Child of 1959.

6. The basis of modern international legal regulation of the protection of children's rights is the 1989 Convention on the Rights of the Child and its three optional protocols.

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