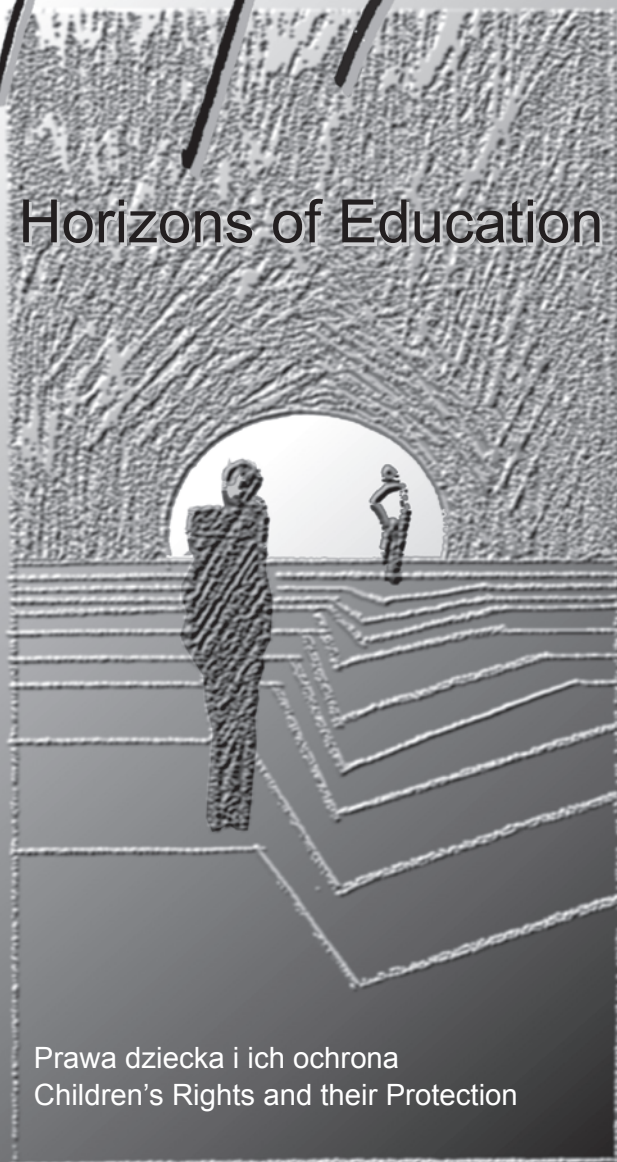


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Horizons of Education



Prawa dziecka i ich ochrona  
Children's Rights and their Protection

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**Editorial:**  
***Children's Rights and their Protection***

Ladies and Gentlemen!

The first issue of "Horizons of Education," which will be printed in 2014 marks a new chapter for the publication which henceforth will be a quarterly journal. The journal has also be revamped in terms of its graphics. These changes are due to a raising of the standards of the journal as well as more closely meeting the needs of the reader.

The current issue of our journal is devoted to the widely recognized problem of children's rights. The idea of children's rights emerged in the seventeenth and eighteenth centuries. As a legal institution recognized around the world, children's rights appeared at the turn of the nineteenth / twentieth century. Nowadays, we observe the large and ever growing process of their codification, both at the national and international level. One can find plenty of binding international agreements, many more documents belonging to so-called "soft law" and numerous domestic law acts regarding child rights issues and defining standards for their protection. Individual units, institutions and states are committed to their implementation and respect.

Among the articles written by foreign and Polish authors you will find papers on issues related to the nature of children's rights, their implementation and their protection.

We are introduced to the theme of the rights of children by Marta Prucnal in her article *On Children's Rights*. The author begins with a presentation of the universal definition of "a child" incorporated into the UN Convention on the Rights of the Child. The author continues her thoughts with the presentation of the concept of rights and children's rights. She presents two main theories of rights – "interest" and "choice" theory and explains children's rights place within those theories. She discusses the frameworks of children's rights presented by M. Freeman and J. Eekelaar, the contemporary concept of children's rights

described by M. Balcerek, E. Czyż and K.A. Bentley, the evolution and codification process of children's rights and the means of their protection.

The theme of children's rights is developed by Marta Kosowska-Ślusarczyk in her article *The Portrait of a Contemporary Child. The Discussion in the Context of Children's Rights in the Light of the Findings of Janusz Korczak*. The author analyzes some documents by Janusz Korczak, such as *Prawo dziecka do szacunku (The Child's Right to Respect)*, *Jak kochać dziecko. Dziecko w rodzinie (How to Love a Child. The Child in the Family)*, *Prawidła życia (Regulations of Life)* and other selected writings. She analyses a child's right to life, to be what it is, to property, to his / her own opinion, to play and free time. The author concludes with statement that despite many differences between Korczak's vision of children's rights and the contemporary portrait of the child, one should always remember the "Old Doctor's" belief that childhood is a unique phase; separate moment that should always be respected since once it ends, it will be repeated.

Łukasz Kosowski in his article *Mtoto. Children's Rights in the Post-Colonial World* examines the meaning of "postcolonialism." He looks at human rights and children's rights from an interdisciplinary perspective and "discusses the need of understanding the diversity, and reinventing international dialogue in terms of education of youth for sustainability."

Two authors discuss criminal law regulations referring to children – Farhad Malekian in his article *The International Criminal Law of Children on War Crimes* carries out his analysis from an international perspective, whereas Hangameh Ghazanfari in her article titled *Criminal Responsibility of Children in Iranian Penal System in the Light of New Penal Code* – from a national one. In his study Farhad Malekian presents the concept of international criminal law and focuses on its part which is the international criminal law of children. He describes the mandate of international criminal law for children, identifies international crimes against children and characterizes international criminal responsibility for the recruitment of children. He underlines that children are protected subjects both in times of peace and war and their rights "should be regarded as peremptory parts of international criminal law and therefore inalienable." Hangameh Ghazanfari deals with the issue of determination of the age of

criminal responsibility of children which she considers to be “one of the most challenging legal issues associated with child rights in Iran.” The author analyses the Iranian penal system in light of its compliance with Iranian religious rules on the one hand and binding international conventions on the other.

Małgorzata Kozak’s article entitled *A Child’s Right for Protection against all Forms of Violence – Polish Legislation and Pedagogical Perspective* is devoted to the problem of violence towards children. The author describes definitions of violence towards a child, the Polish legal context of this phenomenon and its socio-legal consequences. She tries to find out what the sources of violence towards children are and indicate the role of various institutions and organizations in the context of violence prevention.

Last but not least, Aneta Rogalska-Marasińska in her article *Children’s Right to Learn about Multicultural Europe in Future Teachers’ Education* underlines a child’s need and right to learn about “itself and about other people from the background of his/her own culture and in relation to the culture of those others” so that he or she could build sincere relations with other people. The author states that teachers should be educated in such a way as to make them conscious about that needs of a child and so that they are prepared to teach children how to develop the idea of openness and understanding.

On behalf of the entire Editorial Board I wish you an enjoyable and beneficial read.

Marta Prucnal







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## **Edytorial: Prawa dziecka i ich ochrona**

Szanowni Państwo!

Pierwszy numer „Horyzontów Wychowania” opublikowany w 2014 roku wyznacza nowy rozdział w publikacji czasopisma, które odtąd ukazywać się będzie jako kwartalnik. Czasopismo przebudowane zostało również pod kątem graficznym. Zmiany te podyktowane zostały dążeniem do podniesienia standardów oraz pełniejszej realizacji potrzeb Czytelnika.

Aktualny numer poświęcono szeroko ujętej problematyce praw dziecka. Prawa dziecka jako idee pojawiły się w XVII i XVIII wieku. Jako instytucja prawna uznana przez poszczególne państwa świata zaczęły funkcjonować na przełomie XIX i XX wieku. Współcześnie obserwujemy rozległy i stale się rozwijający, zarówno na szczeblu krajowym, jak i międzynarodowym, proces kodyfikacji praw dziecka. Odnaleźć możemy wiele wiążących umów międzynarodowych, dokumentów należących do tak zwanego „soft law” i aktów prawa wewnętrznego poszczególnych państw dotyczących problematyki praw dziecka oraz wyznaczających standardy ich ochrony. Poszczególne jednostki, instytucje i państwa są zobowiązane do ich realizacji i poszanowania.

Wśród artykułów napisanych przez zagranicznych i polskich autorów w najnowszym numerze „Horyzontów Wychowania” znajdziecie Państwo teksty dotyczące zagadnień związanych z naturą praw dziecka, ich realizacją oraz ochroną.

W tematykę praw dziecka wprowadza nas artykuł Marty Prucnal zatytułowany *Wokół praw dziecka*. Autorka prezentuje powszechną definicję terminu „dziecko” zawartą w Konwencji ONZ o Prawach Dziecka, przedstawia dwie główne koncepcje „praw” – teorię „interesu” i „wyboru” oraz wyjaśnia miejsce „praw dziecka” na podstawie obu tych teorii. Opisuje ramy praw dziecka wyznaczone przez M. Freemana oraz J. Eekelaara, współczesne koncepcje „praw dziecka” reprezentowane przez M. Balcerka,

E. Czyż oraz K.A. Bentley, proces rozwoju i kodyfikacji tych praw oraz środki ich ochrony.

Problematykę praw dziecka rozwija Marta Kosowska-Ślusarczyk w artykule *Portret współczesnego dziecka*. Dyskusja w kontekście praw dziecka w świetle ustaleń Janusza Korczaka. W swojej pracy autorka opiera się na kilku tekstach Janusza Korczaka, między innymi: *Prawo dziecka do szacunku*, *Jak kochać dziecko*, *Dziecko w rodzinie*, *Prawidła życia* oraz kilku pismach wybranych. Analizuje prawo dziecka do życia, prawo dziecka do bycia, tym, czym jest, prawo do własności, własnego zdania, zabawy oraz wolnego czasu. Marta Kosowska-Ślusarczyk w konkluzji swoich rozważań stwierdza, że mimo wielu różnic między spostrzeżeniami Janusza Korczaka na temat praw dziecka a współczesnym ich obrazem, powinniśmy zawsze pamiętać przesłanie „Starego Doktora”, że dzieciństwo jest wyjątkowym etapem życia, który się nigdy więcej nie powtórzy.

Łukasz Kosowski w artykule *Mtoto. Prawa dziecka w postkolonialnym świecie* bada znaczenie „postkolonializmu”. Autor przygląda się, z perspektywy interdyscyplinarnej, prawom człowieka, ze szczególnym uwzględnieniem praw dziecka oraz „omawia potrzebę zrozumienia różnorodności i ponownego zaprojektowania międzynarodowego dialogu pod kątem edukacji młodych dla dobra przyszłości”.

Dwóch autorów omawia regulacje karne odnoszące się do dzieci – Farhad Malekian w artykule *Międzynarodowa odpowiedzialność karna za zbrodnie wojenne popełniane na dzieciach* przeprowadza analizę z perspektywy międzynarodowej, podczas gdy Hengameh Ghazanfari w artykule *Odpowiedzialność karna dzieci w irańskim systemie karnym w świetle nowego kodeksu karnego* analizuje przepisy krajowe. W swoim studium Farhad Malekian przedstawia koncepcję międzynarodowego prawa karnego, rozważania swoje koncentrując na międzynarodowym prawie karnym dzieci. Autor opisuje zbrodnie międzynarodowe popełniane na dzieciach oraz charakteryzuje międzynarodową odpowiedzialność karną za rekrutację dzieci. Podkreśla międzynarodowy obowiązek ochrony dzieci w czasie pokoju i wojny, wskazując, że prawa dziecka „powinny być traktowane jako bezwzględnie obowiązujące normy międzynarodowego prawa karnego, a zatem jako normy nie podlegające uchyleniu”. Hengameh Ghazanfari koncentruje swoje rozważania wokół kwestii określenia wieku odpowiedzialności karnej dzieci, którą uważa

za „jedno z najtrudniejszych zagadnień prawnych związanych z prawami dzieci w Iranie”. Autorka analizuje irański system karny w świetle jego zgodności z zasadami religijnymi Iranu z jednej strony i obowiązującymi Iran konwencjami międzynarodowymi z drugiej strony.

Artykuł Małgorzaty Kozak zatytułowany *Prawo dziecka do ochrony przed wszelkimi formami przemocy – polskie rozwiązania prawne i perspektywa pedagogiczna* został poświęcony problemowi przemocy wobec dziecka. Autorka opisuje definicje przemocy wobec dziecka, polski kontekst prawny tego zjawiska oraz jego socjoprawne konsekwencje. Małgorzata Kozak podejmuje próbę analizy przyczyn przemocy wobec dziecka oraz wskazuje rolę różnych instytucji i organizacji w kontekście ochrony dziecka przed przemocą.

Na koniec Aneta Rogalska-Marasińska w swoim artykule *Prawo dziecka do poznawania wielokulturowej Europy w kształceniu przyszłych nauczycieli* omawia potrzebę i prawo dziecka do poznania „siebie i innych na tle własnej kultury i kultury tych innych”, tak aby umiało ono budować szczere relacje z innymi ludźmi. Autorka podkreśla, że nauczyciele powinni być kształceni w taki sposób, aby stali się świadomi tych potrzeb dziecka i odpowiednio przygotowani do nauczania dzieci rozwijania w sobie idei otwartości i zrozumienia.

W imieniu całej Redakcji oraz swoim własnym życzę Państwu przyjemnej i owocnej lektury.

Marta Prucnal



THEMATIC ARTICLES

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ARTYKUŁY TEMATYCZNE





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## ***On Children's Rights***

### **SUMMARY**

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The idea of children's rights emerged in the seventeenth and eighteenth centuries. As a legal institution recognized around the world, children's rights appeared at the turn of the nineteenth / twentieth century. Nowadays, we observe the large and ever growing process of their codification, both at the national and international level. One can find dozens of binding international agreements, numerous documents belonging to the so-called "soft law" and many domestic law acts regarding child rights issues and defining standards for their protection. Individual units, institutions and states are committed to their implementation and respect. The article presents the normative universal definition of childhood, the concept of children's rights, the evolution and codification process of children's rights and the means of their protection.

**KEYWORDS** – CHILD, CHILDHOOD, RIGHTS, CHILDREN'S RIGHTS, PROTECTION

### **STRESZCZENIE**

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#### *Wokół praw dziecka*

Koncepcja praw dziecka narodziła się w XVII i XVIII wieku. Jako instytucja prawna uznana na całym świecie, prawa dziecka pojawiły się na przełomie XIX i XX wieku. Obecnie obserwujemy rozległy i stale rosnący, zarówno na poziomie krajowym, jak i międzynarodowym, proces ich kodyfikacji. Uchwalono dziesiątki wiążących umów międzynarodowych, wiele dokumentów międzynarodowych o charakterze niewiążącym oraz wiele krajowych aktów prawnych dotyczących praw dziecka i wyznaczających standardy w zakresie ich ochrony. Poszczególne jednostki, instytucje i państwa są zobowiązane do ich implementacji i poszanowania. Artykuł przedstawia normatywną, powszechną definicję dzieciństwa, koncepcję praw dziecka, proces rozwoju i kodyfikacji tych praw oraz środki ich ochrony.

**SŁOWA KLUCZOWE – DZIECKO, DZIECIŃSTWO, PRAWA, PRAWA DZIECKA,  
OCHRONA**

“The twentieth century began with children having virtually no universal rights but ended with children having the most powerful legal instrument, a Convention that not only recognizes but protects their human rights.”<sup>1</sup> The adoption of the Convention on the Rights of the Child on the 20th November 1989<sup>2</sup> marked the culmination of a long process that led to universal recognition of children’s rights. Nowadays, there is no doubt that children have rights and individuals, institutions and countries are obliged to implement and respect them. This is evidenced by a large and ever growing process of their codification, both at the national and international level. One can find plenty of binding international agreements, thousands more documents belonging to the so-called “soft law” and many domestic law acts regarding child rights issues and defining standards for their protection.

The article presents the normative universal definition of childhood, the concept of children’s rights, the evolution and codification process of children’s rights and means of their protection.

## What does it mean to be a child?

In order to talk about children’s rights we need to explain who “a child” is.<sup>3</sup> This article does not consider different conceptions of childhood held across the world, instead it presents the normative universal definition of “a child” incorporated into the Convention on the Rights of the Child. According to Article 1 of the CRC “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is

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<sup>1</sup> E. Manful, *The Development of Children’s Rights in Africa and Europe. Comparing Legislation in Ghana and Northern Ireland*, Lewiston – Queenston – Lampeter 2010, p. 57.

<sup>2</sup> United Nations Convention on the Rights of the Child, Nov. 20, 1989, 28 I.L.M. 1456, 1577 U.N.T.S. 3 [hereinafter the CRC].

<sup>3</sup> For thorough presentation on international definition of a child see: M. Prucnal, *Who is a child? International definition of a child*, in: *The Sovereignty of Children in Law*, eds. F. Malekian, K. Nordlöf, Newcastle upon Tyne 2012, p. 69-87.



attained earlier.”<sup>4</sup> The Convention’s definition of “a child” was based partly on the age limit criterion. The drafters of Article 1 indicated only the upper age limit of childhood, stating that in principle childhood ends with the attainment of the age of eighteen years. Expressing respect for cultural and traditional diversities reflected in national regulations,<sup>5</sup> they agreed on situations when national law allows earlier than at eighteen years attainment of majority. They have not determined the childhood lower age limit. Thus, we are confronted with three approaches referring to the interpretation of Article 1 of the CRC. The first approach equates the beginning of childhood with the moment of child’s conception. The second one – with the moment at which the embryo becomes a foetus or with a specific period of its development in the womb. The third one, which is the dominant doctrinal view, equates it with the moment of child’s birth.<sup>6</sup> The CRC does not, however, restrict discretion of each State party to provide under their domestic law wider definition of “a child” and thus including every human being from the moment of conception.<sup>7</sup>

## What does it mean to have rights?

The concept “right” can be approached from different directions. “A right” can be described either as a claim or entitlement.<sup>8</sup> To have rights understood as legitimate claims indicates that there is a corresponding duty or obligation, that there is a claim on someone who is obliged to assist the rights-bearer in securing

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<sup>4</sup> Article 1 of the CRC, supra note 2.

<sup>5</sup> The principle of respect for cultural and traditional diversities of different societies was reflected in the 11th preambular paragraph to the CRC which reads “taking due account of the importance of the traditions and cultural values of each people,” see the CRC, supra note 2.

<sup>6</sup> G. Van Bueren, *The International Law on the Rights of the Child*, The Hague – Boston – London 1998, p. 35; S. Detrick et al., *The United Nations Convention on the Rights of the Child. A Guide to the “Travaux Préparatoires”*, Dordrecht – Boston – London 1992, p. 57.

<sup>7</sup> Article 41 of the CRC, supra note 2.

<sup>8</sup> P.E. Veerman, *The Rights of the Child and the Changing Image of Childhood*, Dordrecht – Boston – London 1992, p. 13-16; E. Manful, *The Development of Children’s Rights in Africa and Europe. Comparing Legislation in Ghana and Northern Ireland*, supra note 1, op. cit., p. 22-23.

his or her rights.<sup>9</sup> A person has rights (synonymous with claims, correlative of duties and obligations) to perform acts when others are under a correlative duty or obligation to permit these acts or to restrain from preventing them.<sup>10</sup> To have rights described as entitlements means that the right-bearer is protected from the action or inaction of others. In other words, the behaviour of others is restricted on the basis of rights = entitlements granted to right-holders.<sup>11</sup>

There are two main competing theories as both to the nature and function of rights – “interest” (welfare) theory and “choice” (will) theory. According to “interest” theorists, to have rights means that others have duties which protect interests of the rights-holder. The rights-holder is entitled to put certain duties on others (people, institutions) which guarantee the protection of his or her interests.<sup>12</sup> Thus, it is the duty of others to ensure the rights of the rights-holder. Proponents of “choice” theory are of the view that to have rights means to have the ability to make a choice, “to have the power to enforce or waive the duty to which the right corresponds.”<sup>13</sup> According to “choice” theorists it is the rights-holder who is able to make rational decisions and thus it is the rights-holder who is under an obligation because he or she is the one whose choice is protected by the right.<sup>14</sup>

Philosophers make a distinction between legal (positive) and moral (negative) rights. This distinction is based on the attributes and ways of creation of rights. Legal (positive) rights are rights which are created by and exist under the law of the state. Moral (negative) rights are not codified in the law, they are

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<sup>9</sup> Ibidem.

<sup>10</sup> P.E. Veerman, *The Rights of the Child and the Changing Image of Childhood*, supra note 8, op. cit., p. 14.

<sup>11</sup> E. Manful, *The Development of Children’s Rights in Africa and Europe. Comparing Legislation in Ghana and Northern Ireland*, supra note 1, op. cit., p. 23.

<sup>12</sup> J. Bentham, *Anarchical Fallacies*, in: ed. J. Waldron, *Nonsense Upon Stilts: Bentham, Burke and Marx on the Rights of Man*, Oxford 1987, p. 198-229; E. Manful, *The Development of Children’s Rights in Africa and Europe. Comparing Legislation in Ghana and Northern Ireland*, supra note 1, op. cit., p. 23-24.

<sup>13</sup> H.L.A. Hart, *Esseys on Bentham*, Clarendon Press 1982, in: E. Manful, *The Development of Children’s Rights in Africa and Europe. Comparing Legislation in Ghana and Northern Ireland*, supra note 1, op. cit., p. 24.

<sup>14</sup> Ibidem.

acknowledged to all the people and they stem from the moral values and principles of social groups.<sup>15</sup>

Moral rights impose a negative duty on others, the duty not to interfere with a person's activity in a certain area (...). Whilst legal rights impose a positive duty on others, the duty to help a person, to have or to do something based on agreed rules and laws.<sup>16</sup>

## What are children's rights?

The distinguishing feature of children is their incompetence to bear full responsibility for their actions.<sup>17</sup> Thus, most of their rights are actually their entitlements, their privileges rather than their legitimate claims. Because of their special needs, capacities and interests which differ significantly from those of adults, children are considered to be incompetent to claim a right. Claiming the welfare of children as a right is the task of adults who act on behalf of children. "Therefore, for children, rights are mainly to protect their interests that others perform a duty or an obligation owed them"<sup>18</sup> ("interest" theory). In this way children are dependent on adults as having power over their lives and thus having more power to protect children's interests than children themselves. Thus, children's rights "give children a claim which puts obligation on others to perform a duty, or give children the entitlement to be protected from behaviour of others."<sup>19</sup>

On the other hand, we shall distinguish between children's rights safeguarded by adults and those which empower children to make decisions and take actions for themselves ("choice"

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<sup>15</sup> J. Feinberg, *Social Philosophy*, Prentice-Hall 1973; D. Archard, *Children: Rights and Childhood*, Routledge 2004, p. 53, in: E. Manful, *The Development of Children's Rights in Africa and Europe. Comparing Legislation in Ghana and Northern Ireland*, supra note 1, op. cit., p. 25-26.

<sup>16</sup> E. Manful, *The Development of Children's Rights in Africa and Europe. Comparing Legislation in Ghana and Northern Ireland*, supra note 1, op. cit., p. 25-26.

<sup>17</sup> P.E. Veerman, *The Rights of the Child and the Changing Image of Childhood*, supra note 8., op. cit., p. 17.

<sup>18</sup> E. Manful, *The Development of Children's Rights in Africa and Europe. Comparing Legislation in Ghana and Northern Ireland*, supra note 1, op. cit., p. 32.

<sup>19</sup> Ibidem, p. 33.

theory). Many philosophers think, however, that children's rights to make choices are constrained. In their opinion, a child cannot be the best judge of what is for his or her own good or interest, instead there are adults who specify the best interest criteria of children's choices. Thus, children are allowed to make their choices and express their opinions but within the criteria established for them by adults.<sup>20</sup>

## Frameworks of children's rights

Frameworks of children's rights can be divided into entitlement and interest frameworks. Entitlement framework theory is represented by M. Freeman who argues that children, according to their capability, are entitled to participate in decisions and choices affecting them. The author distinguishes four types of rights understood as entitlements for children. These are: 1) rights to welfare (which include right to: nutrition, health, education and non-discrimination); 2) rights to protection (which include right to: protection from neglect, harm, abuse and exploitation); 3) right to be treated like adults (which includes right of a child to make his or her decisions according to the changing capacity of a child) and 4) rights against parents who impede "the societal expected development of the child."<sup>21</sup>

Interest framework theory is represented by J. Eekelaar who argues that everyone, thus also children, is entitled to claim for themselves rights protecting their interests. He is of the view, however, that children are unable to recognize their best interests and therefore this role falls to adults who decide on behalf of children what serves them best. Eekelaar distinguishes three kinds of interests which build the basis of children's rights. These are: 1) basic interests (which include physical, emotional and intellectual care); 2) developmental interests (which include among others education and health services) and 3) autonomy interests

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<sup>20</sup> Ibidem, p. 34-36.

<sup>21</sup> M. Freeman, *The Rights and Wrongs of Children*, Frances Pinter 1983, in E. Manful, *The Development of Children's Rights in Africa and Europe. Comparing Legislation in Ghana and Northern Ireland*, supra note 1, op. cit., p. 38-40.

(which include for example child's freedom to present her or his views, freedom to choose his or her own lifestyle).<sup>22</sup>

## The contemporary concept of children's rights

Among authors who describe the contemporary concept of children's rights are two Polish scholars whose concepts this article refers to. These are Marian Balcerek and Elżbieta Czyż.

Balcerek states that children's rights constitute set of entitlements granted to children which stem from civil rights of community and which determine the status of the child in her or his state, society and family.<sup>23</sup> Children's rights give the child a status of special protection and simultaneously they inform adults about their responsibilities towards children. The catalogue of children's rights indicates also what the needs of the child are and what adults should do in order to provide each child with the necessary conditions for her or his proper development, education and preparation for life in society. At the same time children's rights constitute the catalogue of children's privileges in the adult world, which enable her or him to a privileged functioning as poor, inept and immature being.<sup>24</sup>

Czyż argues that children's rights belong to human rights category and they reflect the dignity and uniqueness of the child as a human individual. She underlines that children's rights should not be confused with child's basic needs (for example her or his need for growing up in a happy family, her or his need for love). Children's rights should be seen in relation individual – the authority. It is not sufficient for the state to confirm children's rights existence under its legal system rules, but it is necessary that the state provides children with the possibility of exercise of their rights as well as with the effective procedures for children's right enforcement. Children's rights should not be discussed in the parent – child relationship. Children are subject to parental

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<sup>22</sup> J. Eekelaar, *The Emergence of Children's Rights*, "Oxford Journal of Legal Studies" 1986, 6(2), 161, in: E. Manful, *The Development of Children's Rights in Africa and Europe. Comparing Legislation in Ghana and Northern Ireland*, supra note 1, op. cit., p. 40-42.

<sup>23</sup> M. Balcerek, *Międzynarodowa ochrona dziecka*, Warszawa 1988, p. 18.

<sup>24</sup> Ibidem, p. 22.

authority and it is primarily parents who decide about upbringing and worldview of their children. The state helps the family in securing the appropriate conditions for the development of the family. It plays, however, only subsidiary role. The state is therefore obliged to respect the rights and duties of parents primarily responsible for the development and upbringing of their children. The state should protect the autonomy of the family and should not interfere with it, as long as parents do not neglect a child or do not abuse their parental authority.

Children's rights are subject to restrictions, but only such as are prescribed by law and are necessary in a democratic society because of national and public security, the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others people. Children's rights being based on universal human rights belong to all children irrespective of their race, gender, creed etc. Children cannot be deprived of their rights nor can children's rights be suspended.<sup>25</sup>

An interesting conception on children's rights concept is presented by K.A. Bentley who makes the distinction between rights which children have as human beings and rights which they have in terms of their status as children (by virtue of their age) rather than as human beings. She states that most of the rights granted to children are granted to children because of their status as human beings and not strictly on the basis of their status as children. She describes these rights as "children's humans rights" and includes in their catalogue for example: the inherent right to life; protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Children's humans rights are of course non-derogable (inalienable) rights – they cannot be limited, deprived or suspended. On the other hand she argues that children have also their proper "children's rights" which are "those rights which children are deemed to have *qua children* rather than as human beings, or refugees, or any other rights-generating category."<sup>26</sup> She describes them as derogable rights as they "are constituted by limitations that are placed on children in terms of the exercise of their liberty, as the practice in question is one that is regarded

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<sup>25</sup> E. Czyż, *Prawa Dziecka*, Warszawa 2002, p. 5-7.

<sup>26</sup> K.A. Bentley, *Can there be any universal Children's Rights?*, „International Journal of Human Rights” 2005, vol. 9, no. 1, p. 110.

as inappropriate for children to be engaging in by virtue of their youth.”<sup>27</sup> Children’s rights catalogue includes, among others: protection of children from engagement in hostilities; protection from the illicit use of narcotic drugs and psychotropic substances or the rights to be protected from economic exploitation and from performing any hazardous work or the one that is likely to interfere with the child’s education, or to be harmful to the child’s health or her or his physical, mental, moral, spiritual or social development.<sup>28</sup>

## Evolution of children’s rights and their protection

“Tracing the development of children’s rights over the centuries’ reveals “that the status of the child within the family has changed with the introduction of State laws to protect the child from the sole control of the father.”<sup>29</sup> “In the past children were generally treated as the property of their parents, with rights falling somewhere between those of slaves and those of animals.”<sup>30</sup> Fathers could treat children the way they wanted and the State offered no protection against child abuse.

The history of children’s rights begins in nineteenth and early twentieth century. In 1819 England passed a law prohibiting the employment of young children in factories, mines and agriculture. In 1908 England adopted the Law on the protection of maternity and child care called the Children Act of 1908, Children’s Charter or Habeas Corpus of Children. In 1904 France passed the law “Sur la Service des Enfante assistes providing care of children and young people up to 21 years of age.” In 1912 Belgium issued “Law for the Protection of Childhood” (“Loi du 15.V.1912 sur la protection de l’enfance”). Among the central Europe countries in this period only Hungary introduced legal system of childcare of abandoned, neglected and delinquent children. The national

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<sup>27</sup> Ibidem, p. 110-111.

<sup>28</sup> Ibidem, p. 109-121.

<sup>29</sup> E. Manful, *The Development of Children’s Rights in Africa and Europe. Comparing Legislation in Ghana and Northern Ireland*, supra note 1, op. cit., p. 18.

<sup>30</sup> M.G. Flekkøy, *A Voice for Children*, Jessica Kingsley Publishers 1991, in: E. Manful, *The Development of Children’s Rights in Africa and Europe. Comparing Legislation in Ghana and Northern Ireland*, supra note 1, op. cit., p. 10.

legislative process on the rights of the child was accompanied by the development of associations of criminologists, judges, child care workers seeking to set up special institutions for the education and care of children, to mitigate the criminal law in relation to minors, etc. Among them there were the Society for the Juvenile founded in 1865 in France and the UK Charity Organization Society formed in 1869. Simultaneously international conferences and congresses began to be organized. In 1883 in Paris the International Congress on the Care of Abandoned and Homeless Children was held.<sup>31</sup> In 1890 in Berlin the participants of Criminologists' Congress established the International Union of Criminologists who started discussion on the problem of juvenile delinquency. In 1900 in Chicago the first juvenile court has been created.<sup>32</sup> In 1905 in France the International Bureau for the Care of abandoned and released from prison children has been opened (Bureau International des oeuvres de patronage des des enfants et libérés abandonnés).<sup>33</sup>

In 1922 in Brussels L'Association Internationale pour la Protection de l'Enfance has been established. Its role was described as "fight with everything that could harm children in their proper physical, moral and social development."<sup>34</sup> In 1919 the first organizations in the world to protect children – Save the Children in England and Radda Barnen in Sweden have been formed. In 1920 the International Association for Children – Union Internationale de Secours aux Enfants (UISE) has been founded. Its main activity focused on helping child war victims. The Union has also initiated creation of an international legal document that would guarantee protection of children's rights. It was "Geneva Declaration on the Rights of the Child" adopted by the League of Nations in 1924. Subsequent years have brought further congresses, conferences devoted to children's rights and their protection.

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<sup>31</sup> E. Kantowicz, *Ochrona praw dziecka w kontekście działalności UNICEF*, Warszawa 1997, p. 19-20.

<sup>32</sup> E. Czyż, *Prawa Dziecka*, supra note 25, op. cit., p. 9.

<sup>33</sup> E. Kantowicz, *Ochrona praw dziecka w kontekście działalności UNICEF*, supra note 31, op. cit., p. 21.

<sup>34</sup> M. Balcerek, *Międzynarodowa ochrona dziecka*, supra note 23, op. cit., p. 74-77.



The most important event in the first several years of the post-war period, contributing to the dissemination and popularization of the idea of children's rights in the world, has become the International Declaration on the Rights of the Child, approved and adopted by the United Nations General Assembly on the 20th November 1959.<sup>35</sup> Thirty years later the United Nations adopted the Convention on the Rights of the Child which is currently the most important document in the field of child protection, defining standards for this protection that are binding to almost every country in the world.<sup>36</sup>

## The catalogue of children's rights

### The history of children's rights

shows the development of the rights of children from protection rights in the factories and abuse in homes, to provision rights in the aftermath of wars and disasters to rights to participation. It clearly shows that the description of children's rights has been changing depending on the issues in the polity at a particular time. Industrialization introduced protection rights, with the two World Wars came provision rights and the civil rights movement focused on participation rights, but the concept evolved inclusively of the other previous categories of rights.<sup>37</sup>

The contemporary catalogue of children's rights includes the three abovementioned categories of rights: protection, provision and participation rights. They can be found both in international and national legislation. However, it is the UN Convention on the Rights of the Child of 1989 that constitutes the core base of this catalogue and acts as the children's rights protection basic scheme that should be established under national law of Convention's member States.

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<sup>35</sup> E. Kantowicz, *Ochrona praw dziecka w kontekście działalności UNICEF*, supra note 31, op. cit., p. 22-24.

<sup>36</sup> State Parties to the Convention: 193 countries: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) (access: 27.01.2014).

<sup>37</sup> E. Manful, *The Development of Children's Rights in Africa and Europe. Comparing Legislation in Ghana and Northern Ireland*, supra note 1, op. cit., p. 21.

The catalogue of rights entrusted to children under the CRC provisions includes civil, social, cultural and political rights. Among civil rights we can find: the inherent right to life (Article 6); the right of a child to be registered immediately after birth; the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents (Article 7); the right of the child to preserve his or her identity, including nationality, name and family relations (Article 8); the right to express views freely in all matters affecting the child, to be heard in any judicial and administrative proceedings affecting the child (Article 12); the right to freedom of expression (Article 13); the right to the protection of the law against interference with child's privacy, family, or correspondence, or to unlawful attacks on his or her honour and reputation (Article 16); protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (Article 11, 19, 32-37; Optional Protocol to the CRC of 2000 on the sale of children, child prostitution and child pornography); protection of children affected by armed conflict (Article 38 and 39; Optional Protocol to the CRC of 2000 on the involvement of children in armed conflict). Among children's social rights there are: the right of the child to the protection of his or her health (Article 24 and 25); the right to benefit from social security, including social insurance (Article 26); the right of every child to an adequate standard of living (Article 27); the right of the child to rest and leisure (Article 31). Among cultural rights we can find: the right of the child to education (Article 28 and 29); the right to access to information (Article 17) and among children's political rights: the rights of the child to freedom of association and to freedom of peaceful assembly (Article 15). The CRC grants also children special rights to protection in the event of their disability (Article 23), in the case of deprivation of the child's family environment (Article 20 and 21). It underlines the rights of refugee children (Article 22) and children belonging to ethnic minorities to preserve their own culture, religion and language (Article 30). It also includes special treatment provisions of minors who have fallen into conflict with the law (their right to defense, the prohibition of the death penalty and life imprisonment) (Article 40).<sup>38</sup>

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<sup>38</sup> United Nations Convention on the Rights of the Child, *supra* note 2.

## The protection of children's rights

At the beginning of the twenty-first century, the essential question posed in the context of children's rights is the question of their implementation and protection. We can observe four spheres of action undertaken in order to provide child's rights implementation and protection. They exist both at national and international level and they include: the creation of the law, the monitoring of compliance with national/ international obligations, the enforcing of violations of these obligations and helping/ supporting children whose rights have been violated. Since the first decade of the twentieth century we have been observing a large and ever growing process of the codification of children's rights, both at the national and international level, One can find dozens of binding international agreements, plenty more documents belonging to so-called soft law and many domestic law acts regarding child rights issues and defining standards for their protection.<sup>39</sup> Simultaneously, special institutions have been established to monitor compliance with the legal standards for the protection of children's rights that bind individual units, institutions and states. At the international level this role falls mainly to the Committee on the Rights of the Child, the African Committee of Experts on the Rights and Welfare of the Child, the United Nations Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations High Commissioner for Human Rights (UNHCHR), the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC) and the United Nation Special Representatives of the Secretary-General on Children. At the national level this role is performed by the Ombudsmen for Children and national governmental and nongovernmental organizations acting in favor of children's rights protection. These organisations play also an important role in helping and supporting children whose rights have been threatened or violated. Their role has been strengthened by institutions responsible for enforcement of children's rights' violations. At the national level this function

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<sup>39</sup> At international level function of creating legal standards in the field of children's rights in universal dimension falls mainly to the United Nations Organization and the International Labour Organisation and in regional dimension – to the Council of Europe, European Union, Organization of American States and African Union.

is being played by national courts and at the international level mainly by the African Committee of Experts on the Rights and Welfare of the Child, the United Nations Committee on the Rights of the Child and the International Criminal Court.

In the field of children's rights protection a very important principle is the cooperation of international and national institutions' which is one of the guaranties of the protection's effectiveness.

## Conclusion

One hundred years ago we were creating first major codifications on the rights of the child. We have entered in the twenty-first century not only with countless international and national legal documents concerning children's rights, but also with the legal definition of "a child," with numerous concepts of "the rights of the child," with a broad catalogue of children's rights, with many institutions protecting children's rights and enforcing their violations. In the historical, legal, sociological, psychological perspective a lot has changed in the context of children's rights and their protection. We have many means, which at least theoretically create ideal conditions for the development of children and their protection. Are those conditions realized also in practice? The answer – fuller and closer to the truth, seems to be possible – as was in the case of laying the foundation of the existence and protection of children's rights, with a longer passage of time.

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## ***The International Criminal Law of Children on War Crimes***

### **SUMMARY**

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Whilst the system of international criminal law is a relatively new branch of public international law, its foundations are comparatively based on ancient times. This system has mostly been applied to serious criminal violations committed by individuals, groups, organizations and states. It is the first system of public international law which deals with all of its violators as independent subjects of law. The international criminal law of children is that part of international criminal law which deals with the rights belonging to the children of the world and the obligations of individuals, organizations and states not only to fulfil and respect those rights but also to prevent their violation in national, regional or international relations. The rights of children should be regarded as peremptory parts of international criminal law and therefore inalienable because of their essential role in the protection of children from the unlawful and immoral acts of individuals acting behind the international legal personality of their states. Children are thus the protected subjects of international law, whether in times of peace or war. This is also confirmed in the judgments of the SCSL and the ICC. The word 'child' in the article is used without any prejudice as to the sex or the physical or mental capability of the child.

→ **KEYWORDS:** CHILDREN, RIGHTS, CRIME

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<sup>1</sup> Distinguished Visiting professor, Director of Institute of International Criminal Law, Sweden. To my wife – a woman of substance – Kerstin Nordlöf – with a garden of followers of everlasting love.

*Międzynarodowa odpowiedzialność karna za zbrodnie wojenne popełniane na dzieciach*

Chociaż system międzynarodowego prawa karnego stanowi stonkowo nową gałąź prawa międzynarodowego publicznego, jego fundamenty sięgają starożytności. Stosuje się go głównie w sytuacjach poważnych naruszeń prawa międzynarodowego publicznego, popełnionych przez poszczególne osoby, grupy, organizacje i państwa. Jest to pierwszy system prawny traktujący sprawców jego naruszeń jako niezależne podmioty prawa. Wchodzące w skład międzynarodowego prawa karnego międzynarodowe prawo karne dzieci stanowi tę jego część, która obliuguje osoby fizyczne, organizacje i państwa, nie tylko do realizacji i przestrzegania tych praw, ale także do podejmowania odpowiednich środków w celu zapobieżenia ich naruszeniu w porządku krajowym, regionalnym i międzynarodowym. Prawa dzieci powinny być traktowane jako bezwzględnie obowiązujące normy międzynarodowego prawa karnego z powodu ich zasadniczej roli, jaką odgrywają w aspekcie ochrony dzieci przed nielegalnymi i niemoralnymi czynami osób pozbawionych międzynarodowej prawnej osobowości. W ten sposób dzieci stanowią chroniony podmiot prawa międzynarodowego, zarówno w czasie pokoju, jak i czasie wojny. Fakt ten potwierdziły również wyroki STSL i MTK. Termin 'dziecko' w artykule jest stosowany niezależnie od płci albo fizycznej lub psychicznej zdolności dziecka.

→ **SŁOWA KLUCZOWE – DZIECI, PRAWA, PRZESTĘPSTWO**

## What is International Criminal Law?

Whilst the system of international criminal law is a relatively new branch of public international law, its foundations are comparatively based on ancient time. This system has mostly been applied to serious criminal violations committed by individuals, groups, organizations and states.<sup>2</sup> It is the first system of public

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<sup>2</sup> For an analysis of this law and its scope On international criminal law see Georg Schwarzenberger, 'The Problem of an International Criminal Law,' 3 *Current Legal Problems* (1950) 263; Edward M. Wise, 'Prolegomenon to the Principles of International Criminal Law,' 16 *New York University Law Review* (1970) 562; Farhad Malekian, *International Criminal Law: The Legal and Critical Analysis of International Crimes* (2 vols. 1991); Farhad Malekian, *Principles of Islamic International Criminal Law: A Comparative Search* (2011); Farhad Malekian, *The Monopolization of International Criminal Law in the United Nations: A Jurisprudential Approach* (2 ed, 1995); M. Cherif Bassiouni (ed.), *International*



international law which deals with all of its violators as independent subjects of law. By contrast, within other branches of public international law, individuals, groups, or organizations did not constitute direct subjects of law up until the creation of a considerable number of international treaties. For instance, public international law did not recognize the individual as its direct subject but as its beneficiary subject. However, the situation of individuals and the recognition of their criminal responsibility in the international sphere altered their position and led to them being recognized as direct subjects of international human rights law and also responsible subjects of international criminal law. The system is thus the first and the foremost branch of public international law to attribute the concept of international criminal responsibility to all classes of offender, including states, organizations and individuals of all ranks.<sup>3</sup> The system exclusively concerns criminal violations of the rules of international law, such as international human rights law, the international humanitarian law of armed conflicts, transnational criminal law, international criminal justice and – of particular relevance to this article – the protection of the rights of children from different forms of abuse and exploitation. These include slavery, pornography, international or transnational sexual exploitation and being conscripted as soldiers in wartime.

Although it is true that all the above subjects constitute a separate branch of international law, they are, at the same time,

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*Criminal Law* (3 vols., 1999); Farhad Malekian, *International Criminal Responsibility*, in M. Cherif Bassiouni (ed.), *International Criminal Law*, (1999) 153; Michael Bacharach, 'The Protection and Rights of Victims under International Criminal Law,' 34(1) *The International Lawyer* (2000); M. Cherif Bassiouni, 'International Recognition of Victims' Rights,' in Bassiouni (ed.), *International Criminal Law*, vol. III, 635-701 (2008); Boas Gideon and William A. Schabas (eds.), *International Criminal Law Developments in the Case Law of the ICTY* (2003); Yoram Dinstein, 'International Criminal Law,' 20 *Israel Law Review* 206 (1985); Robert A Friedlander, 'The Foundations of International Criminal Law: A Present-Day Inquiry,' 15 *Case Western Reserve Journal of International Law* 13 (1983); M. Cherif Bassiouni, *Introduction to International Criminal Law* (2003).

<sup>3</sup> The International Military Tribunal in Nuremberg attributed the concept of international criminal responsibility not only to individuals but also to organizations. Accordingly it recognized four criminal organizations. These were National Socialist German Workers Party known as Nazi Party, Gestapo (the official secret police of Nazi Germany), Waffen SS (known as the armed wing of the Nazi Party), and Sicherheitsdienst SD (the intelligence agency of the SS and the Nazi Party in Nazi Germany).

an integral part of the international criminal law system. In fact, the system cannot properly be treated without consideration of these branches and remain effective. For example, international criminal law emphasises the very significant function of international human rights law principles. This means that the system imposes upon states certain international obligations that must be followed by them for the maintenance of international peace, equality, justice, and humanitarian principles in the world. As such, international criminal law is a law which aims to secure and defend other systems of law from serious violations of their provisions.

International criminal law thus consists of a particular framework which focuses on the prevention or elimination of violations against individuals. For the purposes of our discussion, certain parts of this law may appropriately be characterised as the 'international criminal law of children', i.e. those parts aiming explicitly at the protection of the rights of children from the unlawful criminal actions of governments, organisations or individuals. In other words, the international criminal law of children may be defined as a body of law consisting of provisions, rules, principles or regulations of conventional or customary law which deal with the rights of persons who are under eighteen years of age. This is the age recognised as marking the passage from immaturity to adulthood.

## What is the International Criminal Law of Children?

### Characterization

The international criminal law of children is that part of international criminal law which deals with the rights belonging to the children of the world and the obligations of individuals, organizations and states not only to fulfil and respect those rights but also to prevent their violation in national, regional or international relations.<sup>4</sup> The rights of children should be regarded as peremptory parts of international criminal law and therefore inalienable

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<sup>4</sup> Farhad Malekian, Consolidating the International Criminal Law of Children, *Criminal Law Forum* (2014).

because of their powerful and essential role in the protection of children from the unlawful and immoral acts of individuals acting behind the international legal personality of their states. Children are thus a protected subject of international law, whether in times of peace<sup>5</sup> or war.<sup>6</sup> The word 'child' here is used without any prejudice as to the sex or to the physical or mental capability of the child.<sup>7</sup> An *unkempt* form of international criminal law of children under national criminal law may be called juveniles justice which is essentially the development of the theory of the doctrine of *parens patriae* relating to the best interests of minors.<sup>8</sup> This theory obliges the government to enact rules and provisions for the care, protection, custody, and maintenance of children under its jurisdiction.<sup>9</sup> Therefore, the juveniles' justice is a field of national criminal law dealing with persons not old enough to be kept criminally responsible for the criminal conducts. The basic elements of the field of juveniles' justice are protection, non-application of punishment and rehabilitation. Some states have gone even further and protect children in different ways,<sup>10</sup> although there is

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<sup>5</sup> Particularly see the Convention on the Rights of the Child.

<sup>6</sup> See the 1949 Geneva Conventions relating to international humanitarian law of armed conflict.

<sup>7</sup> Farhad Malekian and Kerstin Nordlöf, International Legal Status of Children in the Encyclopaedia of Criminology & Criminal Justice, (Jay S. Albanese, editor, Wiley-Blackwell, 5 volumes, 2014).

<sup>8</sup> This theory was developed throughout the seventeenth century, <[http://en.wikipedia.org/wiki/Parens\\_patriae](http://en.wikipedia.org/wiki/Parens_patriae)> (access: 22.03. 2014). The theory has some roots in English Common law.

<sup>9</sup> Here, a reference should also be made to Article 24 of the Charter of Fundamental Rights of the European Union concerning the protection of the Rights of the Child. The Charter was signed and proclaimed by the European Commission, the Council and the Parliament in December 2000. The article reads that: "1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests."

<sup>10</sup> See Kerstin Nordlöf, Unga Lagöverträdare i Social, Straff- och Processrätt (2005); Kerstin Nordlöf, Straffprocessuella Tvångsmedel: Gripande, Anhållande och Häktning (1987); Kerstin Nordlöf, The Legal Philosophy of Protecting a Suspect Child, Journal of the XVII World Congress of the International

not yet any integration of international legal system of children into their legislations. They have to work for this end in order to ensure the safety and welfare of children due to the provisions of international law of children.<sup>11</sup> This means that almost none of the legislations concerning juveniles' codes within different states fulfil the provisions of international or international criminal law of children.<sup>12</sup>

### *Jus Cogens*

The body of international criminal law which protects the safety of children in different times is an integral part of the international law of *jus cogens*. This is an international legal system listing those norms of international law which cannot be modified by the will of one or several states. The philosophy behind the unchangeable character of certain norms protecting the rights of children is that these rights are so important and vital for the safety of children and humanity that they should not be modified, violated or reduced in any circumstances. They are, in other words, the minimum standard of justice for the safety and protection of the world's children.

The most significant source for the legal validity of the peremptory norms of international criminal law of children is to be found in one of the foundational international treaties, namely, the 1969 Vienna Convention. The convention emphasises that treaties conflicting with a peremptory norm of general international law are null and void. The Convention reads that:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which

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Association of Youth and Family Judges and Magistrates in Belfast, Northern Ireland, 27 August – 1 September 2006; Kerstin Nordlöf, *Straffrättens Processer för Unga Lagöverträdare* (1991).

<sup>11</sup> A clear example of this is the Swedish legislation which does not yet incorporate international law of children into its framework.

<sup>12</sup> See generally Farhad Malekian and Kerstin Nordlöf, *Confessing the International Rights of Children* (2012).

no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.<sup>13</sup>

Similarly, the international criminal law of children may be strengthened if the emergence of a new peremptory norm of general international law seems to be necessary for the protection of children and renders an existing law obsolete. This is also clearly stated by the Vienna Convention, which constitutes one of the most significant law-making treaties in the system of international law. The Convention states that

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.<sup>14</sup>

This means that the Convention aims to ensure that the provisions of preceding treaties which deal, in one way or another, with the rights of children do not hinder the development of the rights of children at the international level. This provision of the Vienna Convention may also be seen as recognising the increasing awareness of the relevant law of children and the importance of securing their social, juridical, economic and political positions at all times.<sup>15</sup> The much-consolidated form of this theory is stated in the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.<sup>16</sup>

The international criminal law of children is also strengthened by another article of the Vienna Convention which aims at the suppression of any obsolete act, decision, rule, or regulation in the provisions of any earlier treaty on the rights of children. Therefore, according to the Vienna Convention, the parties should take certain necessary measures concerning the consequences of

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<sup>13</sup> Article 53 of the Vienna Convention on the Law of Treaties.

<sup>14</sup> Article 64 of the Vienna Convention on the Law of Treaties.

<sup>15</sup> See the provisions of the 1989 Convention on the Rights of the Child and its Optional Protocols

<sup>16</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002.

the invalidity of a treaty which conflicts with a peremptory norm of general international law. They should:

- (a) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and (b) bring their mutual relations into conformity with the peremptory norm of general international law.<sup>17</sup>

The parties should also take the following measures in recognition of the principle that a treaty which becomes void and terminates:

- (a) releases the parties from any obligation further to perform the treaty;
- (b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination, provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.<sup>18</sup>

As is evident, the peremptory norms of general international law offer a strong framework for the protection of the rights of children. This includes even those rights which are expressed according to the circumstances of the time and should be superseded or strengthened on the basis of effective protection of the rights of children. That is why when we speak about the international criminal law of children we employ the system of peremptory norms of general international law which are not only unchangeable but are also requisite. This means that the domestic legal systems of states which do not coincide with the peremptory norms of international law protecting the rights of children have to be modified to this end.

## Consolidated Parts

Among the most established parts of the international criminal law of children are international human rights law, international

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<sup>17</sup> Article 71 (1) of the Vienna Convention on the Law of Treaties.

<sup>18</sup> Article 71 (2) of the Vienna Convention on the Law of Treaties.

humanitarian law, and international criminal justice. These three bodies of law make an effort to strengthen the legal status of children and prevent any conduct, action or decision which may prejudice the implementation of the legitimate rights of children. For example, some of the most widely-recognized rights of children are the following:

- The right to religious, cultural, language, race, ethnic, or any other similar matters;
- The right to integrity;
- The right to legal personality;
- The right to express his/her views;
- The right to be a party to an agreement;
- A right to be recognized as a child when a person is below eighteen years old;
- The right to be respected in all legal procedures;
- The rights to incontrovertible rights to protection;
- The rights to legal identity in criminal procedures;
- A right not to be recruited as a soldier when he is less than fifteen years old;
- The right not to be infanticide;
- The right that no crimes be committed against them;
- The right that transnational crimes be prevented against them;
- The right that international crimes be prevented against them;
- The right that not to be used as slave;
- The right not to be employed for heavy labour;
- The right not to be used in prisons for hard labour;
- The right to protection from unlawful sexual or pornographic exploitations;
- The right not to receive capital punishment;
- The right not to receive life imprisonment;
- The right regarding prohibition of corporal punishment in the juvenile justice system;
- The right not to be kept in adult's prisons or jails;
- The right not to be the object of armed attacks.

## Mandate of International Criminal Law for Children

### Protection of Children

Each branch of public international law has generally speaking a specific mandate that underlines the way in which it works and carries out its role in international public order. The same is true of the system of international criminal law. The system is authorized from its very inception to formulate certain rules that are necessary for the recognition, prevention, and eradication of international crimes against children.<sup>19</sup> Furthermore, it is also one of the primary purposes of international criminal law to regulate proceedings for the prosecution and punishment of international criminals. This has to be in accordance with an appropriate criminal jurisdiction and more obviously a definite statute. Thus, the function of international criminal law is based on the chief element of the criminalization of acts that are deemed unacceptable by the international political and legal community as a whole and are eventually condemned. The scope of criminalization should therefore be considered as the most substantive function of international criminal law.

Yet this substantive part is also strengthened under the provisions of natural law which are integrated into human rights law. In other words, international criminal law strongly protects those primary natural rights of man that are inherited by all human beings and should not be taken from them for any reason, such as right to life, right to home, right to protection, political and social rights and also the right to reside in the land and territories

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<sup>19</sup> There are a large number of documents protecting the rights of children and creating the concept of ICLC. These are such as Geneva Declaration of the Rights of the Child (1924), Declaration of the Rights of the Child (1959), Convention on the Rights of the Child (1989), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005), African Charter on the Rights and Welfare of the Child (1990), European Convention on the Exercise of Children's Rights (1996), Standard Minimum Rules for the Treatment of Prisoners (1955), United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), United Nations Guidelines for the Prevention of Juvenile Delinquency (1990), United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).



in which one has learned ones culture. Protection of these and many other rights are the primary purpose of international criminal law and it is upon this basis that the system of international criminal law was strengthened and settled after the outbreak of the Second World War. This not only aimed at the protection of individuals, but to a great extent, at the practical protection of children from unlawful acts of armed conflict.<sup>20</sup>

## Humanitarian Rules

Historically, however, the strengthening of the system of international criminal law has been straightforward and this is still one of the serious problems facing the law that has been ignored by many writers up until recently. The fact is that the system existed even during previous centuries, although not as a separate branch of the “law of nations,” but rather as an integral part of the body of law which was called “the law of war.” These laws regulated the rules of war between states with very few terms concerning children. Yet, these laws in their own terms were mostly created after an armed conflict by victorious states which had the authority to designate the rules and provisions of peace treaties. This was the case also after the First and the Second World Wars with the drafting of the law of war to apply to new areas, with new concepts of violations such as war crimes, crimes against humanity, aggression and genocide.

Nevertheless, it has to be stated here that the primary mandate of the international criminal law of children has been imposed by the rules of the international humanitarian law of armed conflict and therefore the enumeration of other international crimes into the system of international criminal law is mostly

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<sup>20</sup> For example Article 38 of the 1989 United Convention on the Rights of the Child has proclaimed that “State parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.” It has however permitted in certain situations when people who are over the age of 15 but under the age of 18 voluntarily take part in combat as soldiers. Nevertheless the provisions of Article 4 of the Optional Protocol to the Convention on the Rights of Children has stated that states parties “shall take all feasible measures to ensure that persons below the age of 18 do not take a direct part in hostilities and that they are not compulsorily recruited into their armed forces.” This means that there are basic differences between the provisions of the Convention and the Protocol.

conventional or promotional. This mandate put a particular weight on the rights of civilians and specifically the rights of children in wartime. This means that rules governing the prevention of certain criminal conducts during armed conflicts or the prohibition of certain acts against the population of occupied territories, in particular children or pregnant women, are not only a part of certain conventions of the eighteenth, nineteenth, and twentieth centuries, but are also a product of the long development of the customary international criminal law of armed conflict since the creation of the concept of states.

The charters, constitutions, or statutes of international criminal tribunals/courts are the descendants of these developments and all these together have helped in the strengthening of the system protecting the rights of children during an armed conflict. Examples are the International Military Tribunal for the Prosecution and Punishment of Major War Criminals in Nuremberg, 1945 to 1946; the International Military Tribunal in Tokyo, 1946 to 1948; the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia (ICTY) from 1991 to 2013; the International Criminal Tribunal for Rwanda (ICTR) begun in 1994, ending in 2014; the Mechanism for International Criminal Tribunals, tasked since 2010 with carrying out the works of the last two tribunals mentioned above after they cease operations; the Special Criminal Court for Sierra Leone (CCSL) since 2002; and also the Permanent International Criminal Court established at The Hague. The courts have defended, among other rights, the inalienable rights of children and necessity of their physical protection by the conflicting parties. In fact, one of the mandates of the courts is to prosecute and punish those who have committed serious criminal conduct constituting crimes against children.

These courts constitute the milestones for the rapid development of the system of international criminal law since 1919, and particularly 1945, and its consolidation in the twenty-first century. Some of the legacies of international criminal courts for international criminal law have been therefore to emphasise that rules of war should be respected by all conflicting parties and that violations of the rules of armed conflict constitute war crimes and, in certain situations, crimes against humanity. The ruling decisions of the courts also demonstrate the fact that regardless of

the degree and nature of a conflict between the conflicting parties, or occupying and occupied states or territories, the conflicting parties have certain duties and obligations regarding the maintenance of international rules governing the protection of children, serious violations of which may be recognized as war crimes, crimes against humanity or genocide. There may indeed be evidence which proves that all these three categories of crimes have been committed against children simultaneously.

## Identifying International Crimes against Children

### Hesitation

The function of international criminal law is to identify international criminal behaviour against men, women and children.<sup>21</sup> This means that the law aims to recognize which acts do and do not constitute international crime. The elaboration of this function has been one of the important reasons for the slow evolution of the system and its recognition as law creating obligations for all states. This difficulty of identification has not necessarily been a result of the absence of international conventions but rather of the fact that states have been reluctant to identify their own acts or acts of their individuals as constituting international crimes against children. Therefore, political motivations have always played an important role in the identification of international crimes and the scope of their applicability.

Most states have, for example, avoided signing an international treaty which identifies which acts do or do not constitute aggression. For a long time the international legal community failed to adopt an acceptable international treaty which could clearly identify acts constituting aggression. This was because states did not want to be identified as aggressors because of their actions or occupation of the territories of other states or the unlawful

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<sup>21</sup> For the development of the principles of International Criminal Law of Children see Farhad Malekian and Kerstin Nordlöf, *The Sovereignty of Children in Law* (2012); Farhad Malekian and Kerstin Nordlöf, *Confessing the International Rights of Children* (2012); Farhad Malekian and Kerstin Nordlöf, *Prohibition of Sexual Exploitation of Children Constituting Obligations Erga Omnes* (2013); Farhad Malekian and Kerstin Nordlöf, *International Legal Status of Children in the Encyclopaedia of Criminology & Criminal Justice* (Jay S. Albanese, editor, 2014).

killing of civilians, including children. For this reason, most states preferred to focus on other aspirations at the expense of the recognition of the international crime of aggression, although the crime has been one of the oldest crimes identified in the system of international criminal law.<sup>22</sup> The international policies of states, in particular those of the strongest states, caused all such proposals between 1919 to 1939 to be ineffective and these policies for the non-acceptance of a definition of aggression carried over even into the United Nations and from that organ into the drafting process of the International Criminal Court. Thus, political assessments have had a defining role in the identification, recognition and penalization of international crimes committed against men, women, and children.

It is due to the issue discussed above and many other practical reasons that the development of the system of international criminal law has been very slow and consequently criminals have succeeded in fleeing prosecution and punishment.<sup>23</sup> This is particularly tangible in the contemporary position of international criminal law. Almost all international crimes and all international criminal courts, including the permanent and *ad hoc* tribunals, have prosecuted and punished individuals of those states which are at an early stage of political development and which are in the process of trying to understand what democracy means and how it functions.

Consequently, the international courts which have been established by the United Nations after the end of the lengthy Cold War between the two super power states have aimed solely at the prosecution and punishment of individuals of militarily weak states. The concept of international crimes, such as crimes against humanity, war crimes and genocide that have been recognized in the constitutions of the United Nations Tribunals have entirely been used against nations which are politically very weak and underdeveloped. In other words, individuals of powerful nations have not been brought to justice and have avoided prosecution and punishment.

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<sup>22</sup> See Gerhard Kemp, *Individual Criminal Liability for the Crime of Aggression* (2010).

<sup>23</sup> Another great difficulty has been the very dark and challenging atmosphere around the cold war or between the two super power states and their allies. The United States and the Union of Soviet Socialist Republic have been very critical for the recognition of certain conducts as criminal violations.

The international criminal courts or tribunals base their constitutions on the identification of several categories of crimes recognized by the system of international criminal law. These are crimes against humanity, war crimes, genocide and also, to be recognised in the very near future, the crime of aggression. The first three identifications of international crimes are almost always the ones applied to those who have committed serious criminal conduct against children under international criminal law.

## War Crimes against Children

The term “war crimes” constitutes one of the most readily-identified terms in the system of public international law. These crimes have been recognized within most civilizations in the world but with different criteria and to different degrees. War crimes imply acts that are not permitted to be carried out during an armed conflict against enemies or occupied lands. They should be avoided by the conflicting parties and are regarded as violations of the law of armed conflict. These are acts such as attacks against civilians; killing of the elderly, women and children; attacks against schools and hospitals; using weapons of mass destruction: using of weapons that cause unnecessary suffering; destruction of civilian installations; torture of civilians; and devastation of food supplies or other resources necessary for civilians. Although war crimes against children have been particularly prohibited and have been recognized as against the principles of morality and the philosophy of justice, war crimes have been committed repeatedly against children from the dawn of civilization up until today.

## Customs Preventing War Crimes against Children

Some of the most important regulations concerning the prohibition of certain acts during armed conflicts and recognizing them as war crimes can be examined within the rules of war under the 1907 Convention IV, Respecting the Laws and Customs of War on Land. According to this instrument, any attack or bombardment for whatever purpose on dwellings, villages, towns or

any building which is undefended was prohibited. The treaty also prevented the commission of other acts in wartime.<sup>24</sup> The provisions in the Convention recognized certain responsibilities for the states which were engaged in hostilities, such as avoiding attacks on the life of non-combatants and the property of municipalities, and causing damage to the institutions of religion, charity and education, works of art and historic monuments.<sup>25</sup> States were in fact obliged not to violate an occupied state's social services or commit acts against their population. The 1907 "Convention integrated natural law and customary law into international conventional law and it was a step towards the creation of international humanitarian law."<sup>26</sup>

The Convention should be regarded as one of the clear modifications of the system of international law towards the creation of certain rules that are necessary for the protection of civilians from the threat of war, the danger of developed weapons, fear of being killed, the risk of destruction of residential dwellings by enemies, while also protecting children from unlawful methods of military occupation and calling gradually for the application of the humanitarian law of armed conflict for the recognition of the international criminal responsibility of offenders. Although the Convention aimed at the prohibition of certain acts during armed conflict, its provisions regarding the protection of children were not specified in a separate article. The Convention collectively safeguarded all individuals which meant children practically received the same protection as adults and therefore received no extraordinary protection because of their age. This was one of the serious problems of the Convention regarding the protection of children as it ignored their particularly vulnerable position in armed conflict.

The evolution of the rules of armed conflict in these earlier instruments, including the 1907 Convention, and then the outbreak of the First World War brought the necessity of the protection of civilians including children into the global spotlight for the first time. Many civilians were killed because of the disregarding and violation of the rules of occupation. A clear example is the occupation

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<sup>24</sup> Article 25.

<sup>25</sup> Articles 46, 50 and 56.

<sup>26</sup> Malekian, *International Criminal Law*, Vol. I, p. 105.

of the Armenian region under the authority of the Turkish government and the genocide of the population of the area, including children, committed by the shameful Turkish military forces in contravention of the earliest forms of the international humanitarian law of armed conflict which had been strengthened in 1907.<sup>27</sup> The killing proved that the international legal community needed powerful rules for the prohibition of certain acts, behaviours or conduct during an armed conflict and practically preventing such acts against children. Therefore, the question was taken into serious consideration during the Preliminary Peace Conference in Paris in 1919. The Peace Conference established a Commission in order to investigate which acts should or should not be recognized as violations of the rules of war and therefore be categorized as war crimes.

The Commission came to the conclusion that there were many acts that should be recognized as war crimes. It listed thirty two acts the commission of which would lead to the attribution of criminal responsibility to the violating party. Thus, parties during conflicts and parties who had occupied other territories by the use of armed force were under obligations not to commit certain acts which were also represented in the customary rules of armed conflict. However, one of the serious problems of this list of acts was its failure to mention explicitly the importance of the protection of the rights of children in armed conflict.<sup>28</sup>

## Ignoring the Murder of Children

Despite the fact that many international conventions and reports created by the League of Nations agreed on the prevention of certain acts during armed conflicts, the outbreak of the Second World War proved that the law concerning the international humanitarian law of armed conflict was not strong enough and states were not prepared to prevent the commission of war crimes. During the war the armed forces of Germany were

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<sup>27</sup> Farhad Malekian, *Armenian Genocide and the Questions of Responsibility of the Turkish Government* (House of Commons Conference on the Armenia Genocide, Nor Serount Publications, 2007), p. 31-39.

<sup>28</sup> The United Nations War Crimes Commission., *History of the United Nations War Crimes Commission and the Development of the Laws of War* (London, 1948), p. 34-35. For no. 33 see The United Nations War Crimes Commission, p. 478.

responsible for the killing of a large number of unarmed civilians, mainly Jews. Many children were murdered or caused intentional suffering by German forces in the territories of occupied Europe. The Nazi regime was convinced that the Jewish people had to be eradicated from the whole of Europe – a fanatical and irrational ideal which could not be carried out without the mass killing and systematic occupation of Jewish properties by German military power.

The international response to these atrocities led to the establishment of an international military tribunal by the victorious powers. This was known as the International Military Tribunal for the Prosecution and Punishment of Major War Criminals. For the first time in history, the Charter of the Tribunal used the term “war crimes” to describe the way in which humanitarian law have been violated. The Charter states that war crimes are

violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.<sup>29</sup>

The definition, as the above extract demonstrates, recognizes as war crimes acts which were already recognized as serious violations of the law of armed conflict after the First World War by the League of Nations Commission. The definition was also based in its particulars on the concept of the violation of the law of armed conflict under customary international law. The words used in the definition were merely illustrative and were not therefore conclusive. The Tribunal could therefore refer to other acts as constituting war crimes and entailing the international criminal responsibility of the perpetrators.

The definition had several problems. One serious problem of the definition was that it focused exclusively on the criminal acts of the German state and ignored the serious criminal violations by the Allied Powers. A second problem of the definition is that it did not say anything directly about the immoral and unlawful killing of innocent Jewish children who had no idea of what was

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<sup>29</sup> Article 6 (b).



neither occurring nor any awareness of the forces evolving within the social relations of human beings against their existence. As a whole, the idea of war crimes, their prevention and punishment was based on the methods of proceedings and procedures and not specifically on the shocking violations of the natural or legal rights of children. That is why the Tribunal in Nuremberg did not tackle the question of the mass killing of children separately from the massive and systematic killing of the Jews.<sup>30</sup>

### Protection of Children in Territories under Military Occupation

Since the provisions of the Charter of the International Criminal Tribunal in Nuremberg were temporary and had only been drafted to evaluate the violations of the law of armed conflict during the Second World War, other necessary rules needed to be drafted and be codified. Furthermore, the international humanitarian law of armed conflict created thus far was far from application and the legislation of international criminal law needed precise conventions that could be referred to in times of armed conflict. Moreover, in the creation of the provisions of the earlier international conventions, in particular the Charter of the Nuremberg Tribunal, the victorious states had taken a dominant role

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<sup>30</sup> The crimes which were committed against (mostly Jewish) children in Europe disfigured the image of justice and humanity in the world. Accordingly: "The Germans and their collaborators killed as many as 1.5 million children, including over a million Jewish children and tens of thousands of Romani (Gypsy) children, German children with physical and mental disabilities living in institutions, Polish children, and children residing in the occupied Soviet Union. The chances for survival for Jewish and some non-Jewish adolescents (13-18 years old) were greater, as they could be deployed at forced labour." <[www.ushmm.org/wlc/en/article.php?ModuleId=10005142](http://www.ushmm.org/wlc/en/article.php?ModuleId=10005142)>. Simultaneously, children who could be hidden with the help of individuals, entities or states were transferred to the new state or Israel. The following description is illustrative of this fact: "After the surrender of Nazi Germany, ending World War II, refugees and displaced persons searched throughout Europe for missing children. Thousands of orphaned children were in displaced persons camps. Many surviving Jewish children fled eastern Europe as part of the mass exodus (Brihah) to the western zones of occupied Germany, en route to the Yishuv (the Jewish settlement in Palestine). Through Youth Aliyah (Youth Immigration), thousands migrated to the Yishuv, and then to the state of Israel after its establishment in 1948." <[www.ushmm.org/wlc/en/article.php?ModuleId=10005142](http://www.ushmm.org/wlc/en/article.php?ModuleId=10005142)>.

and right of decision and therefore most states had not participated in the drafting of those earlier instruments.

It was on the basis of these and many other reasons that the world moved toward the adoption of new conventions protecting civilians from indiscriminate acts of war by occupying powers. Therefore, the 1949 Geneva Conventions were drafted, signed and ratified by states in order to create a legal body responsible for the international humanitarian law of armed conflict. The Conventions formulated the customary international provisions into conventional international law and simultaneously formulated many new rules to be applied in times of armed conflict. The Geneva Conventions are 1) the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949,<sup>31</sup> 2) the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 3) the Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, and 4) the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949.<sup>32</sup>

The provisions of the four Geneva Conventions apply to times of armed conflict, whether of an international or non-international character. The conflicting parties in an armed conflict are under the responsibility to carry out the provisions of the conventions and bound not to breach these provisions. Violations of the rules of the Conventions are not therefore permitted for any state.<sup>33</sup> This is for four essential reasons: firstly, the parties to the Conventions are bound by the principle of *pacta sunt servanda*; secondly, the provisions of the Conventions constitute an integral

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<sup>31</sup> This convention has been developed since 1864, 1906, 1929, and finally 1949. Therefore, the Convention is one of the significant instruments of international criminal law protecting individual during an armed conflict.

<sup>32</sup> *Id.*, p. 122-141.

<sup>33</sup> However, it must be stated that the provisions of these Protocols have not been respected and have often been violated by different states in national or international armed conflicts. A clear example of this is "The Gaza massacre or the grave violations of the international humanitarian law in Gaza was a three week long horrific attack on the civilization of the Gaza Strip. The war was waged by the Israeli armed forces against the population of the Gaza Strip at the end of 2008 and the beginning of 2009. At least 1550 civilians were killed, one third of whom were very young children. Only a few Israeli people were killed by the Hamas militants." Farhad Malekian, Judging International Criminal Justice in the Occupied Territories, *International Criminal Law Review* 12 (2012) 827-869, 841.

part of international customary law; thirdly, the Conventions are a central pillar within the international humanitarian law of armed conflict; fourthly, the provisions of the Conventions are a significant part of the international law of *jus cogens*. This means that they constitute peremptory *regulations* and, consequently, compulsory humanitarian obligations upon all states regardless of their ratification of the Conventions.

The content of all four conventions require that states should protect civilians and children in all possible circumstances and that they do not commit war crimes. These crimes include murder, extermination, killing of children, minors or infants, violence to life, mutilation, humiliation, torture and cruel or degrading treatment.<sup>34</sup>

### Additional Protocols Safeguarding Children

Whilst the provisions of the four Geneva Conventions were formulated to outline the existence of principles respect for which is important in times of armed conflict, some of the states parties were not satisfied with their provisions and pressed for the adoption of more detailed provisions for the prevention of certain acts that should not be allowed to occur during an armed conflict. Consequently, states parties to the Geneva Conventions drafted and adopted two additional protocols to the four Geneva Conventions. These are the Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 12 December 1977 and the Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 12 December 1977. These Protocols include a considerable number of provisions governing armed conflicts that were not properly examined within the provisions of the four 1949 Geneva Conventions.

### Condemning the Murder of Children

In a broad sense many questions of the protection of children and the safeguarding of their position from various attacks arise

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<sup>34</sup> *Id.*

in the context of armed conflict. It is for this reason that most relevant international conventions have focused on the protection of civilians, in particular minors, women and the elderly. Although the four Geneva Conventions and the two Protocols adopted certain provisions regarding the protection of women, men and children, these were not seen by the legislators as sufficient to protect the position of children. The two Protocols therefore focused on the rights of children in a separate chapter. They make it clear that the conflicting parties have conventional duties to protect children in all possible situations and avoid any act which may danger their security. Chapter II of Protocol I relating to measures protecting women and children declares that:

Art 77. Protection of children

1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

2. The Parties to the conflict shall 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 and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting 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 endeavour to give priority to those who are oldest.

3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.

4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.

5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of *eighteen years* at the time the offence was committed.

That is why almost all crimes committed against children at the international level are bound by the provisions of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.<sup>35</sup> States are obliged to follow the

provisions of the conventions and prevent any actions which prejudice the protected rights of children. The purpose of the Statutory convention is also to underline that those who commit criminal acts against children cannot escape from criminal responsibility by invoking any statute of limitations. It must nevertheless be asserted that the provisions of Article 77 of the Additional Protocol are not as strong as they could be for the protection of the rights of children. This is based on the fact that the article uses the term "all feasible measures" which is subject to very profound differences in interpretation varying from state to state.

## Evacuation of Children

The contracting parties to the Geneva Conventions and Protocols have also taken into serious consideration and have recognised the situation of children who should be evacuated because of the conditions of war, armed attacks or the absence of certain necessary requirements for their health or social care. Protocol I has formulated certain provisions regarding the evacuation of children from war zones but attaches certain conditions. It provides that:

1. No Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety, so require. Where the parents or legal guardians can be found, their written consent to such evacuation is required. If these persons cannot be found, the written consent to such evacuation of the persons who by law or custom are primarily responsible for the care of the children is required. Any such evacuation shall be supervised by the Protecting Power in agreement with the Parties concerned, namely, the Party arranging for the evacuation, the Party receiving the children and any Parties whose nationals are being evacuated. In each case, all Parties to the conflict shall take all feasible precautions to avoid endangering the evacuation.<sup>36</sup>

As is evident, according to the provisions of Protocol I no evacuation can be carried out without the primary consent of

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<sup>36</sup> Art 78. Evacuation of children.

a rightful guardian of the child. This means for the evacuation of each child a legitimate form of consent should be expressed by the parents or any other person who is responsible for the care or the safety of the child in question. With all these safeguards the provisions above aim at preventing abuse or decisions against the interests of the child and calls simultaneously on the responsibility of the occupying state not to resort to unlawful decisions which may harm the present or the future position of the child.

### Minimizing the Risk of Harm to Children

Protocol I additional to the Geneva Conventions on the humanitarian law of armed conflict puts a heavy weight on the position of children who are, for one reason or another, the subject of evacuation because of armed conflict. The parties to the Protocol have therefore accepted clearly defined responsibilities for the protection of the identity of children and providing of assured facilities for their return to their country of origin. Thus, authorities who are engaged in the evacuation and receiving of children have duties not only to safeguard children's physical health but also to record all information concerning their identities. The Protocol clearly concerns the question of the protection of children not only by an occupying power, but also, by all other states who are engaged with the wider consequences of armed conflicts.

Protocol I clarifies that:

2. Whenever an evacuation occurs pursuant to paragraph 1, each child's education, including his religious and moral education as his parents desire, shall be provided while he is away with the greatest possible continuity.

3. With a view to facilitating the return to their families and country of children evacuated pursuant to this Article, the authorities of the Party arranging for the evacuation and, as appropriate, the authorities of the receiving country shall establish for each child a card with photographs, which they shall send to the Central Tracing Agency of the International Committee of the Red Cross. Each card shall bear, whenever possible, and whenever it involves no risk of harm to the child, the following information:

- (a) surname(s) of the child;
- (b) the child's first name(s);

- (c) the child's sex;
- (d) the place and date of birth (or, if that date is not known, the approximate age);
- (e) the father's full name;
- (f) the mother's full name and her maiden name;
- (g) the child's next-of-kin;
- (h) the child's nationality;
- (i) the child's native language, and any other languages he speaks;
- (j) the address of the child's family;
- (k) any identification number for the child;
- (l) the child's state of health;
- (m) the child's blood group;
- (n) any distinguishing features;
- (o) the date on which and the place where the child was found;
- (p) the date on which and the place from which the child left the country;
- (q) the child's religion, if any;
- (r) the child's present address in the receiving country;
- (s) should the child die before his return, the date, place and circumstances of death and place of interment.<sup>37</sup>

The list above outlines with no room for doubt the importance of the child's right to a childhood and his/her need for an effective protection of personal identity. This means that the relevant authorities of the contracting parties are under a recognized responsibility to record and safeguard the identity of each child and avoid any action or decision which may prejudice the legal status of the child. The intention of the legislator is therefore two-fold: firstly, it is to protect the position of the child with the rules of international criminal law; and secondly, it is to emphasise the responsibility of the relevant authorities who are engaged in armed conflict.

## Humane and Fundamental Guarantees for Children

The Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts of 1977 is another international

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<sup>37</sup> Art 78. Evacuation of children.

instrument dealing with the questions of the protection of children as set out in Protocol I.<sup>38</sup> The difference between the first and the second protocol is the scope of their applicability and not their legal validity. Protocol II encloses three significant humanitarian principles: principle one concerns the necessity of fundamental guarantees protecting those who do not take a direct part in armed activities;<sup>39</sup> principle two deals with those persons whose liberty has been restricted during a time of armed conflict;<sup>40</sup> principle three concerns the respect of generally recognized principles for penal prosecutions such as the principle of innocence until proven guilty, the right to a defence, conviction on the basis of individual responsibility and the application of the law in force at the time a crime was committed and not the retroactive application of a law.<sup>41</sup>

Some of the most significant provisions of the Protocol dealing directly with the rights of children are entered into the provisions of Article 4 relating to humane treatment and fundamental guarantees for children. The provisions of the article clearly protect the moral, cultural, and legal statuses of children who may be the victims of non-international armed conflict. The article reads that:

- ...
3. Children shall be provided with the care and aid they require, and in particular:
    - (a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
    - (b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;
    - (c) children 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;

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<sup>38</sup> The Protocol was opened for signature in Berne, on 12 December 1977 and came into force on 7 December 1978. U.N. Doc. A/32/144 Annex II; International Committee of the Red Cross, *Protocols Additional to the Geneva Conventions of 12 August 1949*, Geneva, Geneva, 1977, p. 89-101; 16 ILM (1977), p. 1442.

<sup>39</sup> See Article 4.

<sup>40</sup> See Article 5.

<sup>41</sup> See Article 6.



- (e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.

The Protocol condemns the participation of children in armed conflicts. Specifically, it underlines that children who have not attained fifteen years of age should not in any circumstances be forced to take part in armed hostilities. Article 4 of Protocol II has therefore aimed to create legal protections for children below the age of fifteen who are, for one reason or another, forced to participate in armed conflict. In this case, “the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured.”<sup>42</sup>

The purpose of the above provisions is to emphasise two important principles regarding the protection of children. The first principle specifies the age limit of fifteen years below which participation in armed conflict is not permitted, while the aspiration of the second principle is to bring to the attention of conflicting parties that the participation of a child in an armed conflict who has not reached fifteen years of age should not be interpreted as removal of his/her protection. The Protocol has therefore underlined that the “death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.”<sup>43</sup>

It may be asserted that the provisions of Protocol II governing children are partly based on the customary interpretation of the rules of armed conflict during hostilities. The provisions are also the development of the rules of conventional international law, such as the four Geneva Conventions, which were not clearly elaborated at the time of their formulation and created ambiguity, controversy and a broad gap within the scope of their applicability

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<sup>42</sup> Article 4 (3,d).

<sup>43</sup> Article 6 (4) concerning penal prosecutions.

at the international level. The Protocols came into existence to fill this gap.

## War Crimes against Children and the International Criminal Courts

Practically, the definition of war crimes in international criminal law has been, to a great extent, developed within the statutes and judgements of international criminal tribunals or courts. The first definition of war crimes was drafted into the provisions of the Charter of the Nuremberg Tribunal.<sup>44</sup> The establishment of the Tribunal was met with many sharp criticisms by a considerable number of states and international lawyers. The criticisms were based essentially on the fact that the Tribunal itself and its law were both retroactive and did not therefore have any basis in the system of international law. Criticisms were also made concerning its non-impartiality.

Regardless of the many criticisms of the Charter of the Tribunal, it is true that its laws concerning war crimes were not only based on conventional approaches to the law but also on principles of customary international law. It is in this regard that the definition of war crimes had long been rooted in international law. However it is true that the Nuremberg Tribunal did not separately deal with the questions of crimes committed against children and therefore children were, like other categories of persons, recognized as an indistinguishable part of the general civilian population. No particular priority was given to children because of their age.<sup>45</sup>

Despite the occurrence of many wars between many states, particularly the war waged by the United States in Vietnam and the occupation of its territories, no need for the codification of a new concept of war crimes was seen by the great powers as necessary for the world. In other words, the definition, application and interpretation of such crimes were legally monopolized. Consequently, it was only in 1993 that the first definition of war

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<sup>44</sup> On Nuremberg Tribunal see generally Sheldon Glueck, *By What Tribunal Shall War Offenders Be Tried?*, 56 Harv.L.R. 1059 (1942-3); Hans Kelsen, *Will the Judgement of the Nuremberg Trial Constitute a Precedent in International Law*, 1 INT'L L.Q 153 (1947).

<sup>45</sup> Article 6 (b).

crimes, under the term “violations of the laws or customs of war,” was drafted by the United Nations Security Council into the Statute of the ICTY.<sup>46</sup> The Statute relates to two significant questions of international criminal law concerning war crimes. These are the law and customs of war and grave breaches of the relevant law in the territories of the occupied state by the criminal acts of the occupying state.<sup>47</sup>

The Statute of the ICTY also clarifies which acts constitute grave breaches of the law of armed conflict and therefore entail the attribution of criminal responsibility to individuals of the occupying state. According to it, the Tribunal has the power to prosecute persons committing or ordering to be committed grave breaches of the 1949 Geneva Conventions.<sup>48</sup>

The International Criminal Tribunal for Rwanda (ICTR) has similar provisions to the ICTY regarding the prohibition of war crimes and grave breaches of the international humanitarian law of armed conflict. The Statute of the ICTR makes it clear that Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II constitute war crimes.<sup>49</sup>

Under certain conditions which are mentioned in the Statute, it is possible that the international humanitarian law of armed conflict may be judged to have been violated by the conflicting parties in the occupied territories. The law makes it clear that the occupying power has a great responsibility not to violate the obligations of international criminal law.

Disputes concerning what do and do not constitute unjust and therefore grave breaches of armed conflict are, however, frequent. The proceedings and records of international criminal courts display the fact that many disputes are irrational and it is only when a conflict flares up constituting a danger to peace or some other political crisis that it leads to an international reaction. In other words, an occupying power which hides the truth

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<sup>46</sup> Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, U.N. Doc. S/25704 at 36, annex (1993) and S/25704/Add.1 (1993), adopted by Security Council on 25 May 1993, U.N. Doc. S/RES/827 (1993).

<sup>47</sup> Article 3.

<sup>48</sup> Article 2.

<sup>49</sup> Article 4.

concerning the commission of war crimes and serious violations of the law of armed conflict may nevertheless later face serious difficulties in the procedures of international criminal courts and jurisdiction. This happened in the case of those individuals who were brought before the ICTY or the ICTR. Individuals who had violated the law of armed conflict faced similar problems in the proceedings of the Special Court of Sierra Leone (SCSL). Almost all those who were brought to the above courts were prosecuted and received terms of imprisonment according to the gravity of their criminal decisions or conduct. The SCSL in particular has dealt with questions of violations of international criminal law against children.

However, it is true that all international crimes against children are not prosecuted or punished. Clear examples are crimes committed against Iraqi children during the Gulf War beginning in 1991.<sup>50</sup> These crimes were war crimes, crimes against humanity and aggression committed by the United States and the United Kingdom governments.<sup>51</sup> None of the responsible authorities of the relevant governments were brought before any national or international criminal court.<sup>52</sup> Similar conclusion can be reached about the serious criminal actions which have long been committed against the Palestinian's children by the government of Israel.<sup>53</sup> Official Reports of the United Nations denote to this fact. Although, violations against Palestinian's children are seriously condemned by the international legal and political community, responsible individuals have never been brought before any national or international criminal court.<sup>54</sup> More seriously, the serious

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<sup>50</sup> See Farhad Malekian, *Condemning the Use of Force in the Gulf Crisis* (1993); see also <<http://www.countercurrents.org/azzawi010310.htm>>, (access: 02.02.2014); see also World Tribunal on Iraq: Final Declaration of the Jury of Conscience, <<http://www.indymedia.org.uk/en/regions/world/2005/08/320190.html>> (access: 02.02. 2014).

<sup>51</sup> <[http://www.brusseltribunal.org/article\\_view.asp?id=925#.Uu7NS\\_vY-EYg](http://www.brusseltribunal.org/article_view.asp?id=925#.Uu7NS_vY-EYg)> (access: 02.02.2014).

<sup>52</sup> <[http://www.gicj.org/index.php?option=com\\_content&task=view&id=282&Itemid=4](http://www.gicj.org/index.php?option=com_content&task=view&id=282&Itemid=4)> (access: 03.02.2014).

<sup>53</sup> Farhad Malekian, *Judging International Criminal Justice in the Occupied Territories*, *International Criminal Law Review* (2012), p. 827-869.

<sup>54</sup> Human Rights in Palestine and Other Occupied Arab Territories, *Report of the United Nations Fact Finding Mission on the Gaza Conflict*, A/HRC/12/48,

violations of international criminal law of children are occurring continuously.<sup>55</sup>

## War Crimes against Children in the Statute of the ICC

Many important regulations governing what constitutes a war crime and what constitutes a breach of international humanitarian law of armed conflict can be found in the Statute of the International Criminal Court (ICC). By contrast with other international criminal courts which have *ad hoc* characters, the ICC is a permanent Court. This means that the function of the ICC is not restricted for a limited time period and its Statute should be respected at all times. The Statute recognizes several international crimes, including war crimes. The definition of war crimes in the Statute is strictly speaking much broader than the definitions of war crimes in the statutes of other earlier international criminal courts. It could be said that the definition used by the ICC is a combination of several international factors including the effect of customary international law.

The Statute's definition explicitly calls upon the responsibilities of states in armed conflict and occupying states to respect the international humanitarian law of armed conflict and to avoid unnecessary suffering. The definition also strictly prohibits conflicting parties from committing certain criminal acts against *children*. Although the statutes of other international criminal courts have dealt with the questions of serious crimes committed against civilians or children, this is the first time that the statute of an international criminal court has formulated explicit regulations concerning the prohibition of certain acts against children. The statute has, for example, criminalized the use of children as soldiers. Article 8 of the Statute reads that "Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities" in international or non-international armed conflict constitutes a war crime.

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15 September 2009, para.32. The report was prepared by Richard Goldstone, a distinguished international lawyer and judge.

<sup>55</sup> *Id.*

The long list enumerating war crimes in Article 8 of the Statute of the ICC demonstrates the inherent requirements of international humanitarian law of armed conflict for the conflicting parties not to engage in activities that violate the system of international criminal law of children. The intention of the legislators is here to emphasise that pleas of defence or self-defence by contracting parties do not by themselves create permission to violate the principle of proportionality or the principle of duties of the occupying states towards the population of the occupied country.

The legislator's aim is also to create a distinction between what we call an act of war and what is called criminal conduct in its strict definition. The contrast between the legitimate conduct of armed conflict and the list of prohibited acts deriving from the imperatives of conventional and customary international criminal law makes the task of international organs such as the General Assembly, the Security Council and the international criminal courts apparently much more straightforward. The list is also intended to emphasise that the international humanitarian law emanating from the Geneva Conventions or their Protocols cannot present the development of the system of international criminal law regarding certain new emerging weapons technologies. Thus, the Statute of the ICC with its long list of provisions applicable to international crimes tries to guarantee the fact that the question of possible uncertainty surrounding the conduct of conflicting parties will not freeze the provisions of international criminal law governing the protection of justice, of victims and the prosecution of those responsible for international crimes committed against children.

### Criminal Responsibility for the Recruitment of Children

One of the most significant functions of the system of international criminal law of children is to bring the perpetrators of international crimes against children under international criminal jurisdiction and to attribute criminal responsibility to the perpetrators.<sup>56</sup> In particular, the system has been decisively important

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<sup>56</sup> See Alison Smith, Child Recruitment and the Special Court for Sierra Leone, 2 *Journal of International Criminal Justice* 1141-1153 (2004).

concerning the attribution of criminal responsibility to those who have recruited children in armed conflict. This has been demonstrated particularly effectively by the concept of criminal responsibility which has been developed within the Statute of the Special Court for Sierra Leone.<sup>57</sup>

This concept contains some of the most prominent rules for the protection of children and punishment of those who deploy children as soldiers during armed conflict.<sup>58</sup> The Statute recognises the recruitment of child soldiers as a serious crime under the structure of the international humanitarian law of armed conflict.<sup>59</sup> According to Article 4 (c) “Conscripting or enlisting children under the age of fifteen into armed forces or groups or using them to participate actively in hostilities” constitutes a violation of international humanitarian law.<sup>60</sup>

There were several crucial reasons for the formulation of Article 4 (c) of the Statute.<sup>61</sup> However, the most fundamental motivation behind the article was the fact that during the civil war in Sierra Leone children were influenced or kidnapped and forced to take part in the armed conflicts.<sup>62</sup> This military strategy was

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<sup>57</sup> The Statute was formulated in response to the Civil War in Sierra Leone which began on March 23, 1991 and finished on January 18, 2002.

<sup>58</sup> Most shockingly, the recruitment of children as soldiers was a strategy adopted from the very beginning of the war. See *ibid*.

<sup>59</sup> Consult *ibid*.

<sup>60</sup> Article 4 (c). For the examination of the views of the Special Court consult *id*.

<sup>61</sup> See <[www.crin.org/law/Instrument.asp?InstID=1263 - 21k](http://www.crin.org/law/Instrument.asp?InstID=1263 - 21k)> (access: 20.01.2014).

<sup>62</sup> According to the Prosecutor of the Special Court for Sierra Leone, the politician Samuel Hinga Norman had criminal responsibility for the use of children under the age of 15. He stressed “The crime of child recruitment was part of customary international law at the relevant time. The Geneva Conventions established the protection of children under 15 as an undisputed norm of humanitarian law. The number of states that made the practice of child recruitment illegal under their domestic law and the subsequent international conventions addressing child recruitment demonstrate the existence of this customary international norm.” Moreover, a considerable number of other international instruments establish the prohibition of child recruitment such as the ICC Statute, which represents the codification of the rules of customary international law. The *Tadic case* is another example proving the existence of customary rules for the prohibition of child recruitment. According to the prosecutor, the president of the Security Council has also declared the condemnation of child recruitment in the body of the international humanitarian law of armed conflicts on 29 June 1998. The concept of the prohibition of child recruitment has in fact entered into the

not only against the Convention on the Rights of the Child, but was also against various international conventions protecting the rights of children in peace and wartime.<sup>63</sup> An examination of different cases brought before the Special Court demonstrates the widespread abuse of children less than fifteen years of age.

The Charles Taylor Case is one of the most notorious cases to have come before the jurisdiction of international criminal courts in which the system of international criminal law of children has been applied to prove the criminal responsibility of a head of state for crimes against children. Among the crimes committed against children during the conflict were rape, abduction, subjection to sexual slavery, conscription of minors and forced labour. According to witnesses, militias allegedly authorised by Charles Taylor abducted and terrorized children in various ways. They trained children in “Small Girls Units” and “Small Boys Units” and sent them to villages and cities in order to kill and mutilate people, sometimes even their own families.<sup>64</sup> Taylor was finally convicted by SCSL in 2012 for 50 years imprisonment.

Another case similar to the character of the above case is the final judgment of the ICC concerning the charges against Thomas Lubanga Dyilo who was accused of committing several serious international crimes, in particular child requirement.<sup>65</sup> The case concerns the alleged crimes committed in the Democratic Republic of the Congo.<sup>66</sup> There are allegations that Lubanga was the former President of a political group, namely, Union des Patriotes Congolais (UPC), since its establishment in September

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declaration on the Prevention of Children into Armed Forces and Demobilization and Social Reintegration of Child Soldiers in Africa which clearly states that “those responsible for illegally recruiting children should be brought to justice.” [Cape Town Principles and Best Practices on the Recruitment of Children in to the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa, Symposium of the NGO working on the Convention of the Rights of the Child and UNICEF, 30 April 1997, para 4.]

<sup>63</sup> Consult [http://www.sc-sl.org/Documents/CDF/SCSL-04-14-AR72\(E\)-131-7398.pdf](http://www.sc-sl.org/Documents/CDF/SCSL-04-14-AR72(E)-131-7398.pdf) (access: 01.02.2014).

<sup>64</sup> *Sexual Violence in the Sierra Leone Conflict*, 15 Human Rights Watch (Africa Division)-1(A) (Jan. 2003), at 6-8, 28-63, 76-7, <<http://www.hrw.org/reports/2003/sierraleone/>> (access: 03.02.2014).

<sup>65</sup> For the full case see Farhad Malekian, *Jurisprudence of International Criminal Justice* (2014), p. 461-465.

<sup>66</sup> *Thomas Lubanga Dyilo*, (ICC-01/04-01/06), Warrant of Arrest, 10 February 2006.



2000.<sup>67</sup> Lubanga was, alongside other leaders of the conflicting party, arrested by Congolese authorities and imprisoned in Kinshasa. He was then later arrested by the ICC in 2006.<sup>68</sup>

The Prosecution alleged that Lubanga recruited children under the age of fifteen years. Therefore, there were several charges against Lubanga. He was charged with criminal responsibility as a co-perpetrator, jointly with other active members of two different groups. He forced children into many forms of military training. After the training, he compelled them to participate in different military activities. The children were also used for the protection of military officers from any act against them.<sup>69</sup> Similarly, according to the Pre-Trial Chamber in 2007, there was enough evidence to establish substantial grounds to prove that Lubanga was responsible, as co-perpetrator, for the charges of enlisting and conscripting children under the age of fifteen.<sup>70</sup> It is relevant to present the charges demanded by the Pre-Trial Chamber against Lubanga:

Charges arising in the context of “Non-international armed conflict:”

- Count 1: CONSCRIPTING CHILDREN INTO ARMED GROUPS, a WAR CRIME, punishable under Articles 8(2)(e)(vii) and 25(3)(a) of the Rome Statute.
- Count 2: ENLISTING CHILDREN INTO ARMED GROUPS, a WAR CRIME, punishable under Articles 8(2)(e)(vii) and 25(3)(a) of the Rome Statute.
- Count 3: USING CHILDREN TO PARTICIPATE ACTIVELY IN HOSTILITIES, a WAR CRIME, punishable under Articles 8(2)(e)(vii) and 25(3)(a) of the Rome Statute.

Charges arising in the context of “International armed conflict:”

- Count 4: CONSCRIPTING CHILDREN INTO NATIONAL ARMED FORCES, a WAR CRIME, punishable under Articles 8(2)(b)(xxvi) and 25(3)(a) of the Rome Statute.
- Count 5: ENLISTING CHILDREN INTO NATIONAL ARMED FORCES, a WAR CRIME, punishable under Articles 8(2)(b)(xxvi) and 25(3)(a) of the Rome Statute.

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<sup>67</sup> Malekian, *Jurisprudence*, p. 461.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*, p. 462.

<sup>70</sup> <<http://www.icc-cpi.int/iccdocs/doc/doc1379843.pdf>>.

Count 6: USING CHILDREN TO PARTICIPATE ACTIVELY IN HOSTILITIES, a WAR CRIME, punishable under Articles 8(2)(b)(xxvi) and 25(3)(a) of the Rome Statute.

After many prolonged investigations and hearings, the Chamber concluded in 2012 that

the prosecution has proved beyond reasonable doubt that ... Lubanga...vis guilty of the crimes of conscripting and enlisting children under the age of fifteen years into the FPLC and using them to participate actively in hostilities within the meaning of Articles 8(2)(e)(vii) and 25(3)(a) of the Statute from early September 2002 to 13 August 2003.<sup>71</sup>

Lubanga was finally sentenced to 14 years imprisonment by the ICC. This is the first case of the ICC which came to the end and in which the body of international criminal law of children has been focused in the Court. On the whole, the system of international criminal law is even directed to establish transnational measures against the impunity of international crimes.<sup>72</sup>

## Conclusion

Owing to limits of space this has of necessity been a brief study and much more attention needs to be devoted to the international criminal law of children.<sup>73</sup> The article has dealt solely with those aspects of war crimes most relevant to the discussion. Obviously, the international criminal law of children has not been developed to apply only to war crimes but also concerns crimes against humanity, genocide, sexual exploitation, slavery and pornography. This system of law has long been consolidated in

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<sup>71</sup> *Id.*

<sup>72</sup> Albin Eser., Transnational Measures against the Impunity of International Crimes, JICJ (2012), p. 621-634.

<sup>73</sup> See also Arts, Karin; Popovski, Vesselin (eds.), International Criminal Accountability and the Rights of Children (2006); Grover, Sonja C., Prosecuting International Crimes and Human Rights Abuses Committed Against Children – Leading International Court Cases (2010); Comparative Youth Justice – Critical Issues (2009); Bergsmo, Morten (ed.), Thematic Prosecution of International Sex Crimes (2012).

the system of international public law and it constitutes, without doubt, a significant part of the international legal system. The purpose of the international criminal law of children has been first and foremost to protect and support the position of children whether in times of war or peace. As a result, a framework has been created in which numerous laws, regulations, rules and principles are collected which specify what is and is not permitted to be carried out against the legal personality of children.

Among the most significant values of the system of international criminal law of children is the principle that the legal characterization of the law is not only preventive and prohibitive but is also punitive. This is based on the fact that the international criminal justice system ensures that the violators of the law are brought before the international *ad hoc* or permanent tribunals for prosecution and punishment. That is why one of the most important tasks of the international criminal tribunals has been to bring the perpetrators of international crimes against children under their jurisdictions.

Regardless of what has been said about the international criminal law of children, the implementation of the law is still a very difficult question among the international legal community based on the fact that, for different reasons, states do in fact continue to violate the rights of children. Rights belonging to children are still a question of legality and not reality. The reason is that the protection of children under international criminal law has not yet become a universal policy. Most states in the world have its own tactics for the use of children in military armed conflicts. Another strong reason is that the permanent members of the Security Council of the United Nations have quite different policies in their own national military systems. Although the permanent members have defended the position of children in various situations, they have also been responsible directly or indirectly for the widespread killing of children during armed conflicts. For example, they have not taken any action against the murder of Palestinian children, or children in Iraq and Afghanistan. Nevertheless, the international criminal law of children does enjoy the principle of universality which means that all those who commit crimes against children, wherever they are arrested, have to be prosecuted and punished or must be submitted to the jurisdiction of the permanent International Criminal Court for appropriate prosecution and punishment.

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***Criminal Responsibility of Children  
in Iranian Penal System in the Light  
of New Penal Code***

**SUMMARY**

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The qualitative and quantitative reactions of the penal system to offenses by children and adolescents have always been the subject of investigations and explorations. The significance of childhood and adolescence, the effects of these periods on the personality and future of members of these age groups, and evident differences between the physical and psychological capabilities of children and adolescents compared to adults are the causes of the significance. In this regard, determination of the age of criminal responsibility is considered one of the main axes of juvenile criminal law. The importance of this issue originated from the fact that in this stage the criminal adolescent is exposed to punishments determined for adult committers of such crimes. Accordingly, in most countries the legislator determines an age as the age for application of full criminal responsibility. Therefore, when an adolescent reaches that age he/she gains sort of physical and intellectual maturity. The age is conventionally equal to the age of acceptance of social responsibility. In most countries, 18 is the age for application of full criminal responsibility. In Iran, the age of religious maturity for girls and boys is 9 and 15, respectively. The ages are also considered the criterion for applying criminal responsibility. However, changes have been made that have caused gradual application of responsibility, specification of some punishments, and prosecution of crimes. The present study aimed to analyze and criticize the status quo in light of the new Islamic Penal Code of Iran and the Criminal Procedure Act.

→ **KEYWORDS** – CHILD, CRIMINAL RESPONSIBILITY, RELIGIOUS MATURITY,  
ISLAMIC PENAL CODE, CRIMINAL PROCEDURE ACT

*Odpowiedzialność karna dzieci w irańskim systemie karnym w świetle nowego kodeksu karnego*

Różnorakie reakcje systemu karnego w odniesieniu do przestępstw popełnianych przez nieletnich zawsze były przedmiotem badań i poszukiwań. Źródłem tych reakcji jest wpływ okresu dzieciństwa i dorastania na osobowość i przyszłe życie dziecka, w tym oczywiste różnice między fizycznymi i psychicznymi możliwościami dzieci i młodzieży z jednej strony, a dorosłych z drugiej strony. W związku z tym faktem, określenie wieku odpowiedzialności karnej jest uważane za jedną z głównych osi prawa karnego wobec nieletnich, tak by nieletni przestępca nie był narażony na kary przewidziane dla dorosłych. W większości krajów ustawodawca określa wiek pełnej odpowiedzialności karnej, zakładając, że wraz z osiągnięciem tego wieku młodociany osiąga pewien stopień dojrzałości fizycznej i intelektualnej. W większości krajów pełną odpowiedzialność karną ponosi sprawca, który ukończył 18. rok życia. W Iranie wiek dojrzałości religijnej w przypadku dziewcząt i chłopców kształtuje się odpowiednio na poziomie 9 i 15 lat. Wiek ten jest równoznaczny z wiekiem odpowiedzialności karnej. Jednakże, wskutek zmian w ustawodawstwie Iranu, wprowadzono stopniową odpowiedzialność, specyfikację niektórych kar oraz ścigania przestępstw. W artykule autor dokonuje analizy i krytyki *status quo* w świetle nowego irańskiego kodeksu karnego oraz ustawy o postępowaniu w sprawach karnych.

→ **SŁOWA KLUCZOWE** – DZIECKO, ODPOWIEDZIALNOŚĆ KARNA,  
DOJRZAŁOŚĆ RELIGIJNA, ISLAMSKI KODEKS  
KARNY, USTAWA O POSTĘPOWANIU W SPRAWACH  
KARNYCH

## Introduction

In Iran, according to Article 14 of the Islamic Penal Code the following four types of punishment are defined for the general public: fixed punishment, retaliation, restitution and corporal punishment. Moreover, Article 23 predicts additional and consequential punishments such as exile, job prohibition, etc.

In Iran, childhood age, punishments and criminal responsibilities are similar to other laws determined on the basis of jurisprudence. However, due to requirements of the time and fatwa of some jurisconsults, changes have been made to these rules that are reflected in the new rules of the Criminal Procedure Code and the Islamic Penal Code. As a result of these changes,



efforts have been made to follow principle four of the constitution: "all civil rules and regulations, and financial, economic, administrative, cultural, military, and political codes shall be formulated according to Islamic laws." In addition, the regulation of the Convention of Child Rights,<sup>1</sup> which is binding as domestic laws in the power of the parliament, as well as requirements and necessities of the time, shall be taken into account.

As a general principle, whoever commits a crime is not necessarily responsible for it because in addition to determining the carrying out of a crime and criminal responsibility, the perpetrator has to meet some conventional conditions to be known as the 'doer' of a crime. Consequently, a human being is considered responsible for a crime when the act leads to an accident. That is to say, it has to be possible to ascribe a crime to the person.<sup>2</sup> Hence, criminal responsibility is the result of the ability to ascribe or attribute it to someone. That is to say, judicial authorities have to realize that the perpetrator of the offense has gained such physical strength and rational ability as well as determination and power that a causal relationship can be established between the committed crime and its agent. Therefore, it is evident that the perpetrator of a criminal act is punished only if he/she has understanding of the good and bad and is of sound mental health. The person has to commit the crime intentionally and deliberately. Moreover, there has to be a direct relationship between the crime and determination of the doer. In other words, the crime has to be the result of an action carried out by its doer. Concerning the criminal responsibility of the juvenile, the most important factor that makes the distinction between their criminality and that of adults' is age.

In legal terms, a child is a person who has (not?) reached the age of physical and mental maturity and is able to live in the society.<sup>3</sup> Hence, determining the age range for children depends on maturity.<sup>4</sup> According to note one of Article 1210 of the Civil

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<sup>1</sup> United Nations Convention on the Rights of the Child, Nov. 20, 1989, 28 I.L.M. 1456, 1577 U.N.T.S. 3.

<sup>2</sup> Najafi Abrand Abadi, Ali Hussein, *An Introduction to Criminal Policy*, Mizan Press, 2002, p. 30.

<sup>3</sup> Ebadi Shirin, *Child Rights*, Kanoon Publications, 2010, p. 5.

<sup>4</sup> Najafi Abrand Abadi, Ali Hussein and Hashem Beygi, Hamid, *Terminology of Criminology*, Shahid Beheshti University Press 1998, p. 11-12.

Code maturity for boys is 15 and for girls is 9 years. According to one of Article 49 of the former Islamic Penal Code, a person who without religious maturity was considered a child without any criminal obligations while all persons with religious maturity were charged with criminal responsibilities and were sentenced in cases where they committed crimes. On the other hand, according to the bill submitted by the Islamic Republic of Iran to the Convention on Child Rights, passed in February 20 – March 20, 1994, people under 18 are considered children.<sup>5</sup>

The age for the criminal responsibility of children is one of the most challenging legal issues associated with child rights in Iran. Since, on the one hand due to the dominance of religious rules and regulations over laws and adherence of the Iranian Legislator to the opinions of famous Shiite jurists in formulating and passing relevant laws, determination of a special age as the religious age of maturity has been the basis of determining criminal responsibilities for criminal children. On the other hand, since Iran has joined various international conventions and accords, compliance between domestic laws and regulations mentioned in the conventions and accords is a necessity. The regulations have to be in line with special definition of child included in these references. In the post-revolutionary Iranian legislative system, children were subjected to the criminal system defined for adults as soon as they reached maturity. However, about half a century ago, the Criminal Juveniles Court Act of 1959 had predicted an intermediary stage.<sup>6</sup>

Adherence to the rule that criminal responsibility is defined depending on the religious maturity of girls and boys has caused problems to the Iranian society. Not only is the age defined for girls considered to be too low, but also, criminal responsibility is completely excretory in this view. That is to say, up to a point the child lacks legal and criminal capacity and suddenly all legal, religious and criminal responsibilities are applied to him/her. The intensity of punishments, especially execution, increases depending on the criticality of the crime.<sup>7</sup>

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<sup>5</sup> Article 1 of the Convention on Child Rights.

<sup>6</sup> Ashuri Muhammad, *Juvenile Trial in Iran*, Proceedings of the seminar on juvenile trial, Tehran, UNICEF, first volume, 2000, p. 70-72.

<sup>7</sup> Nobahar Rahim, *Age and Criminal Responsibility*, "Journal of Criminal Law", 2/2013, p. 162.

The changes made in the current years to the Iranian law have defined gradual criminal responsibility, change of quantity and quality of some punishments, and prosecution and hearing methods by applying the Islamic Penal Code and the Criminal Procedure Code.

## Notion, Basis and Pillars of Criminal Responsibility

In order to gain an understanding of the real meaning of responsibility and its dimensions, in addition to the commitment and obligation defined by the authority, other factors and conditions shall be taken into account that are as follows:

1. Obligation to do or refuse to do an act, which is an obligation *per se*. The obligation has to be the result of legal rules or social relationships.
2. Awareness of the responsibility, because a person who is unaware of his responsibilities cannot be considered responsible by any means. Being unaware of existence of an obligation may be caused by the deficit of mental and emotional powers or deficit of social education. It may be also caused by the failure to inform the person of his/her responsibility or obligation.
3. Ability to accomplish the task: Inability of the obligated person to accomplish his/her tasks may be caused by personal or social factors.<sup>8</sup>

In sum, it shall be said that the obligation to respond to violation of the rights of others is known as “criminal responsibility” whether it is aimed to support personal rights or to defend public rights. However, in none of the penal rules of Iran are the legal nature and criminal responsibility clearly defined. Although no clear description of criminal responsibility is available, there is a sort of personal obligation to respond to the consequences and dissatisfactory results of the crime or offense. In the criminal point of view, commitment of crime or any offense or violation to penal codes does not cause criminal responsibility on its own because in order to blame the committer on the moral and

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<sup>8</sup> Shambayati Hushang, *Public Criminal Law*, Zhubin Press, second volume, 1997, p. 2.

social aspects of his/her crime, the following conditions have to be met:

1. Commitment of a crime or offense originated from intentional awareness and willingness defining the opinion, deeds and decisions of the person.
2. A criminal act committed with previous determination, will and intention originated from the outside world has to be suggestive of the ill-will of the perpetrator or his/her mistakes.
3. In addition to the will to commit a crime or offense, the crime has to be capable of being ascribed to its doer or agent. Whoever commits a crime with prior knowledge and awareness is not necessarily considered responsible because in addition to determination, ill-will or criminal responsibility the perpetrator has to have capacity and conventional personal traits. Consequently, when human is considered responsible only when he/she causes an accident. That is to say, the accident has to be ascribed to the person. Hence, criminal responsibility is the product of attribution. That is to say, juridical authorities have to know that the doer of the crime has reached such a physical and rational capacity as well as a determination and power that the crime can be ascribed to him/her.<sup>9</sup>

In fact, criminal responsibility is proved by direct consequences of the crime ascribed to the doer. Hence, in sum it can be said that criminal responsibility requires attribution and approval of the crime. The question that springs to mind is who is considered to be irresponsible? The Islamic Penal Code of Iran, drawn on jurisprudence to concluded in Article 146 that immature people are free from criminal responsibility. According to this code, reasons for elimination of criminal responsibility include: 1) insanity, 2) dream and intoxication, 3) compulsion, 5) mistake, 6) minority of age.<sup>10</sup>

The pillars of criminal responsibility include criminal capacity and guilt. Criminal capacity is comprised of the following two elements: understanding and power. In penal laws, understanding refers to the power and ability to understand and distinguish

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<sup>9</sup> Mirsaeedi Seyyed Mansour, *Criminal Responsibility*, first volume, 2007, p. 24.

<sup>10</sup> Mohseni Morteza, *Criminal Responsibility*, Public Criminal Code Course, Ganjedanesh Press, first volume, 1997, p. 175.

the nature of deeds and their moral and social consequences. Accordingly, if the criminal lacks understanding and power, he/she is not considered to be responsible for his/her action. Hence, the definition and clarification of the boundaries of criminal responsibility is of great importance. There are several conditions to criminal responsibility which are as follows: a) the person has to reach maturity; b) the person has to be free from insanity or similar conditions; c) the person has to be free from compulsion or other factors, or the person has to have power. Since the 18<sup>th</sup> century, during the emergence of individualism, a criminal and his/her personality was introduced as a riddle (mystery). Therefore, understanding the personality of the criminal became one of the concerns of various criminological schools and new viewpoints were expressed. The viewpoints led to two major evolutions in the field of criminal responsibility.<sup>11</sup>

A) Individualization of criminal responsibility: In the primitive ages and until the Middle Ages, identity and thus individual responsibility were meaningless. Hence, criminal responsibility was collective and was extended to the members of a family, a tribe or a race.

B) Personalization of criminal responsibility: Before the 18<sup>th</sup> century, the most important characteristic of criminal responsibility was its objectivity or materiality. That is to say, the personality and thought of the criminal were not taken into consideration. The mental element had no importance in the identification of crimes and only the material element mattered. However, after that period with the emergence of intellectual schools of criminology, the best way to confront criminals was known to be determination of causes of a crime as well as appropriate responses depending on the real personality of the criminal.

Criminal maturity refers to the age when the child reaches a level of maturity and growth that he/she can be considered a criminal and subject of juvenile criminal laws. In fact, the reason for the attributive nature of crime is that it varies depending on the person and it is measured against the maturity of the child in question. Criminal maturity or the age of absolute criminal responsibility is the age when the criminal is considered to be an

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<sup>11</sup> Mirsaeedi Seyyed Mansour, *Criminal Responsibility*, op. cit., p. 108.

adult and is assumed to have absolute criminal responsibility.<sup>12</sup> Gradual criminal responsibility is the difference between criminal responsibility and maturity. In other words, in the attributive criminal responsibility, it is a period or leniency when special juvenile prosecution matters. In this period, criminal executions and reactions are only aimed to train and socialize the criminals. This stage is derived from the following substantial issues: 1) the conditions and special characteristics of the child; 2) educability of children and the fact that the justice system has to act as an educational system in the case of children because the objective is not only to punish and frighten the child but the penal system aims to recover the child. However, constitutions of different countries do not employ similar approaches to this period as some have divided this period into several periods and have defined a specific reaction for each period. Some others have also considered the period as an integrated period and have granted the court judge to decide on the punishment based on a range of pre-determined punishments.

## Legal Evolutions of Juvenile Criminal Responsibility

In Iranian criminal law, and for the first time in the General Penal Code of 1925, the conditions of the juvenile were taken into account. This law allocated Articles 34 and 39 to juvenile crimes. In this law, which drew on the French law, the separation criterion was taken into account. This law predicted no regulations for the prosecution methods.<sup>13</sup> In 1959, the act for formation of Criminal Juvenile Court (which was dedicated to children between 6 to 18 years) was passed, but after the Islamic revolution, the legislator dictated that juvenile crimes have to be prosecuted by General laws. The legislator also showed no interest in creating specific courts. However, the decision did not last and finally by Article 219 of the Criminal Procedure Code of 1999, some general courts were allocated to prosecution of juvenile crimes. The new Islamic Penal Code of 2013 also paid special attention to juvenile crimes, which is considered one of its advantages. Chapter ten

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<sup>12</sup> Ibidem, p. 110.

<sup>13</sup> Ashuri Muhammad, *Juvenile trial in Iran*, op. cit., p. 18.

of this law was entitled the “Juvenile Punishments and Security and Educational Measures.” Some believe that this chapter is aimed to suggest that in the case of children only security and educational measures suffice and it is not possible to punish them with pre-determined punishments.<sup>14</sup> In the new Islamic Penal Code the age of 18 is accepted as the age of adolescence and a classification is used that divided childhood and adolescence into the following periods: birth to 9 years old; 9 to 12 years old; 12 to 15 years old; and 15 to 18 years old. It not only introduces the age of 18 as childhood and adolescence, but also has defined maturity to determine the criminal responsibility of a group of children and adolescents. The new bill of the Criminal Procedure Code, which has been approved recently (but has not been put into effect yet), also has been subjected to positive changes concerning the formation of special courts and the methods used for preliminary investigations and issuance of warrant concords for criminal children. The changes are going to be discussed in what follows.

- a) Changes made to the application of punishments in the new Islamic Penal Code by accepting the gradual responsibility of children and adolescents and ranking crimes have caused and will cause numerous changes. These changes are focused on corporal punishments, fixed punishments and retaliations. Concerning children below 9 years old, who commit corporal crimes, only security and education measures are taken. Concerning children and adolescents between 9 and 15 years old (the second and third periods) decisions are made to correct and educate them with emphasis on the responsibility of parents and other guardians. Examples of these measures are the surrender of children to legal guardians who commit to educate and correct the children or surrender of children, whose parents are not eligible, to other people or institutions. However, rules included in Article 1173 of the Civil Code concerning deprivation of the right of custody of parents also applies to this case. Concerning adolescents between 15 and 18, Article 89 dictates that if members of this age group commit

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<sup>14</sup> Fathi Hujjat Allah, *Juvenile Criminal Responsibility*, “Quarterly of Islamic Law”, 21/2009, p. 81.

corporal crimes, they are sent to Correction and Rehabilitation Centers, or are charged with fine or public services. That is to say, in the new law not only are corporal crimes classified into different levels, each age group is subjected to specific punishments. Concerning crimes that necessitate fixed punishments and retribution, according to note 2 of Article 88, in the case of male children between 12 and 15 and before it (9-12), decisions made in Article 88 are applied. The decisions can be revised and rethought as many times as required by the juvenile court according to the benefit of the child while the punishment for stay of the child in Correction and Rehabilitation Centers and fines can be converted to other preferable punishments. Moreover, fixed punishments and retributionss can be converted to corporal punishments in the case children aging less than 18 whose sanity and mental growth is suspect. The aforementioned cases are among the important considerable issues addressed in the new law.

- b) The advantages of the new changes made to the penal code especially concerning corporal punishments are that no difference is made between girls and boys and physical punishments such as the lash are omitted. The new code also accepts postponement of the issuance of decrees for children and the omission of criminal sentences. The aforementioned are among positive evolutions of the code.

According to international standards, the approach aimed to reduce legal interventions, de-jurisdiction, and objective measures (including mobilization of all resources such as families, social groups, schools and other social institutions) are among important principles of juvenile justice. Moreover, surrendering children to parents and legal guardians referred to in Article 89 is a suitable measure aiming at educating, correcting and monitoring the deeds of the juvenile.

Seemingly, the difference between maturity and the age of absolute criminal responsibility is the best time to take corrective and educational measures that may help prevent the committing of crimes by children.<sup>15</sup>

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<sup>15</sup> Abachi Maryam, *Juvenile Criminal Laws*, Majd Press, 2001, p. 71.



## Addressing juvenile crimes

Most international standards encourage governments to create criminal procedures, or establish independent or specialized entities to handle cases condemning children.

What shall be taken into account is that in the Iranian constitution, there is no difference between crimes committed by children and adults similar to some legal systems of the world. In some countries, crimes are defined as “juvenile crimes.” However, the eighth congress on crime prevention and criminal justice held by the United Nations in 1990, asked for omission of these items from constitutions of countries. In Iran, according to Article 220 of the Islamic Penal Code, crimes committed by adults aging less than 18 years are addressed in court, but it shall be noted that in addition to branches of penal general courts that dedicated to prosecution of juvenile criminals, there are other specialized courts (such as the revolution court and the provincial criminal court) that deal special juvenile crimes. If a child commits a crime that has to be handled by the Revolution Court, by precedent decisions he/she is prosecuted in the Juvenile Court and Provincial Court.

- a) The new criminal procedure code of includes positive changes one of which includes formation of a special juvenile court headed by a solicitor-general and one or several inspectors. In this court, preliminary investigations into crimes committed by adolescents between 15 and 18 are carried out. However, investigation into crimes such as adultery and sodomy is carried out directly by the court. Cases of such crimes are included in the new bill of “other anti-chastity crimes as well.” According to this bill, investigation into crimes committed by children under 15 (whether boy or girl) as well as children between 15 to 18 years of old (who spend the last days of their childhood) is carried out in the juvenile court. If a criminal court or revolution court is eligible to handle the crime, the criminal court of juvenile crimes will hear the case.
- b) Changes have been made to the procedure of issuance of warrant for children. In the current law, since there is no classification for childhood and adolescent, laws are equally applied to all children under 18. However, in the new law different rules are set for children under 15 and

children between 15 and 18 years old. Concerning delivery of a warrant or bond, which is a responsibility of parents or legal guardians, the new law dictates that the warrant is only received for the accused between 15 and 18. Similar to current regulation, if the parents or guardians fail to provide bonds or warrants, the child is sent to a Correction and Rehabilitation Center. Moreover, according to Article the interrogation of females under 15 shall be performed only by trained female officers otherwise the case has to be referred to the juvenile court or its deputy.

Other positive changes made to this law are as follows: concern for NGOs supporting juvenile to announce crimes; presence at all of the phases of prosecution to present reasons and object to the judgments of judicial authorities, feasibility of presence of the lawyer in preliminary investigations; and presence of two counselors in the court.

## Conclusion

The execution of the death penalty (such as fixed punishments and retaliation) on children under 18 has always been faced with legal and judicial problems. Fortunately, the legislator has a positive attitude toward these deficiencies and therefore has taken actions to set new rules and regulations. As a result, by calling all people under 18 as children, the Legislator has classified children into three age groups.

According to the new law, in the case of corporal or preventive punishments legal punishments do not apply to adult children. Rather, depending on the age of the committer and according to the act of juvenile crimes, decisions are made accordingly. Moreover, if immature children commit a crime, they are free from responsibility. If a child commits a crime, he/she is surrendered to his/her parents and guardians to be educated or is sent to a Correction and Rehabilitation Center to be educated.

Concerning crimes to which lashing is applied as a punishment, if an adult child does not have an understanding of the essence of the crime or its evilness or if the child has not reached rational perfection yet, depending on the age and case he/she is sentenced to fixed punishments defined in the law for crimes

committed by juveniles. According to this law, the court is to recognize whether a person has reached rational perfection or not. The court is also authorized to use any medical or any other necessary means to investigate the issue further.

Accordingly, it can be said that the new law is more consistent with the Convention of Child Rights. Regulations related to the response to criminal children as well as discussions included in the new Islamic Penal Code and the Criminal Procedure Code are more consistent with the requirements of the time. The rules and regulations also comply with the fourth principle of the constitution as well.

However, in the case of child punishment, the law still has its deficiencies. Evidently, useful changes made to the rules and regulations are more prominent. The law predicts that the criminal child is surrendered to the court which may refer him/her to a coroner to determine his/her maturity. The process is criticized because it cannot be 100% certain that whether the court judge sends the person who is under 18 to a coroner or not because the judge has full authority in this regard.

Hence, it is evident that the legislator has considered religious fundamentals and public requirements to make changes (corrections) to laws associated with the criminal responsibility of children and subsequent punishments. The legislator has classified children into three groups and has set specific rules for each group. Therefore, juvenile regulations not only comply with principle 4 of the constitution (regarding consistency with the religion) it also complies with the international commitments of Iran.

In line with the Convention on Child Rights, the new law divides children and adolescents by their age. As a result, children and adolescents who commit corporal crimes and are aged less under 9-15 at the time of committing the crime are granted limited privileges. In such occasions, the judge is authorized to surrender a child to his/her parents or legal guardians and refuse to determine other punishments. The new law monitors the deeds of parents or legal guardians of the child. The law states that the child is surrendered to the parents if the parents commit to correct, educate and care for him/her. In this case, whenever the court decides it can obtain warrants from the responsible persons to fulfill their obligations. For example, it can ask parents to bring their child or adolescent child to a social worker, psychologist or

other experts. It may also ask them to send their child to a training and cultural institute for educational purposes.

Moreover, the judge can ask parents to take the necessary measures to treat the child or subject him/her to addiction treatment under the supervision of a physician. It can also prevent communication of the child with people who are recognized to be harmful by the court. Finally, the court can ask parents prevent visits of the child to specific places.

In the case that the parents or legal guardians of the child are not available, the judge can surrender the child to other legal or real entities depending on the interest of the child and it can oblige them to implement the rules. However, eligible people are not obliged to accept children and adolescents as they can refuse to accept the child.

The court may suffice to give some advices to the criminal child or at most warns them of their evil actions. It may also obtain written commitments of the child to prevent them from repeating the crime. However, the maximum punishment for children is send them to Correction and Rehabilitation Centers for three months to one year in the case of first-degree to fifth-degree corporal crimes.

Concerning adolescents who commit corporal crimes and who are aged between 15 and 18 at the time of committing the crime, harder punishments are dictated. Accordingly, the maximum punishment is keeping them in Correction and Rehabilitation Centers for one to five years in the case of first-degree to fourth-degree corporal crimes.

One of the punishments for adolescents is obliging them to do public services, but the hours of service may not exceed four hours a day. Moreover, the court is authorized to sentence the child to remain in house determined by the court or spend weekends in the Correct and Rehabilitation Centers for three months to five years instead of issuing a verdict of punishment or fine.

Although religious punishments have to be executed, in the case of crimes necessitating fixed punishments or retaliation, whenever the doer who is under 18 does not have an understanding of the crime or its evilness or has not reached maturity or maturity, depending on the case and age of the doer only limited punishments are determined. The law is harder on adult criminals and only predicts special conditions for change, mitigation or revision of their punishments. However, since children

and adolescents are sensitive and less understanding, exceptions are made for them.

For example, the court may revise its verdict only once based on the reports of the behavior and deeds of the child in the Correction and Rehabilitation Center. It can reduce retention to one-third or surrender the child to his/her parents or legal guardians.

The court can revise its decision only if the child or adolescent spends at least one-fifth of the time determined for his/her retention in the Correction and Rehabilitation Center. Moreover, the court verdict in this regard is definite but this does not prevent the use of parole and other legal mitigations that can be used.

Moreover, the court may reduce at least half of punishments and security and education measures for children and adolescents or it may take other actions. On the other hand, the court is also exceptionally enabled to postpone prosecution or execution of punishment in the case of all corporal crimes committed by adolescents. Finally, the criminal conviction of children and adolescents lacks criminal effects, which is of great importance.

It is impossible to deny that proper changes have been made to the new law in relation to corporal punishments. Moreover, children (whether girls or boys, adult or non-adult) who commit such crimes under 18 are only condemned to security and educational issues and it is not possible to apply adult punishments to them. As compared to the previous law which considered religious maturity as the only requirement for criminal responsibility, it can be said that the changes have been positive especially in the case of female children. Moreover, it is possible to cancel fixed punishments or retaliation if it is proved that the child lacks maturity. However, this law is not perfect and does not address the problem thoroughly. In addition, it is necessary to make distinctions between crimes committed by children, adolescents and adults.

Finally, it shall be noted that corrective measures that have always been asked for by activists and human rights international societies, aimed to fully and unconditionally cancel fixed punishments, retaliation, hostile punishments, and hanging for people under 18. But these goals have yet not been attained.

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***A Child's Right for Protection  
against all Forms of Violence –  
Polish Legislation  
and a Pedagogical Perspective***

**SUMMARY**

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The article discusses the problem of a child's right to protection against all forms of violence. It presents a concept of pedagogical and legal analyses of the problem of violence towards a child. It discusses the normative concept for securing one of the fundamental childhood needs; the need to be safe. It analyses the provision of law, institutions and procedures within the scope of the protection and pursuit of children's rights to freedom from all forms of violence in the Polish law. Definitional dilemmas pertaining to the category of violence towards a child are subjected to analysis and the primary diagnostic prerequisites of this phenomenon are depicted. An main goal of the essay is to indicate the actual competencies and entitlements of teachers and pedagogues within the sphere of securing this right and tracing out the directions for change within the scope of its comprehensive execution.

→ **KEYWORDS** – CHILD, VIOLENCE, LAW, VIOLENCE TOWARDS CHILDREN

**STRESZCZENIE**

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*Prawo dziecka do ochrony przed wszelkimi formami przemocy – polskie rozwiązania prawne i perspektywa pedagogiczna*

Artykuł ujmuje problematykę prawa dziecka do ochrony przed wszelkimi formami przemocy. Prezentuje koncepcje pedagogicznych i prawnych analiz problemu przemocy wobec dziecka. Omówiona została tu normatywna koncepcja zabezpieczenia jednej z podstawowych potrzeb dzieciństwa – potrzeby bezpieczeństwa – oraz podjęta została analiza stanu przepisów prawnych, instytucji i procedur w zakresie ochrony i dochodzenia prawa dziecka do wolności od wszelkich form przemocy w prawie polskim. Analizie poddano dylematy definicyjne kategorii przemocy wobec dziecka i ukazano podstawowe przesłanki diagnostyczne tego zjawiska. Ważnym celem prezentowanego tekstu jest wskazanie konkretnych kompetencji oraz uprawnień nauczycieli i pedagogów

w obszarze zabezpieczenia tego prawa, a także wyznaczenie kierunków zmian w zakresie pełnej jego realizacji.

→ **KEYWORDS** – DZIECKO, PRZEMOC, PRAWO, PRZEMOC WOBEC DZIECKA

## Violence towards... a child?

The problem of children being taken advantage of, treated badly or violently has been recognised for centuries. Since bygone times children have been seen as someone's property, which can be used for a specific purpose. The further back in time we take this thought, the lower the level of awareness the needs specific to childhood, and the lower the level of care for children and a higher rate of violent behaviours towards them. Here, a significant role is played by the Roman legal tradition and its reception in European legislation which grants almost unlimited power over children's lives to the father.<sup>1</sup> The absolute power to make decisions concerning the life and death of a child was abolished in Rome by Emperor Valentinian I in 365. He prohibited abandoning and killing children, however the father's right to discipline them remained. The significance of the Valentinian edict, despite often being omitted in the literature on the subject, is far-reaching. It can be analysed in the categories of the first legal position in history within the scope of the protection of children's rights.

The child's predicament over the centuries depended on the attitudes of adults which often spoke of a lack of understanding of the essence of childhood, the child's self and dignity. "As soon as a child could get by without the mother's, maid's or nanny's care, it entered into the world of adults and was no different than others."<sup>2</sup> Children lived together with adults and just as soon as they were able to, which occurred at around the age of seven,<sup>3</sup> they stepped into the world of adults, sharing their work, games,

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<sup>1</sup> Lat. *Pater familias* head of an agnatic family in ancient Rome. Only a male Roman citizen could fulfil that role, not subject to the paternal authority of a different pater familias. He was entitled to unlimited authority over all family members.

<sup>2</sup> P. Ariès, *Historia dzieciństwa. Dziecko i rodzina w dawnych czasach*, Gdańsk 1995, p. 125.

<sup>3</sup> *Ibidem*, p. 234.



happiness and troubles. A child was seen as a “little adult” who will soon attain their full usefulness in the life of a family. Children did not constitute any special social or age group, they rather endured in a peculiar – undefined state of waiting for adulthood. Looking at a child as a miniature adult allows for an easy description of it and its actions based on analogy to the functioning of an adult.<sup>4</sup> The specific needs of a child were not noticed, and as such conditions for their fulfilment were not provided. “The civilisation of the Middle Ages forgot about the ancient paideia, but it was still lacking knowledge on modern education.”<sup>5</sup> The position of Richard Farson is worth mentioning, who formulates a thesis on “inventing a child”

the idea of childhood is a sixteenth century European invention. And as such prior to the first part of the Middle Ages the idea of childhood just did not exist. Most languages did not even have the word “child”.<sup>6</sup>

Humanity began to discover the child and childhood in the 13th century<sup>7</sup> and gradually delved into the mysteries of the thus far unknown, peculiar state of being. Together with this process the social attitude to the child and its needs and right was also transforming. A moral concept of childhood arose, which introduced entirely new categories in relation to a child. F. Coustel wrote in his 1687 *Rules for the education of children*:

Children must be loved and the aversion which they awaken in a reasonable man must be overcome. Children do not deserve a lot of respect, if one considers their outwardness, which is one weakness both on the body as well as the mind. But our feelings change, when we look into the future and when our actions are dictated by faith.<sup>8</sup>

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<sup>4</sup> J. Wilk, *Kim jest dziecko*, in: *W służbie dziecku*, ed. J. Wilk, t. I, Lublin 2003, p. 27.

<sup>5</sup> P. Ariès, *Historia dzieciństwa*, op. cit., p. 234.

<sup>6</sup> R. Farson, *O wynalezieniu dzieci*, in: *Edukacja i wyzwolenie*, ed. K. Blusz, Kraków 1992, p. 40.

<sup>7</sup> *Ibidem*, p. 55.

<sup>8</sup> Quote: F. Coustel, P. Ariès, *Historia dzieciństwa*, op. cit., p. 117.

This new take on the child primarily changes the social way of looking at childhood and sets out the way for humanity to fully discover and respect human rights during childhood. It is this new way of thinking about childhood, not only as a finite stage before adulthood, that led to an increase in social interest in the ill treatment of children.

The spiritual climate of the 17th century, the appearance and development of, *inter alia*, schooling, the establishment of the first college, all this meant that it was considered that a child, before becoming mature had to be given special care and protection. This care, in those times, assumed the framework of a special regime, a peculiar quarantine,<sup>9</sup> which is to prepare a child to enter the adult world. However drawing attention to the virtue of protection and education for children, shall become that driving force, which will transform society in the direction of taking care of the needs of children.

## The normative discovery of violence towards a child

Thus since the idea of who a child is, its psycho-physical specificity and needs was an unknown for such a long time one cannot speak in the modern reality of a normative concept of violence towards a child. Every attempt at naming and identifying this phenomenon, which has remained unnamed for centuries, lost its subject. Together with the social and scientific “discovery” of the child, its pedagogical and legal self, it became possible to undertake systematic reflection on the phenomenon of violence towards a child, which has been known for centuries. This process began in the 17th century, namely of a clear differentiation between the children and adult world particularly considering public life. It allowed the specific situation of a child to be noticed and the need for special protection to be pondered upon.

The problem of violence towards a child was only named and defined in the 1960s. Firstly, in medical categories and then in academic ones. In 1860 a court medical professor in Paris, Ambroise Tardieu, presented 32 cases of children beaten to death. In his description he described each medical diagnosis in detail as well as the children’s sociological and demographic situation,

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<sup>9</sup> Ibidem, p. 236.

however there was not even one mention, that the cause of death of the children was violence towards children despite all the injuries occurring whilst the children were under the care of their families.<sup>10</sup> The positions assumed by medics were also important, *inter alia*, *Report of child violence* by Parrisot and Caussade who were the first to identify the parents as the perpetrators of violence towards a child.<sup>11</sup> However, many years were needed for the problem of violence towards a child to become the subject of thorough scientific research. In 1953 the radiologist F. Silverman described using radiological characteristics of uncommon broken bones in young children so-called battered child syndrome.<sup>12</sup> In 1961 the American Paediatric Academy Conference was dedicated to this syndrome and in the following year this syndrome described in detail by F. Silverman, C.H. Kemp and B.F. Steele, officially entered medical literature as an illness and to medical literature within the scope of the prestigious medical journal "Journal of American Medical Association."<sup>13</sup> This marked the start of a debate on the phenomenon of violence towards children in the family seen in medical, social as well as legal categories.

## Definitions of violence towards a child

Despite the scientific research on the phenomenon of violence towards children the concept is still variously and imprecisely interpreted. The World Health Organisation, defines violence towards a child as:

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<sup>10</sup> I. Pospiszyl, *Przemoc w rodzinie*, Warszawa 1994, p. 7.

<sup>11</sup> Cf. D. Girodet, *L'enfantmaltraité*, *Collection médecine, enfance, adolescence*, Paris 1987, [quote] A. Margolis, *Zespół dziecka maltretowanego, diagnostyka medyczna*, Warszawa 1998, p. 3.

<sup>12</sup> Cf. F. Silverman, *Unrecognisedtrauma in infants. The battered child syndrome and the syndrome of Ambroise Tardieu*, "Radiology" 1972, no. 104, p. 337.

<sup>13</sup> Cf. C.H. Kempe, F.N. Silverman, B.F. Steele, W. Droegemueller, H. Silver, *The battered child syndrome*, "Journal of American Medical Association" 1962, no. 181, p. 17; A. Margolis, *Zespół dziecka maltretowanego, diagnostyka medyczna*, op. cit., p. 3.

(...) every intentional and unintentional action by an adult, society or state, which is detrimental to the health, psychological or psychosocial development of a child.<sup>14</sup>

The wide-ranging scope of this definition should be emphasised. If one were to apply this definition literally to the pedagogical reality, then it might turn out that the life situation of most children in Poland would fulfil the prerequisites defined for victims of violence. For the needs of this work it is justified to attempt to make this concept more precise.

Within the scope of the literature on this subject three primary interpretation directions can be identified treating violence towards children:

- (...) every action or inaction of an entity, institution or society as a whole and every result of such action or inaction which deprives the equal rights and freedoms of children and/or disrupts their optimal development;<sup>15</sup>
- such actions, which regardless of the form in the end handicap the power of someone who is an abject. And that is the goal of violence, making man passive;<sup>16</sup>
- action causing damage to the physical, psychological and social wellbeing of other people, causing pain, suffering, destruction leading to the loss of valued virtues;<sup>17</sup>
- intentional infringement of the power and any personal rights and property of an individual in a manner preventing its defence and causing psychological, physical, symbolic and material damage.<sup>18</sup>

A number of characteristic traits of the phenomenon draw attention in the above-mentioned definitions, which we call violence towards a child. The basic issue is the fact that violence towards a child constitutes.

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<sup>14</sup> M. Pietruszka, *Przemoc – wyzwanie dla świata. Światowy Raport WHO*, „Niebieska Linia” 6/23/2002, p. 7.

<sup>15</sup> D.G. Gil, *Violence against children: Physical child abuse in the United States*, Cambridge 1973, fol: *Dziecko krzywdzone. Próba opisu zjawiska*, eds. E. Czyż, J. Szymańczak, Warszawa 1995, p. 10.

<sup>16</sup> W. Sztander, *Na czym polega pomaganie ofiarom przemocy*, „Niebieska Linia” nr 5, Instytut Psychologii Zdrowia, Warszawa 1999, p. 18.

<sup>17</sup> A. Frączek, *Czynności agresywne jako przedmiot studiów eksperymentalnej psychologii społecznej*, Wrocław 1979, p. 13.

<sup>18</sup> J. Mellibruda, *Oblicza przemocy*, Warszawa 1993, p. 5-6.

- action or inaction. Violence may pertain to actual actions injuring a child, but also to failure to perform actions desirable for the child's correct functioning and development, such as not showing them respect and love (emotional violence) or inadequate clothing or feeding, failure to treat a child (neglect).<sup>19</sup>
- intentionality. This means that violence is an intended, or rather non-random action undertaken towards a child with the intention of achieving a certain goal. This trait of violence is best expressed by the term non-accidental, which is difficult to render exactly in Polish. However, what is most significant is the non-accidental character of a child's injuries which occur in domestic violence.
- inequality of strength, in a violence relationship one of the parties dominates over the other. This domination may refer to physical strength, social, legal or economic position. For a child each of these prerequisites is usually true. A child, due to its psycho-physical characteristics is the weaker party in relations with adults.
- infringement of personal rights and property of the victim of violence. The perpetrator, in taking advantage of their domination infringes a child's basic rights such as the right to bodily inviolability, dignity, respect, as well as the right to health or education,
- the victim's suffering and pain. In infringing the above rights the perpetrator of violence causes pain and bodily or psychological harm to the child, putting the child's health and life at risk.

Violent actions usually fulfil the above criteria. Domestic violence towards a child defined in such a manner can assume various forms. In the literature on the subject four forms of violence are defined:<sup>20</sup>

- physical violence
- emotional violence
- sexual abuse
- neglect.

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<sup>19</sup> Cf. *inter alia* R.E. Helfer, *The developmental basis of child abuse and neglect*, Chicago 1987.

<sup>20</sup> Cf. *inter alia* D.M. Houghton, *Working with children*, London 1995, p. 116-120.

A detailed discussion of these lies beyond the scope of this work, however they have been mentioned and marked to complete this matter.

## The legal context of the phenomenon of violence towards a child

The fact that the phenomenon of violence towards a child over the years also became a legal category is also significant for the issues under discussion. This phenomenon, for ages legally indifferent, becomes the subject of a legislative process shaping the position of a child within the family, society and state.

It should be emphasised that the Polish legislator has not introduced a legal definition of violence towards a child. A normative definition of domestic violence (and thus also the category which we are analysing, violence towards a child treated as a member of the family) states, pursuant to Article 2 of the Domestic Violence Prevention Act, that by domestic violence one should understand

a one off or repeated intentional action or inaction infringing personal rights or property of persons referred to in point 1, and in particular exposing these persons to the risk of a loss of life, health, infringing their dignity, bodily inviolability, freedom including sexual freedom, causing damage to their physical or psychological health as well as causing moral suffering and harm in persons effected by violence.<sup>21</sup>

It should be noted that in this definition the legislator includes the traits characteristic to the phenomenon of violence listed and discussed above, and as such it is action or inaction, infringement of the victims rights or property, the risk of a loss of life or health, causing pain and suffering. The element of one off or repeatability of the acts of violence and their intentionality supplements the definitions.

In interpreting Article 2 of the Prevention of Domestic Violence Act it should be emphasised that for the phenomenon of violence to appear and be sanctioned a one off conscious action or

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<sup>21</sup> Prevention of Domestic Violence Act dated 29 July 2005 "Journal of Laws" 2005, no. 180, item 1493.

inaction infringing a family member's personal rights or property, exposing them to serious damage and causing pain and harm is sufficient. This is very significant from the perspective of a diagnostic criteria, as the phenomenon of violence does not have to be a series of repeated actions causing pain and suffering, but can be of a one off character or even incidental. Also in these cases, when the behaviour or omission fulfils the prerequisites of Article 2 of the Domestic Violence Prevention Act, violence should be diagnosed.

In the normative context, the aspect of act intentionality or omission mentioned in the definition is also important. In side-stepping the widely discussed category in criminal law of a prohibited act<sup>22</sup>, it should be ascertained in general that pursuant to Article 9 of the Criminal Code §1 and 2

a prohibited act is perpetrated intentionally, if the perpetrator intends to perpetrate it, that is want to commit it or foreseeing the possibility of committing it, accepts it. A prohibited act is perpetrated unintentionally, if the perpetrator with no intention of committing it, still commits it as a result of failure to pay due care required in given circumstances, despite the possibility of the committal of such act being foreseen or being able to foresee.<sup>23</sup>

Thus the action or omission of an entity will bear the hallmarks of violence towards a child if it is perpetrated with the intention of infringing the personal rights or property of a child causing pain and suffering and also moral suffering. Such an interpretation is also evident in the Supreme Court case law.<sup>24</sup> The pedagogical category of intentionality may also be analysed in this context assigned to violent acts, understood in the non random / non-accidental aspect. In this context it is possible to ascertain that violence towards a child constitutes such actions or inactions, which do not occur as a result of an accident, and are the result of intentional actions. In this context one should concur with the thesis of K. Kamińska that

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<sup>22</sup> Cf. The Criminal Code. Main part Commentary Article 1-116, pub. 4, ed. A. Zoll, Warszawa 2012.

<sup>23</sup> Act of 6 June 1996, The Criminal Code, "Journal of Laws" 1996, no. 88, item 553 as amended.

<sup>24</sup> See The Supreme Court Resolution of 9 June 1976 ( VI KZP 13/75), OSNKW 1976, no. 78, item 86, as well as the justification to the ruling of 27 February 2002 (II KKN 17/00), OSNKW 2002, no. 7-8, item 55.

parents intentionally injure and harm their children regardless of whether they do this consciously, to educate, an act intending to pay the child back for bad behaviour, or if they act impulsively – it is important that they know what they are doing.<sup>25</sup>

## Violence towards a child – social and legal consequences

The provisions of Polish law pertaining to the prohibition of the use of violence towards a child are guaranteed by the highest constitutional standard. Article 40 of the Constitution of the Republic of Poland states that “No one shall be subject to torture, cruel, inhuman or degrading treatment and punishment. The use of bodily punishment is prohibited.”<sup>26</sup> The Convention of children’s rights ratified by Poland in Article 3 obligates the State-Party to undertake

actions to ensure protection and care for a child to such a degree as it is necessary for its wellbeing, taking into consideration the rights and obligations of its parents, legal guardians or other persons legally responsible for it, and all necessary legislative and administrative steps shall be undertaken to that end.<sup>27</sup>

Articles 19 and 36 of the Convention supplement the problem of protecting a child against bad treatment. Article 19 states directly the obligation of the State-Party to protect a child against all forms of physical or psychological violence, harm or neglect, bad treatment, sexual abuse and exploitation. Whereas Article 36 supplements the concept of child protection stating that “States-Parties shall protect t a child against all other forms of exploitation, in any aspect infringing the wellbeing of a child.”<sup>28</sup>

In 2010 Polish legislators introduced changes to the quoted Domestic Violence Prevention Act and some other Acts and in the Family and Care Code a new Article 61<sup>1</sup> appeared stating that

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<sup>25</sup> K. Kamińska, *Dobro dziecka w dyskursie państwo – rodzina, inaczej o przemocy domowej*, Kraków 2010, p. 71.

<sup>26</sup> Article 40 of the Constitution of the Republic of Poland dated 2 April 1997, “Journal of Laws” 1997, no. 78, item 483.

<sup>27</sup> Convention the rights of a child, “Journal of Laws” 1991, no. 120, item 526.

<sup>28</sup> *Ibidem*, art. 36.



“persons executing parental authority and caring or looking after a minor are forbidden to use bodily punishments.”<sup>29</sup> Detailed provisions of the Criminal Code sanction behaviours incompatible with the above rule of law. Of particular importance here is Article 217 of the Criminal Code referring to striking a person and Article 207 referring to the crime of torment.<sup>30</sup>

Despite such a broad protection for a child against violence the problem of the use of corporal punishment towards children is still met with overwhelming social acceptance. The authors of the report by the Children's Rights Spokesman “Children the victims of domestic violence” show that the indicators pertaining to the social approval for the use of the so-called slaps is 69%.<sup>31</sup> Thus still more than half of Poles approve of and support the use of corporal punishment in the educational process. Research carried out by Ewalina Wiszczun similarly shows a large frequency of the use of physical punishment in the educational process. 60% of the teenagers subject to research admitted that in their families severe physical punishment is used, which result in injuries, bruises, wounds or broken bones. 95% of teenagers consider such behaviour to be degrading for the child and may lead to permanent emotional problems for children and stands as a testament to the fact that parents are not good educators. Only, and as many as, one is six of the respondents considers physical punishment as a normal educational method.<sup>32</sup> Such high indicators of acceptance of the use of bodily punishment with respect to children still remains, despite the critique of violent educational methods which has been going on for a number of years on the basis of pedagogical and psychological teachings.

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<sup>29</sup> Family and Care Code of 25 February 1964, “Journal of Law” 1964, no. 9, item 59.

<sup>30</sup> The Criminal Code, of 6 June 1997, “Journal of Laws” 1997, no. 88, item 553 as amended.

<sup>31</sup> E. Jarosz, A. Nowak, *Dzieci ofiary przemocy w rodzinie. Raport Rzecznika Praw Dziecka. Funkcjonowanie znowelizowanej ustawy o przeciwdziałaniu przemocy w rodzinie*, Warszawa 2012, p. 10.

<sup>32</sup> During 2000-2001 E. Wiszczun conducted research amongst 120 18 and 19 year old pupils of vocational schools and an economics college in Zabrze, see E. Wiszczun, *Rozwój przejawów patologii społecznej jako konsekwencja przemocy w rodzinie*, [in:] *Pokolenie wygranych? Ciąg dalszy badań nad sytuacją dzieci i młodzieży w procesie transformacji*, ed. J. Sztumski, Katowice 2006, p. 214-223.

In the literature on the subject the ineffectiveness of physical punishment as an educational means is emphasised.<sup>33</sup>

## Peroration

Concluding the discussion on the violence towards a child phenomenon in the pedagogical and legal aspect a question should be posed pertaining to what happens to an adult, that they are able to, in certain conditions, take intentional actions or fail to perform necessary acts, which results in harm, physical and moral damage to a child, causes them pain and suffering? What lies at the basis of such a decision to act violently towards a child?

An analysis of the literature on the subject does not provide one single depiction of the sources for violence towards children. The WHO states that

there is no single factor explaining why one person and not another behaves in a violent manner or why one community will be torn apart by violence whilst the neighbouring community will live in peace. Violence is an extremely complex phenomenon, which takes root through the interaction of many factors – biological, social, cultural, economic and political.<sup>34</sup>

Asking for the sources of violence is, in essence, asking for the accumulation of the so called “risk factors,” or such environmental, situational, factual, personal, psychological and legal circumstances the occurrence of which may cause violence towards a child to occur. The literature on the subject points to three groups of these factors: internal to the child, parent or the family system.<sup>35</sup>

The normative context for the protection of children’s rights to freedom against all forms of violence has been clearly delineated by the Polish legislator in the Constitution of the Republic of Poland, as well as many other acts and implementing measures.

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<sup>33</sup> An exception here may be the publications by J. Dobson, *Zasady nie są dla tchórzy*, Warszawa 1998, or the very same *Dzieci i wychowanie*, Warszawa 2000.

<sup>34</sup> <[www.who.int](http://www.who.int)> (access: 05.01.2014).

<sup>35</sup> Cf. E. Jarosz, *Ochrona dzieci przed krzywdzeniem. Perspektywa globalna i lokalna*, Katowice 2009.

They define the particular competencies and obligations of all citizens, and in particular persons holding social functions significant in terms of prevention of violence. In the context of violence prevention, the role of institutions and organisations appointed to perform the broadly understood prevention of violence towards a child is extremely important, namely schools, social workers, health service and the police. It is the manner of the execution of duties, competency (understood to be knowledge, skills and attitudes) of the staff of these institutions which may constitute an environmental factor protecting the child's right to freedom from all forms of violence, or be the factor increasing the risk of violence occurring.<sup>36</sup>

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<sup>36</sup> A. Widera-Wysoczańska, *Mechanizmy przemocy w rodzinie. Z pokolenia na pokolenie*, Warszawa 2010, p. 146-147.

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## ***A Portrait of the Contemporary Child*** The Discussion in the Context of Children's Rights in the light of the findings of Janusz Korczak

### **SUMMARY**

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The article discusses the issue of children's rights in the image of modern childhood against a collision with the vision of children's rights by Janusz Korczak. Currently, despite the widely extended activity of many foundations, organized humanitarian aid, children's rights continue to be violated. The child has enough flexibility to adapt to rapid changes in the surrounding reality and the many requirements it faces. Despite the many differences between the age J. Korczak lived in, and present times there can be seen many parallels and messages that apply to the reality of our times. In my work, I would like to rely on several texts of J. Korczak, addressing the issue of children's rights, among others: *Prawie dziecka do szacunku* (*The Child's Right to Respect*), *Jak kochać dziecko. Dziecko w rodzinie* (*How to Love a Child. The Child in the Family*), *Prawidłach życia* (*Regulations of Life*) and selected writings. In these works the following children's rights are prevalent the right to life and the right of the child to be what it is, the right to property, its own opinion, fun and leisure. I analyze and present them in a context of contemporary vision of childhood and children's rights contained in the UN Convention.

→ **KEYWORDS** – CHILDHOOD, KORCZAK, CHILDREN'S RIGHT, CHILD

### **STRESZCZENIE**

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*Portret współczesnego dziecka. Dyskusja w kontekście praw dziecka w świetle ustaleń Janusza Korczaka*

Artykuł porusza problem praw dziecka w obrazie współczesnego dzieciństwa w zderzeniu z wizją praw dziecka według Janusza Korczaka. Obecnie mimo szeroko rozbudowanej działalności wielu fundacji, organizowanych akcji humanitarnych, prawa dziecka są w dalszym ciągu łamane. Dziecko musi w elastyczny sposób dostosowywać się do szybkich zmian w rzeczywistości oraz stawianych mu wymagań. Mimo

wielu różnic między okresem życia Janusza Korczaka a współczesnym obrazem rzeczywistości, można dostrzec wiele podobieństw oraz przesłań, które wpisują się do obecnych realiów. W swojej pracy pragnę oprzeć się na kilku tekstach Janusza Korczaka, w których porusza on problem praw dziecka, m.in. *Prawo dziecka do szacunku*, *Jak kochać dziecko*. *Dziecko w rodzinie*, *Prawidła życia*, oraz kilku pismach wybranych. Z powyższych prac wyłoniłam następujące prawa dziecka: prawo do życia i prawo dziecka do bycia, tym czym jest, prawo do własności, własnego zdania, zabawy oraz wolnego czasu. Wskazane teksty poddałam analizie, a następnie zestawiałam ze współczesną wizją dzieciństwa oraz prawami dziecka zawartymi w Konwencji o Prawach Dziecka.

→ **SŁOWA KLUCZOWE** – DZIECIŃSTWO, KORCZAK, PRAWA DZIECKA, DZIECKO

Children will not simply become, but already are human beings, yes, they are human, they are not dolls. You can speak to their minds, they will answer to us, speak to their heart, they will feel us.<sup>1</sup>

Janusz Korczak

## Introduction

In a rapidly changing reality, the image of a child is in constant motion, images of young people appear in the media, on billboards, like a public product up for sale. The child is portrayed in two significant ways: an idealized one, almost utopian, and at the same time as naked, hungry, and sick. For that reason, the contemporary child disappears, the truth is replaced by a catchy vision. Despite worldwide appeals, humanitarian and preventive actions, children's rights are still violated. Despite huge efforts and many successful campaigns, multi-million financial support for children, childhood of many people in the world is a period of enormous trial and suffering. In my work I would like to rely on the thoughts of Janusz Korczak, actually Henry Goldsmith, also known as The Old Doctor – who was a doctor, teacher, educator, writer, psychologist, and a social activist. He was a magnanimous person and sincerely devoted to children. The most important thing is that

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<sup>1</sup> J. Korczak, *Rozwój idei miłości bliźniego w XIX wieku*, in: *Na mównicy. Publicystyka społeczna (1989-1912)*, series: *Dzieła*, vol. 3, Warszawa 1994, p. 226 [all quotations from Korczak translated by Author].

through his writings, but also – and most importantly – through his pedagogical practice, Korczak declared, at the beginning of the 20<sup>th</sup> century, the need for a new approach to children and the childhood.<sup>2</sup>

Nowadays, the most important document defining the rights of a child is the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20<sup>th</sup> of November 1989. It contains all the basic children rights – personal, economic, social, and political, they apply to the child and should be accepted and respected on an international level. The first document that formally mentions the Rights of the Child is the Declaration of the Rights of the Child from 1923, created by an international social organization – the International Association of Children's Aid. This declaration contains 5 rules addressed to adult members of society. A year later this document was adopted by the General Assembly of the League of Nations.<sup>3</sup> This declaration was later changed and extended with significant new rights adapted to modern times, and remains a valid legal document. J. Korczak, in his book *The Child's Right to Respect (Prawo dziecka do szacunku)*, commented on the declaration with these words:

Lawmakers from Geneva mixed responsibilities and rights; a lot of the declaration is persuasion, not a request, an appeal to good will, nor request for kindness.<sup>4</sup>

The rules contained therein are not the rights of children shown by J. Korczak, but recommendations and responsibilities of adults towards children.

The strength of modern times is the media, which has helped to develop and promote numerous campaigns under the banner of children's rights. One of the best and most active organizations is UNICEF appointed by the General Assembly of the United Nations. Their work is based on the articles of the Convention on

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<sup>2</sup> L. Koursoumba, *Janusz Korczak and the Convention on the Rights of the Child*, in: *The Year of Janusz Korczak 2012. There are no Children, There are People*, ed. B. Smolińska-Theiss, Warszawa 2013, p. 54.

<sup>3</sup> Cf. *Encyklopedia pedagogiczna*, ed. W. Pomykała, Warszawa 1993, p. 159.

<sup>4</sup> J. Korczak, *Prawo dziecka do szacunku*, in: *Jak kochać dziecko. Momenty wychowawcze. Prawo dziecka do szacunku*, series: *Działa*, vol. 7, Warszawa 1993, p. 448.

the Rights of the Child.<sup>5</sup> Contained in the law they are close to Korczak's perception of children's rights. With the cooperation of organizations from all over the world many actions were initiated, for example current projects carried out by UNICEF – *My dream – vaccination*.<sup>6</sup> In Poland in 2013 there was a UNICEF conference during which a report entitled *The Conditions and Quality of Life in Developed Countries* was presented. It shows that Poland occupies 21<sup>st</sup> place in the global ranking.<sup>7</sup> Many organizations are trying to fight for the rights of children, especially in underdeveloped countries.

Still at the outset, it is worth to define the word "child," which in various cultures and countries carries a different meaning. Under Polish law, the age which marks the end of a childhood is 18, which aligns with the Convention on the Rights of the Child.<sup>8</sup> Cultural and social determinants of entering into adulthood include the following: leaving the parental home, emotional maturity, financial independence, gainful employment, completion of high school, marriage or motherhood. Children in many countries are forced to work from an early age, while in developed countries it is noted that children are staying longer in the family homes, financially dependent on their parents. J. Korczak notes that the child is not treated on an equal footing with other people but as a "brat, a mere child, the future man, not present. It is still to become truly an adult."<sup>9</sup>

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<sup>5</sup> Mission of the UNICEF, <<http://www.unicef.pl/O-nas/O-UNICEF/Misja>> (access: 20.12.2013).

<sup>6</sup> <[http://www.youtube.com/results?search\\_query=prawa+dziecka&sm=3](http://www.youtube.com/results?search_query=prawa+dziecka&sm=3)>; <[http://www.youtube.com/results?search\\_query=unicef+children+rights&sm=3](http://www.youtube.com/results?search_query=unicef+children+rights&sm=3)> (access: 27.12.2013); <<http://www.unicef.pl/Co-robimy/Prawa-dziecka/Biezace-dzialania/Biezace-dzialania/Wakacje-z-prawami-dziecka>> (access: 20.12.2013); <<http://www.unicef.pl/Co-robimy/Prawa-dziecka/Biezace-dzialania/Biezace-dzialania/Promocja-praw-dziecka-w-sklepach-5.10.15>> (access: 20.12.2013).

<sup>7</sup> Cf. Conference *The Conditions and Quality of Life in Developed Countries*: <<http://www.unicef.pl/Co-robimy/Prawa-dziecka/Biezace-dzialania/Biezace-dzialania/Konferencja-UNICEF-prezentacja-raportu-Warunki-i-jakosc-zycia-w-krajach-rozwinietych>> (access:20.12.2013).

<sup>8</sup> Cf. The Convention on the Rights of the Child, art. 1, <<http://sithi.org/admin/upload/law/Convention%20on%20the%20Rights%20of%20the%20Child.ENG.pdf>> (access: 20.12.2013).

<sup>9</sup> J. Korczak, *Prawo dziecka do szacunku*, op. cit., p. 435.



*The Works (Dzieła)*<sup>10</sup> of Janusz Korczak are an intriguing reading, but not easy in terms of reception. They require from the reader a lot of reflection, attention and skills in finding hidden meanings. Krystyna Gąsiorek notes that analyzing Korczak's tetralogy (*How to Love a Child, The Child's Right to Respect and Regulations of Life*) leads to the conclusion that , "(...) the most important problem discussed by Korczak in all his discourses is the child."<sup>11</sup> In my work, I would like to rely on several texts of Janusz Korczak, in which he significantly writes about children's rights, among others *The Child's Right to Respect (Prawo dziecka do szacunku* [1928]), *How to Love a Child. The Child in the Family (Jak kochać dziecko. Dziecko w rodzinie* [1918]), *Regulations of Life (Prawidła życia* [1929]) and several of the writings selected from different periods of the author's life. These works were chosen for analysis.

## I've Got the Right to...

History shows that children have always been treated as less important than adults, subjected to numerous forms repressions and forgotten, which also is a subject of Korczak's writings in *The Child's Right to Respect (Prawo dziecka do szacunku)*.<sup>12</sup> In the period of Korczak's activity in the interwar period, the child has the status of a "weaker" – not yet human – being, less valuable and rational than an adult. Korczak worked mainly with Jewish orphans, but in his work as a doctor he had contact with children of the rich townspeople. The peculiarity of his work allowed

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<sup>10</sup> The collection of Janusz Korczak's *Works* included: vol. 1 – *Dzieci ulicy. Dziecko salonu*, vol. 2, part 1-2 – *Koszalki opałki. Humoreski – felietony*, vol. 3, part 1-2 – *Na mównicy. Publicystyka społeczna (1898-1912)*, vol. 4 – *Szkoła życia. Obrazki szpitalne. Artykuły pedagogiczne i medyczne (1900-1912)*, vol. 5 – *Moški, Joski i Srule. Józki, Jaški i Franki*, vol. 6 – *Sława. Opowiadania (1898-1914)*, vol. 7 – *Jak kochać dziecko. Momenty wychowawcze. Prawo dziecka do szacunku*, vol. 8 – *Król Maciuś Pierwszy. Król Maciuś na wyspie bezludnej*, vol. 9 – *Bankructwo małego Dżeka. Kiedy znów będę mały*, vol. 10 – *Senat szaleńców. Proza poetycka. Utwory radiowe*, vol. 11, part 1-3 – *Prawidła życia. Publicystyka dla dzieci*, vol. 12 – *Czarodziej. Uparty chłopiec. Opowiadania (1918-1939)*, vol. 14 – *Pisma rozproszone. Listy (1913-1939)*.

<sup>11</sup> K. Gąsiorek, *Janusz Korczak i jego bezgraniczna miłość do dzieci*, „Konspekt. Pismo Uniwersytetu Pedagogicznego w Krakowie” 2012, vol. 3 (44), p. 10.

<sup>12</sup> Cf. J. Korczak, *Prawo dziecka do szacunku*, op. cit., p. 447.

him to look at the child from a different perspective, where the child-orphan took on a different meaning. The overall image of modern Polish childhood was quite different than in the times Korczak lived and worked.

The term “law” means:

a system of rules and norms adopted by the public, defining what is allowed and what is forbidden, which also defines the punishment for the offense caused by the breach of these rules.<sup>13</sup>

However, over the years, there appeared a need for the widening of their scope to adapt to new realities, especially for those who are in more greater need, living in unfavourable conditions, and cannot afford a proper living –

There are stronger and weaker people; for various reasons, they are living in conditions that are more or less favourable. To create proper balance, it is necessary to give the weaker some additional rights (...).<sup>14</sup>

Currently, quickly entering the world of technology, young people have a number of new tasks to handle on their own, and too many extra-curricular activities, or on the contrary have too much freedom. In spite of many differences between the times of Janusz Korczak and the modern picture of reality as well as changing views about children and their role in society, we can discern many legitimate similarities in the words of “the Old Doctor.” In my reflections I will refer to Korczak’s thoughts on the child, especially on a few selected children’s rights.

## The Right to Life and The Right of the Child to Be What It Is

In one of Korczaks’ books: *How to Love a Child. The Child in the Family (Jak kochać dziecko. Dziecko w Rodzinie)*, he points to three basic rights of the child – to death, to this day, to be

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<sup>13</sup> *Popularny słownik języka polskiego*, ed. B. Dunaj, Warszawa 1999, p. 520.

<sup>14</sup> *Encyklopedia pedagogiczna*, op. cit., p. 159.

what it is.<sup>15</sup> He points out that the knowledge about the child is the primary task for adults. It is very important to notice the advantages and disadvantages of being a child, and the need for accepting the child as it is, without criticism or resentment. In many cases, it is difficult to reconcile with the fact that the child is not always ideal, healthy, beautiful, or does not fulfil the initial expectations of its parents, but it has the right to be itself. The Old Doctor points out that

how is it possible to believe that the child has to be what it is meant to be, (...) like a sickly person can have make-up put on to look well, whilst they still cannot be cured.<sup>16</sup>

Individualization allows a better understanding of the behaviour and feelings, not only in respect of children, but every person. It has become one of the basic tasks of modern education and upbringing. In Korczak's book *The Regulations of Life (Prawidła życia)* it is argued that

(...) each person we must know individually and assess separately. And you need to know superficially and thoroughly. It is not only important what a person says, but what he thinks and what he feels, and why it is like this, and not otherwise.<sup>17</sup>

In his works Korczak critically brands the perception of the child as a being without rights, a being not entitled to the privileges of adulthood. However the author is opposed to this position, and in one of his journalistic texts – “Reading-room for All” („Czytelnie dla wszystkich”) – he writes: “Children will not simply become, but already are human beings, yes, they are human, they are not dolls.”<sup>18</sup> He points out that the child has the right not to know, to be lost in real life, to failures and tears, it needs proper guidance –

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<sup>15</sup> Cf. J. Korczak, *Jak kochać dziecko. Dziecko w rodzinie*, in: *Jak kochać dziecko. Momenty wychowawcze. Prawo dziecka do szacunku*, series: *Działa*, vol. 7, Warszawa 1993, p. 43.

<sup>16</sup> *Ibidem*, p. 57.

<sup>17</sup> J. Korczak, *Prawidła życia*, in: *Prawidła życia. Publicystyka dziecięca*, series: *Działa*, vol. 11, part 1, Warszawa 2003, p. 56.

<sup>18</sup> J. Korczak, *Rozwój idei miłości bliźniego w XIX wieku*, op. cit., p. 226.

A child is a foreigner, who does not understand the language, does not know the direction of the street, does not know the laws and customs. Sometimes, it wants to look for itself and when it is difficult, it asks for a hint and advice. A guide is necessary, someone who will politely answer the question. Respect their ignorance.<sup>19</sup>

Currently, this right is included in the Article 16 § 1 of the Convention.<sup>20</sup>

The Convention on the Rights of the Child at the beginning indicates that: "States Parties recognize that every child has the inherent right to live."<sup>21</sup> Despite the fact that this law is basic and undeniable it is still often broken and neglected. The toil of life falls on the child the day it comes into the world, it is left at the mercy of other people. In the introduction to *the Report of the Association "Help for Orphans" from 1927 (Wstęp do sprawozdania Towarzystwa „Pomoc dla Sierot” na rok 1927)*, we read that "(...) growth is difficult; it is the work and the first duty and the law of the child. All the rest should be subordinated to his holy work (...)."<sup>22</sup> Growth requires proper care from the part of another person. Any negligence from parents' ends up leaves deep marks and will eventually grow. The realities of the modern world require from people constant development and the acquisition of new skills. This situation affects to the youngest members of society the most since they require more skills and abilities than their natural conditions for development allow. Striving for perfection, which Korczak also notes:

This is a fleeting fashion, a mistake, a fault of reason, that everything that is not outstandingly perfect, seems to us meaningless and worthless. We obsessively seek immortality,<sup>23</sup>

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<sup>19</sup> J. Korczak, *Prawo dziecka do szacunku*, op. cit., p. 451.

<sup>20</sup> Cf. The Convention on the Rights of the Child, art.16 § 1, <<http://sithi.org/admin/upload/law/Convention%20on%20the%20Rights%20of%20the%20Child.ENG.pdf>> (access: 20.12.2013).

<sup>21</sup> Ibidem, art.6 § 1.

<sup>22</sup> J. Korczak, *Wstęp do sprawozdania Towarzystwa „Pomoc dla Sierot” na rok 1927*, in: *Pisma rozproszone. Listy (1913-1939)*, series: *Dzieła*, vol. 14, Warszawa 2008, p. 127.

<sup>23</sup> J. Korczak, *Jak kochać dziecko*, op. cit., p. 59.

makes adults often feel disappointed because of the imperfections of their offspring, they look for all possible solutions to this situation. The Convention points out that:

States Parties recognize the right of every child to the standard of living adequate for the child's physical, mental, spiritual, moral and social development.<sup>24</sup>

This suggests that adults should afford the child proper development, without limiting its nature, giving it a choice, without pressure from the environment. In the introduction to *Educational Institution "Our Home" Maria Rogowska-Falska* (wstęp do książki Marii Rogowskiej-Falskiej *Zakład Wychowawczy „Nasz Dom”*) it is stated that

The child – now is a resident, citizen and already a human. Not that it will be, but it already is. The child already has a past and a future. Memories and memorabilia. The childhood years are real life, not the announcement of what is to come.<sup>25</sup>

Korczak reproaches adults: “They examine the child not as a different, but lower, weaker, poorer mental system. – as if meaning: all adults were learned professors.”<sup>26</sup> Currently the interest in a child's development from the prenatal perspective is more than significant. The child has been placed in the center of interest of many areas of knowledge – humanities and natural sciences. The reality has changed and with easier access to information, and economic growth the perception of the child has evolved into a wider and deeper state. Korczak tried to look at the child from a different perspective – with eyes full of admiration and by becoming involved in its activities. The child has the right to be what it is, without anyone intervening in its spontaneity –

The child is not stupid; there are no more fools among them as there are among adults. Rules can lack reason, criticism and

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<sup>24</sup> The Convention on the Rights of the Child, art. 27 § 1, <<http://sithi.org/admin/upload/law/Convention%20on%20the%20Rights%20of%20the%20Child.ENG.pdf>> (access: 20.12.2013).

<sup>25</sup> J. Korczak, *Wstęp do książki Marii Rogowskiej-Falskiej Zakład Wychowawczy „Nasz Dom”*, in: *Pisma rozproszone. Listy (1913-1939)*, series: *Dzieła*, vol. 14, Warszawa, 2008, p. 204.

<sup>26</sup> J. Korczak, *Prawo dziecka do szacunku*, op. cit., p. 461.

plausibility if blindly followed by adults. A rational child sometimes becomes amazed by an aged, stubborn stupidity.<sup>27</sup>

A baby does not have a different nature, on the contrary, it is an integral and inseparable part of the society.

## The Right to Property

It is undeniable that a human being who is only a few years old would start exploring the surrounding reality and everything would be new to him. Children are able to marvel at the smallest thing, which takes on great significance for them – it is a secret and a treasure. Korczak indicates that “A beggar is free to spend him alms at whim; the child does not have anything of its own, it must give an account of each item or possession in its use.”<sup>28</sup> The child has the right to property, to possession of personal items, things which it considers relevant and important, but which in the eyes of adults may seem to be useless, therefore often these priceless objects are thrown away or disposed of Korczak wrote:

With respect to the child’s property and budget it perceives the goods in possession of its family, feels deficiencies, and compares its own poverty with the abundance of their peers (...). The property of the child is not junk, but beggar’s goods and tools, hopes and souvenirs.<sup>29</sup>

The adult world is ruled by material goods, which are often a priority and purpose of life – the pursuit of prosperity. For a child this reality is incomprehensible and for the youngest the family is the most important, items are complementary to the environment. Children “do not know that there are expensive things, which are bought once, and should serve for many years.”<sup>30</sup> It is unlawful to dispossess children of their belongings. Nowadays the problem of the right to property is publicized, and the matters points special attention to material goods, however items, which

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<sup>27</sup> J. Korczak, *Prawo dziecka do szacunku*, op. cit., p. 448.

<sup>28</sup> Ibidem, p. 431.

<sup>29</sup> Ibidem, p. 452.

<sup>30</sup> J. Korczak, *Prawidła życia*, op. cit., p. 16-17.

belong to children are viewed from the perspective of adults. Inaccuracy occurs in the case of things that are worthless in the eyes of the law, but for the child are priceless.

If an adult has been unlawfully deprived of personal belongings I would advise them to take the case to the court. I have no right to give such advice to a child in relation to his teacher's actions, although since the child is weak it should find help when someone deprives them of their property all the more.<sup>31</sup>

In The Convention on the Rights of the Child there are marked economic laws directed at children, highlighting that the child cannot be a victim of economic exploitation by not giving children the right to property.

## The Right to Their Own Opinion

The media has raised the problem of children's rights many times, talking about children that have been removed from family homes or are struggling with diseases, but at the same time who have been deprived of their own voice. A child rarely speaks on television, it does not talk about where it would like to live, but it is left to the mercy of adults and it surrenders, despite the rights granted to him by The Convention: "States Parties shall 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 (...)."<sup>32</sup> The youngest are excellent observers who are punished for their skills. They can see the adults' defects and inconsistency in their actions. Korczak in his observations noted:

We hide our own faults and misdeeds. Children cannot criticize, cannot point out our vices, habits and peculiarities. (...) Only the child can be exposed shamelessly and put up for public criticism.<sup>33</sup>

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<sup>31</sup> J. Korczak, *Własność dziecka*, in: *Prawidła życia. Publicystyka dziecięca*, series: *Dzieła*, vol. 11, part 2, Warszawa 2007, p. 173.

<sup>32</sup> The Convention on the Rights of the Child, art.12 § 1, <<http://sithi.org/admin/upload/law/Convention%20on%20the%20Rights%20of%20the%20Child.ENG.pdf>> (access: 20.12.2013).

<sup>33</sup> J. Korczak, *Prawo dziecka do szacunku*, op. cit., p. 445.

The Old Doctor enabled children to express their own opinion, by introducing in his institutions “internal governments,” the Peer Court, postal pronouncements and a children’s magazine. In *How to Love a Child. The Child in the Family* we can read that “the first non-confrontational right is the child’s right to speak his mind, and active participation in our considerations and judgments.”<sup>34</sup>

## The Right to Play and Free Time

Childhood is mostly associated with being carefree and having fun. It is so much more; it is a period of exploration and new experiences, it is also a time full of joy and freedom. As the Doctor noticed “A child needs movement, the air, the light – the harmony, but also something else. Space, the feeling of freedom – the open window.”<sup>35</sup> Today the spontaneous actions of the child and a harmonious and comprehensive development of his personality is highlighted. Independence is accompanied by creative and innovative thinking, which favors the development of intelligence. Reason does not limit the youngest, allowing them to freely explore the surrounding world. Korczak calls it “the open window.” But adults, forgetting about the welfare of the child, often enforce upon it classes, extra work, tutoring, which are focused on specific areas. This way they become deprived of creativity. In the text *The Pickpocket (Złodziejaszek)* Korczak notes that “I am only responsible for the present day of my ward, I was not given the right to influence and interfere in the future of his fate.”<sup>36</sup> The child has the right to decide about and organize his own space and time, the educator is only an observer and adviser. Today, despite the vast amount of information on the rules of education, adults sometimes forget about what is good for the child and only focus on its educational development. Inscribing the rules, the organized world of adults in the fabric of their nature, creates their schedules built not only out of obligatory classes in the nursery or pre-school, but adds to that a number

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<sup>34</sup> J. Korczak, *Jak kochać dziecko*, op. cit., p. 43.

<sup>35</sup> J. Korczak, *Otwarte okno*, in: *Pisma wybrane*, vol. 2, Warszawa 1984, p. 141.

<sup>36</sup> J. Korczak, *Złodziejaszek*, in: *Pisma wybrane*, vol. 2, Warszawa 1984, p. 138.



of extra-curricular activities. A child deprived of choice remains helpless in the face of everyday life. This problem was also noticeable during activities of Korczak, as the author writes:

It cannot be that the child of wealthy parents is to become a mere craftsman. Let it rather become a miserable and demoralized human being. Not a child of love, but of parents' selfishness (...).<sup>37</sup>

On the other hand there is the image of a child subject to over-protection. A force which is supposed to defend him from all evil. Depriving children of knowledge about how to learn to make choices and letting them into the world of contemporary temporal control mechanisms, can make them helpless when faced with common standards in the future. The Convention on the Rights of the Child only mentions the right to rest and leisure, and participation in cultural life,<sup>38</sup> but it does not address the issue of the freedom of choice and the freedom to decide on how to "pass the present day," as the Old Doctor says.

## Conclusion

Allowing children to fully self-guide their lives is also against the law. Equality is not synonymous to the freedom of existence. We cannot protect children against adults' domination or their leadership, when actions should be based on a relationship of love and trust. This is perfectly exemplified by Janusz Korczak who became the protector of children's rights. He became an authority for educators, parents and children, with great dedication to working for and with children. After working with them across various areas he concluded that "years of work make it even more obvious that children deserve respect, trust and kindness (...)."<sup>39</sup>

A child brought up in dissonance looks for its own solutions to problems. Often devoid of a proper childhood, it enters the world

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<sup>37</sup> J. Korczak, *Jak kochać dziecko*, op. cit., p. 17.

<sup>38</sup> Cf. The Convention on the Rights of the Child, art. 31 § 1, <<http://sithi.org/admin/upload/law/Convention%20on%20the%20Rights%20of%20the%20Child.ENG.pdf>> (access: 20.12.2013).

<sup>39</sup> J. Korczak, *Prawo dziecka do szacunku*, op. cit., p. 442.

of adults too quickly. On the other hand the image of modern childhood is associated with Neverland, and remaining a child forever. The task of an educator is to accompany the child in its development and exploration – “The doctor tore the child from death’s grasp as the task of educators it is to give him a life, and present to him the right to be a child.”<sup>40</sup> Modernity requires from children that they face increasingly difficult situations and new challenges. On this ground two faces of the contemporary family clash with each other: the overprotective and the neutral. Overprotection makes the child lose the possibility of a free upbringing and crossing new barriers, and because of that some aspects of development associated with a certain age are elongated. Children do not have the opportunity to become who they would like to be, often embedded in an excessive amount of additional extra-curricular activities, they miss contact with their peers, and dwell in helplessness in which it appears the world is perfect.

(...) parental perfectionism, excessive demands of the child, the so-called success rate, depriving the child of versatility development and joy of childhood.<sup>41</sup>

From the other perspective, indifference from adults makes the immature human beings enter the adult world too quickly without any restrictions.

Janusz Korczak also appeals for respect and dignity of the child. Respect for their ignorance, efforts of exploration, for failures and tears, for property, respect for the mysteries and fluctuations in the growth of hard work, respect for the present time.<sup>42</sup> The modern image of the child is too elusive, its contours and framework difficult to define, but it is important to remember Korczak’s words that the child needs to be able to “respect each separate moment, because it will die and will never happen again, and in its severity, it will bleed if injured and haunt the memory if murdered.”<sup>43</sup>

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<sup>40</sup> Ibidem, p. 461.

<sup>41</sup> J. Gromska, *Raport o przestępczości wobec dzieci, w tym seksualnej (na podstawie analizy 410 orzeczeń sądowo-psychiatrycznych i seksuologicznych)*, in: *Prawa dziecka deklaracje i rzeczywistość*, ed. J. Bińczycka, Kraków 1999, p. 166.

<sup>42</sup> Cf. J. Korczak, *Prawo dziecka do szacunku*, op. cit., p. 451-453.

<sup>43</sup> J. Korczak, *Prawo dziecka do szacunku*, op. cit., p. 453.

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## ***Mtoto. Children's Rights in the Post-colonial World***

### **SUMMARY**

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Nelson Mandela said that “there can be no keener revelation of a society’s soul than the way in which it treats its children,” and there is no denying his statement, but to be able to treat them properly one needs to understand the reality in which we are living. And it is a world build upon centuries of inequality and discrimination. Thus there is a distinctive correlation between contemporary society and postcolonial heritage as the tension between the West and the East – or Global North and Global South – is influencing daily lives, especially of those most vulnerable: women and children. After examining the meaning of “postcolonialism” in the relation to the history of colonization the article touches the subject of human rights in general, and children’s rights in particular, from an interdisciplinary perspective, and discusses the need of understanding the diversity, and reinventing international dialogue in terms of education of youth for sustainability.

→ **KEYWORDS** – CHILDREN’S RIGHTS, HUMAN RIGHTS, POSTCOLONIAL THEORY AND HISTORY

### **STRESZCZENIE**

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#### ***Mtoto. Prawa dziecka w postkolonialnym świecie***

Nelson Mandela powiedział, że „nie może być bardziej żarliwego objawienia duszy społeczeństwa niż poprzez to jak traktuje swoje dzieci” i nie ma jak zaprzeczyć tym słowom, jednakże, by móc traktować je prawidłowo, najpierw należy zrozumieć rzeczywistość, w której się żyje. A jest to świat zbudowany na wiekach nierówności i dyskryminacji. Tym samym istnieje wyraźna korelacja między współczesnym społeczeństwem a postkolonialną spuścizną, jak można zauważyć, śledząc napięcia między Wschodem a Zachodem – Globalnym Południem a Globalną Północą, które wpływają na codzienne życie każdej osoby, zwłaszcza tych najwrażliwszych: kobiet i dzieci. Po zbadaniu

znaczenia „postkolonializmu” w relacji do historii kolonizacji artykuł dotyczy tematu praw człowieka, szczególnie praw dziecka, z perspektywy interdyscyplinarnej oraz omawia potrzebę zrozumienia różnorodności i ponownego zaprojektowania międzynarodowego dialogu pod kątem edukacji młodych dla dobra przyszłości.

→ **SŁOWA KLUCZOWE** – PRAWA DZIECKA, PRAWA CZŁOWIEKA, TEORIA  
I HISTORIA POSTKOLONIALIZMU

When I was 5 years old, my mother  
always told me that happiness was the  
key to life. When I went to school,  
they asked me what I wanted to be  
when I grew up. I wrote down  
“happy.” They told me I didn’t  
understand the assignment, and I told  
them they didn’t understand life.

John Lennon

## Introduction

An African proverb says that “it takes a village to raise a child,”<sup>1</sup> and it is very true since every element of the surrounding influences and reflects upon the development of each person. Environment plays incredibly important role, and its structure defines one’s identity. It is well known that we live in a global village. Western standards teach us about unity, about equality and freedom, but these each, have roots in a dark past of imperialism. Grown out of such soil our village has a difficult path ahead, with young-ones being raised having possibilities unavailable to previous generations. Children nowadays face the need of finding identity in a world which is “global,” “postcolonial,” “mobile” and “multicultural,” a reality which is rarely understood by their parents. Thus stronger protection of their rights seems to be unavoidable evolution of the society for our village to be ready for their proper upbringing.

According to Lacanian psychoanalysis “the child learns to see itself as distinct from the rest of the world by regarding its own mirror image, but becomes a full subject only when it enters the

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<sup>1</sup> This and other African proverbs used in the text are taken from: <<http://af-ritorial.com/the-best-72-african-wise-proverbs/>>.

world of language.”<sup>2</sup> And both language and culture stand behind the origins of postcolonial and oriental theories.<sup>3</sup> Those – as scientific terms – started to be forged in the 1950s. A threshold was marked by an international conference in Bandung. After the World Wars in a bipolar reality of a new, Cold War conflict, representatives of 29 countries of Africa and Asia met in April 1955 to discuss and design both a political and economic place for themselves in that world. That meeting marked a turning point for their foreign policies and relations with the West in general,<sup>4</sup> and more specifically their former colonizers. All the participants unanimously decided that they would stay out of the artificial division of the world for “the East” (“Orient”) and “the West,” instead the countries would follow their own path, using then established New Asian-African Strategic Partnership. The Bandung Conference was also a birthplace of the Non-Aligned Movement<sup>5</sup> – for all those wishing to build a clear opposition to the falling colonization-oriented system, especially foreign influences in Africa.<sup>6</sup> The declarations and plans which started to emerge during the 1955 meeting drew a thick line separating colonizers from former colonies, built foundations for a modern, postcolonial, reality, where children were considered of a great significance, being “test tubes” of changes as they “introduce the possibility of very different ways of being and knowing.” The child is an important trope in representations of language and indigeneity because these are so firmly traversed by conceptual boundaries which, in children, are yet to be fully established.”<sup>7</sup> To understand what “postcolonialism” really is it is crucial to understand

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<sup>2</sup> A. Loomba, *Colonialism-postcolonialism*, London 1998, p. 37.

<sup>3</sup> With Edward Said as the forerunner with his *Orientalism* (London 1977).

<sup>4</sup> Term represents here Anglo-Saxon countries (Australia, Canada, New Zealand, the United Kingdom, and the United States) and Western Europe.

<sup>5</sup> Non-Aligned Movement (NAM) is a coalition of states which are not aligned in any formal way with or against major power blocs. Since 2012 it has 120 members. See: <<http://www.nam.gov.za/>>.

<sup>6</sup> Cf. Y. Mulyana, *The 1955 Bandung Conference and its present significance*, “The Jakarta Post”, <<http://www.thejakartapost.com/news/2011/04/29/the-1955-bandung-conference-and-its-present-significance.html>> (access: 05.01.2013).

<sup>7</sup> B. Ashcroft, *On Post-Colonial Futures: transformations of a Colonial Culture*, London 2001, p. 54.

what “colonialism” is “with a discussion of the legacy of colonial experience and anti-colonial thought.”<sup>8</sup>

## Colonialism, postcolonialism and human rights

The simplest definition of “colonialism” is that it is a mechanism of control which requires the act of submitting one people to the power of another. Its clarity is clouded by the frequent equating with “imperialism” which, in turn, relates to also to political and economical mastery over a dependent territory.<sup>9</sup> To make a distinction between them it is necessary to look into the etymology of the terms. Both derive from Latin, and for ancient Romans *colonus* meant “a farmer,” while *imperium* – “a government.” Thus colonialism was usually connected to a practice of a transfer of people, building their settlements and bases for a development on the new territories, being politically subordinate to the metropolitan state, but constantly interacting with native inhabitants on various levels, e.g. cultural or economical. Over the centuries it became glorified by European thinkers as a way of exporting Western standards to the simple people of newly conquered lands, bringing them up to the level of the Old World.<sup>10</sup> But reality denied that notion, which was noticed in the loud work *Discourse on Colonialism* where Aimé Césaire writes that colonization was *not* a good nor proper way for establishing communication between different civilizations. From the perspective of time passed, it is clear that the reality of Western expeditions was far from the plans and the ideals did not have much in common with humanistic values of the Enlightenment.

Obviously such a sick construction sooner or later had to collapse. That happened together with the global military conflicts

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<sup>8</sup> R. Majumdar, *Postcolonialism, Decolonization and Globalization*, Bloomsbury Publishing, <[http://www.bloomsburyacademic.com/view/WritingPostcolonialHistory\\_9781849663298/chapter-ba-9781849663298-chapter-001.xml?print](http://www.bloomsburyacademic.com/view/WritingPostcolonialHistory_9781849663298/chapter-ba-9781849663298-chapter-001.xml?print)> (access: 26.01.2013).

<sup>9</sup> Cf. M. Kohn, *Colonialism*, in: *Stanford Encyclopedia of Philosophy*, <<http://plato.stanford.edu/entries/colonialism/>> (access: 06.01.2014).

<sup>10</sup> This fact was nicely summarized by Frantz Fanon in his *Black Skin, White Masks*: “The colonized is elevated above his jungle status in proportion to his adoption of the mother country’s cultural standards” (Quote via <<http://www.goodreads.com/work/quotes/949036-peau-noire-masques-blancs>>).



of the first half of the XXth century. As previously noted, in the 50's there appeared a new theoretical discourse on the topic of postcolonialism. As Professor Diana Brydon writes:

Postcolonial studies offers a wealth of detailed stories of past and ongoing injustices, including some associated with humanitarian missions of intervention; an inquiry into the challenges of memorialization and a reminder of the ways in which memory can be tied to forgetting; some valuable critiques of current human rights discourses and practices; some cautions about potential pitfalls; and some thinking about alternative approaches to imagining a justice that is yet to come.<sup>11</sup>

Furthermore, Brydon points out that the history of postcolonialism might be seen as parallel to the history of human rights, because of the fact that "it is all about people asserting their rights to exercise their autonomy."<sup>12</sup> But the postcolonial world is left with dual systems, having separate sets of regulations, separate understandings of "rights," for colonizers and the indigenous populations, and as a phenomenon it cannot be generalized. It shows a great amount of variations in a context of the relation between basic rights, legislated law, state courtrooms, customs and local practices. The hypocrisy of the West might be exemplified by the French,<sup>13</sup> since XVIIth century revolutionists proclaimed the Declaration of the Rights of Man and Citizen in 1793 but at the same time were eager to dehumanize colonized people. The gap between what is stated – the equality of every man and woman – and the reality in which we live, especially the unequal treatment of children, is clear.

In *Geopolitics and the Post-colonial: Rethinking North-South Relations* David Slater notes that

the post-colonial carries with it an important ethico-political dimension that is rooted in the critique of colonialism and

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<sup>11</sup> D. Brydon, *Postcolonial and Global Approaches to Human Rights*, in: *Globalization and Cultural Studies Blog*, <<http://dianabrydon.com/2012/01/09/post-colonial-and-global-approaches-to-human-rights/>> (access: 09.01.2014).

<sup>12</sup> Ibidem.

<sup>13</sup> Frantz Fanon puts an emphasis on their policy in his works: *The Wretched of the Earth and Black Skin, White Masks*.

imperialism and in the re-validation of autonomy and resistance to subordination.<sup>14</sup>

Isn't this a very good metaphor of child-parent relations? In the light of the combination of human rights and postcolonialism in which we live "the time of official apologies, truth and reconciliation commissions, and calls for restitution."<sup>15</sup> But the developed world, consisting mainly of former colonizers, remains an egoistic entity which hides behind its structures, and theories, easily forgetting the oldest and simplest wisdom which is thriving in more traditional societies. Ganda people say that "parents give birth to the body of their children, but not always to their characters."<sup>16</sup> In the same way, the collapse of the colonies marked the beginning of the independent existence of many nations, each with its own unique history and legacy, a character built before European domination. Many children with their own needs, and the Western "parent" still tries to unify them under international regulations.

With such a background the human rights movement emerged in an aftermath of the Second World War, culminating in the form of the Universal Declaration of Human Rights, signed in Paris in 1948 by the participants of the United Nations General Assembly. The document codified norms designed to help protect "people everywhere from severe political, legal, and social abuses. Examples of human rights are the right to freedom of religion, the right to a fair trial, the right not to be tortured, and the right to engage in political activity."<sup>17</sup> Their existence in international political relations has brought as much good in the form of enhancing awareness and legal reforms of existing laws as much evil that came with conflicts and restrictions for their protection. For the West they seem to be just another tool for modern style conquests, counted by the number of investments and the amount of resources exported.

Frantz Fanon in his *Black Skin, White Masks* has written that "we believe that an individual must endeavor to assume the

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<sup>14</sup> D. Brydon, *Postcolonial and Global Approaches to Human Rights*, op. cit.

<sup>15</sup> Ibidem.

<sup>16</sup> They are a native ethnic group in Buganda, a subnational kingdom within Uganda.

<sup>17</sup> See more: Human Rights, <<http://plato.stanford.edu/entries/rights-human/>> (access: 14.01.2014).

universalism inherent in the human condition.”<sup>18</sup> Such a belief undergirds the acts of UN. But what about the youngest children who are not yet *de facto* individuals according to common understanding? What about those trapped in the mechanisms of labor migration, finding themselves among foreign cultures and customs? Post-colonial times came paired with rapid globalization, enhanced mobility, and informatization of daily life, coated in pop-culture and the commercialism of the West. And as much as they lack in true universality, they bring concrete benefits for particular groups.

## Children's Rights

One of more specific sets of rights was created especially for children by the League of Nations already in 1924 with the Geneva Declaration of the Rights of the Child. A little more than 30 years later, in 1959, the United Nations General Assembly adopted the United Nations Declaration of the Rights of the Child, which can be summarized in these points:

1. All children have the right to what follows, no matter what their race, color, sex, language, religion, political or other opinion, or where they were born or who they were born to.
2. You have the special right to grow up and to develop physically and spiritually in a healthy and normal way, free and with dignity.
3. You have a right to a name and to be a member of a country.
4. You have a right to special care and protection and to good food, housing and medical services.
5. You have the right to special care if handicapped in any way.
6. You have the right to love and understanding, preferably from parents and family, but from the government where these cannot help.
7. You have the right to go to school for free, to play, and to have an equal chance to develop yourself and to learn to be responsible and useful. // Your parents have special responsibilities for your education and guidance.
8. You have the right always to be among the first to get help.
9. You have the right to be protected against cruel acts or exploitation, e.g. you shall not be obliged to do work which hinders

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<sup>18</sup> Quote via <<http://www.goodreads.com/work/quotes/949036-peau-noire-masques-blancs>>.

your development both physically and mentally. // You should not work before a minimum age and never when that would hinder your health, and your moral and physical development.

10. You should be taught peace, understanding, tolerance and friendship among all people.<sup>19</sup>

With those articles the world officially recognized the needs of the youngest, but it still became enmeshed in the postcolonial snare of trying to implement laws from above, hoping for the states to influence their citizens. Children's rights are derived from more general human rights and inherit the basic problem of the latter, namely that the category of human is understood differently in various cultures and does not always encompass everyone, leaving many – women or children, the elderly or handicapped – without any rights. Moreover, the UN and politicians have forgotten about those huge gaps between societies, especially in the rural areas. Governments may even ratify the documents, but they leave the necessary dialogue on paper, just to be able to cash in more personal gains in terms of international trade and commerce.

At the same time the horizontal efforts, through education, are limited. Humanitarian and voluntary actions are able to bring change, yes, but it is still not enough on a global scale. Children are especially in danger of being lost as their world is changing faster than ever, before they can even define themselves. The frightening thing is that in the case of many children struggling nowadays to find their place in the postcolonial world their identity is often being created *for* and not *by* them, and that is their only way to gain acceptance.<sup>20</sup> In *Looking White People in the Eye*, Sherene Razack identifies three ideas that most often enable her North American students to deny that oppression exists. These are: "rights thinking, essential woman, and the culturalization of differences,"<sup>21</sup> but for those living in the developing world those are often denied, when societies fail to defend even the basic cells of the communities – families. There everything starts but it

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<sup>19</sup> This plain language version and the original can be found here: <<http://www.un.org/cyberschoolbus/humanrights/resources.asp>>.

<sup>20</sup> See more: D. Hernandez, B. Rehman, *Colonize This!: Young Women of Color on Today's Feminism*, Emeryville 2002.

<sup>21</sup> S. Razack, *Looking White People in the Eye: Gender, race, and Culture in Courtrooms and Classrooms*, Toronto 1998, p. 17.

is relatively rare to hear sentences like this one: "Both my father and my mother raised us to be proud of who we were. Shame was not part of my vocabulary. As a child I was proud to identify myself with brown, with poor, with Indian, with *other*."<sup>22</sup> These kind of statements need a strong backbone, which comes with a proper upbringing.

Protecting the rights of children starts with protecting the rights of women – their mothers. To adapt to the contemporary international environment, with it putting pressure on the issues related to the human rights, many countries are step by step replacing their traditional, customary and religious laws with new legislation based on the ideas forged in the West. The reforms launched in developing countries are designed to help governments in the cooperation with their counterparts in the developed world more than with relations with their own citizens.

In practice, there are still gaps between human rights ideals like principle of gender equality and self-determination and the local norms that govern women's everyday lives. (...) in [the] books by Susan Hirsch and Anne Griffiths<sup>23</sup> [it is shown] how women are relying on a combination of individual rights and family-based entitlements for their day-to-day survival.<sup>24</sup>

The Western answer to the problem was standard – create more laws with the accumulation in the UN Convention on the Elimination of All Forms of Discrimination against Women, and although it was ratified by more than 150 nation states, it remains to be more of a guide-book than actual game-changer. It supported reforms for equality, but again it did so in a top-down fashion, forgetting that shifts in mind-sets cannot be enforced simply by signing papers.

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<sup>22</sup> D. Hernandez, B. Rehman, *Colonize This!: Young Women of Color on Today's Feminism*, op. cit., p. 18.

<sup>23</sup> A. Griffiths, *In the Shadow of Marriage: Gender and Justice in an African Community*, Chicago 1997; S.E. Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court*, Chicago 1998.

<sup>24</sup> A. Hellum, *Human Rights and gender relations in postcolonial Africa: options and limits for the subjects of legal pluralism*, in: *North South. Gendered views from Norway*, KiLDEN. Information Centre for Gender Research in Norway, <[http://eng.kilden.forskningsradet.no/artikkel/vis.html?tid=54098&within\\_tid=54080](http://eng.kilden.forskningsradet.no/artikkel/vis.html?tid=54098&within_tid=54080)> (access: 09.01.2014).

The solution is obvious. The changes should rather be implemented in societies through the education of their youngest members. The need to discard colonial heritage, which displays itself in the form of written regional customary laws, often lacking even close resemblance to the international human rights standards, is an obvious start in a road towards a better future for children. Sadly though, the rules are dictated globally more often by the economy than by any other factors. The crisis touches the core with more strength; women and children are the most vulnerable. Research conducted by UN (Human Settlements Programme 2008) shows that hand in hand with the financial crisis comes a rise in domestic violence, when frustration and anger accumulate in the hearts and minds of men, they threaten the security of others.<sup>25</sup>

Furthermore, in the former colonies local traditions and divisions of labor roles were turned upside down by Europeans who introduced with different division of labor rapidly implemented Old World's system, leaving natives in cultural shock and not helping them in adapting to the new roles. Colonizers forced men to hard work in construction sites, building the infrastructure necessary for new industries, in mines, plantations etc – in this way women were even more burdened as no-one was left to take care of the household.<sup>26</sup> Moreover globalization has brought those changes to ever greater numbers of people with new forms of slavery and a dependence on labor.

For many the word "slavery" brings to mind pictures from the history: transatlantic trade, buying and selling human beings, which, in the modern world, we were suppose to leave far behind. (...) But today, in reality, slavery not only still exists but is growing. Statistics are showing that in the scale of the world there are 27 million people (men, women, children) staying in slavery (Bales, 1999). Women (...) are forced to prostitution (...), children are smuggled between countries (...), and men are forced hard labor (...). Nowadays slavery might touch people of ages, sexes and races, it happens on every continent and in almost

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<sup>25</sup> J. Ghosh, *Kryzisy finansowe i ich konsekwencje dla kobiet. Rys historyczny*, in: *Kobiety, gender i globalny rozwój. Wybór tekstów*, ed. N. Visvanathan, L. Duggan and N. Wiegiersma, L. Nisnoff, Warszawa 2012, p. 41-47.

<sup>26</sup> E. Boserup, *Rola kobiety w rozwoju gospodarczym*, in: *Kobiety, gender i globalny rozwój. Wybór tekstów*, op. cit., p. 59-61.

every country. In most of the cases it is based on the need of repaying debts, and in its worst version – child labor.<sup>27</sup>

Contemporary children might be victims of the violations of the human rights due to many factors, both direct and indirect. The former speak for themselves, such as the case of Chinese doctor, Zhang Shuxia, who was selling newborns to human traffickers. For seven infants she earned \$33,000, one of them has died, and the doctor herself was sentenced to death.<sup>28</sup> By comparison the latter ones come quietly but can be equally destructive. When a family is broken due to debts or kidnappings, and one or both parents are not there for their children they are condemned to lives inside of the system,<sup>29</sup> a system which is like a child itself, and according to an old proverb “You cannot beat a child to take away its tears.” Only patience can bring about change. Many children's rights activists are already working tirelessly to bring violations of human rights to the attention of policymakers. Their efforts are recognized but fail to be permanent<sup>30</sup> as they have to face a duality well-described by Anne Hellum:

A characteristic feature of the legal systems of most former European colonies in Africa and Asia is the plurality of customary and religious laws that coexist with the received European law. The dual legal systems, in which different laws applied to different races, were the cornerstone of apartheid. Upon independence, the new African governments set out on law reform programs that aimed at greater race, class, and gender equality.<sup>31</sup>

In the material world of today we lack the patience to suffer for equality in any form, to listen and understand “the other.” Children are the first ones to become sufferers of such a reality. Often they are considered to be an investment, one of the most

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<sup>27</sup> B. Herzfeld, *Niewolnictwo i gender: podwójny wyzysk kobiet*, in: *Kobiety, gender i globalny rozwój. Wybór tekstów*, op. cit., p. 286-293.

<sup>28</sup> J.T. Quigley, *Chinese Doctor Who Sold Newborns to Human Traffickers Sentenced to Death*, “The Diplomat”, <<http://thediplomat.com/2014/01/chinese-doctor-who-sold-newborns-to-human-traffickers-sentenced-to-death/>> (access: 15.01.2014).

<sup>29</sup> See also: B. Herzfeld, *Niewolnictwo i gender*, op. cit.

<sup>30</sup> See the case of Kailash Satyarthi and Swami Agnivesh in India (*Power, Postcolonialism and International Relations. Reading race, gender and class*, ed. G. Chowdhry, S. Nair, New York 2004, p. 247).

<sup>31</sup> A. Hellum, *Human Rights and gender relations in postcolonial Africa*, op. cit.

expensive ones to that, and many parents of the developed world have a tendency to treat them as such. They are throwing money into their education, and buying the pupils' happiness with various possessions, whilst not realizing that time spent with them means much more for the child's development. On the other hand, on the other side of the global coin, parents are "producing children," investing this way in the future of themselves, being in the need of cheap labor. One of Razack's points seems to be crucial in this context: "As long as we see ourselves as not implicated in relations of power, as innocent, we cannot begin to walk the path of social justice and to thread our way through the complexities of power relations."<sup>32</sup> A child's innocence in the postcolonial world is often lost earlier than ever before and they deserve extra efforts to protect it.

## Conclusion

Even considering the fact that tools connected to the human rights are Western- and Euro-centric it is easy to acknowledge that simple standing in unity is essential for the development of any social movement, even if we agree on the fact universal laws are currently only an idealistic concept. Regardless of the existing diversity between nations, cultures and traditions violations of basic rights should be viewed in a standardized way. Although many years have passed since the collapse of imperial times of colonization and the adoption of Universal Declaration of Human Rights there are still questions that need to be answered in the near future. Can human rights, and more specifically, children's rights help in undoing previous harms? Can they really be universal or do they need to be more flexible, being redesigned, to bear in mind the collectivity of some societies? Hesitancy, and uncertainty are common themes in post-colonial theory as they are aftereffects of white-man crimes against "colorful-others."<sup>33</sup> It is a burden of Western illusion of superiority over the rest; a hangover of colonization. From the perspective of children's

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<sup>32</sup> S. Razack, *Looking White People in the Eye*, op. cit., p. 22.

<sup>33</sup> Famous Indian literary theorist, philosopher and university professor Gayatri Chakravorty Spivak has summarized that problem in a well-known sentence: "White men saving brown women from brown men".



rights it doesn't really matter, since upbringing is as relative as the human conditions. While the postcolonial reality for many children means having no access to quality education or a danger of being sold (sic!), to those who benefited from the power given by imperialism problems of the young ones have totally different sound, e.g. a cyberbullying."<sup>34</sup> And because of that we need to reinvent the fundamental definitions and theoretical constructions, using knowledge gathered throughout the centuries all over the world, leaving behind Euro-centrism. As another African proverb puts it: "You always learn a lot more when you lose than when you win." The developing world over the last couple of centuries has lost a lot of the dignity associated with its previous wealth. Now it is time to use the lesson learnt, and move towards the future. Youth is the key.

Through international and intercultural friendship, young people should benefit from cultural diversity and, through their actions today, help to preserve it for generations to come. Thus, while youth are the key to the future, it is essential that they shape the present too.<sup>35</sup>

By thinking equal-horizontal instead of superior-vertical about youth, and remembering that not "a single creature on earth has more or less right to be here" (Anthony Douglas Williams) we might be able to find a common ground for the mutual benefit and sustainable development in the pursuit of happiness.

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<sup>34</sup> See: A. Srivastava, R. Gamble, J. Boey, *Cyberbullying in Australia: Clarifying the Problem, Considering the Solutions*, "The International Journal of Children's Rights", vol. 21, issue 1, 2013, p. 25-45.

<sup>35</sup> Koïchiro Matsuura, UNESCO, 2004.

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***Child's Right to Learn  
about Multicultural Europe  
in Future Teachers' Education***

**SUMMARY**

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We live in a multicultural Europe. To build good future for worthy and safe Europe it is indispensable to educate its citizens to the culture of common-being.

A child has its right to dignity and respectful life. Thus he/she should learn to build sincere relations with other people. Those are the fundamental presumptions and ideas proclaimed by UNESCO. They constitute Millennium Development Goals (MDGs) and have an impact on education for sustainable development (ESD). In both cases culture has ultimate position. A child, learning about itself and about other people from the background of his/her own culture and in relation to the culture of those others, can develop the idea of openness and understanding. Being aware of similarities and differences between people he/she may create a multicultural society without fears and walls.

We need holistically educated teachers to gain optimal effects of such intercultural education. Pre-service and in-service vocational education, need a new insight into pedeutology and need to update their tasks. Without proper knowledge and practice, teacher education will be far from social needs and multicultural school/class demands. Thus, contemporary students' education of pedagogical faculties should be a field of human sciences (S. Palka, A. de Tchorzewski) where one can find inspiring and emotional propositions and educational solutions (thematic publications, manuals and toolkits). Working on multicultural problems, and using suitable methods/strategies/models (like Milton Bennett scale – DMIS) one may become a skilful and empathic educational practitioner.

A child has its right to individual and social multidimensional development, to safe and synergic future. Thus teachers should be differently prepared to undertake their mission (projects of: K. Duraj-Nowakowa, A. Kotusiewicz, H. Kwiatkowska). Multicultural topics should be introduced to teaching-learning standards of vocational teacher education (Z. Jasiński, T. Lewowicki, J. Nikitorowicz).

→ **KEYWORDS** – HUMAN RIGHTS, CHILD'S RIGHTS, MULTICULTURAL  
EDUCATION, MILLENNIUM DEVELOPMENT GOALS,

## STRESZCZENIE

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### *Prawo dziecka do poznawania wielokulturowej Europy w kształceniu przyszłych nauczycieli*

Żyjemy w wielokulturowej Europie. Aby móc budować dobrą przyszłość dla Europy, trzeba wychowywać jej obywateli do kultury współprzebywania.

Dziecko ma prawo do godnego życia, dlatego powinno uczyć się budować uczciwe relacje z innymi ludźmi. Odnoszą się do tego zarówno milenijne cele rozwoju (ang. MDGs), jak i założenia edukacji do zrównoważonego rozwoju (ang. ESD) – idee firmowane przez UNESCO. W obu przypadkach kultura posiada podstawowe znaczenie. Dziecko, poznając siebie i innych na tle własnej kultury i kultury tych innych, rozwija się w duchu otwartości i zrozumienia. Będąc świadomym podobieństw i różnic między ludźmi, może bez obaw współtworzyć społeczeństwo wielokulturowe.

Aby taka edukacja międzykulturowa dała dobre rezultaty, potrzebni są całościowo przygotowani nauczyciele. Kształcenie przyszłych i doskonalenie obecnych nauczycieli wymaga nowego ujęcia zagadnień pedeutologicznych, które dziś potrzebują międzykulturowej aktualizacji. Bez odpowiedniej wiedzy i praktyki, kształcenie nauczycieli będzie odbiegać od wymagań społecznych, w tym oczekiwań wielokulturowej szkoły i klasy. Dlatego w kształceniu obecnych studentów kierunków pedagogicznych (S. Pałka, A. de Tchorzewski) należy poszukiwać inspirujących i emocjonujących treści (publikacje tematyczne, podręczniki i karty pracy), które przy wykorzystaniu odpowiednich metod/strategii/modeli (np. model/skala Milтона Bennetta) stworzą z nich twórczych praktyków edukacyjnych.

Jeśli prawem dziecka jest wielokierunkowy rozwój indywidualny i społeczny, który ma dawać szansę na bezpieczną i synergetyczną przyszłość, to nauczyciele muszą być w nowy sposób przygotowani do swojej misji (np. projekty: K Duraj-Nowakowej, A. Kotusiewicz, H. Kwiatkowskiej). Tematyka wielokulturowa powinna zatem wejść do kanonu treści kształcenia pedagogów (Z. Jasiński, T. Lewowicki, J. Nikitorowicz).

→ **SŁOWA KLUCZOWE** – PRAWA CZŁOWIEKA, PRAWA DZIECKA,  
EDUKACJA WIELOKULTUROWA, MILENIJNE  
CELE ROZWOJU, KOMPETENCJE W EDUKACJI  
DO ZRÓWNOWAŻONEGO ROZWOJU,  
MIĘDZYKULTUROWE STRATEGIE W ROZWOJU  
ZAWODOWYM NAUCZYCIELI, SKALA BENNETTA

## Introduction

We live in a multicultural Europe. That obviously true statement should open a multidimensional discussion enabling us to state problems or formulate problems pointing out situations which we create and change. My paper concerns the European teacher and his/her educational practice (in theoretical premises and practical school solutions) as he confronts multicultural changes of the present day. The main question is: How do we help a teacher to become a competent intercultural practitioner, who can carry out a student's right to educate and develop himself/herself in multicultural European society?

As a first premise to that problem we can assume the changing character of today's cultures (in shape, character, importance, and meaning). Multicultural society is a challenge that exists as a process, it is a "living system" dependent on various elements. The most important "elements" of that construction are people themselves. The significant position of each person, each child requires our responsibility in the present time and the future. From that point of view the problem of development becomes one of the main endeavours. From a global perspective many developing countries from the South (China, India, and Brazil) have already redefined and reshaped their ideas about how to attain human development.<sup>1</sup> It is closely connected with the economy and merchandise trade, but culture itself occupies a very important and distinctive position in the whole process. European society should also undertake new efforts and determine educational methods in order to reach the goals stated in such documents as the Universal Declaration of Human Rights or the Convention on the Rights of the Child.

Another important premise to be taken under consideration is that countries are increasingly interconnected by trade, technology, communication and similar global behaviours (global patterns and mass culture). Decisions made in one country may have a huge impact on others. In such conditions the idea of sustainable development should be variously implemented into the educational practice. If global society is to undertake goals

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<sup>1</sup> Cf. Human Development Report 2013, *The Rise of the South: Human Progress in a Diverse World*, United Nations Development Programme, New York 2013.

that create the idea of education for sustainable development, it should rethink how to practically interpret them and lead to the education of children and young people. Young people constitute about 20% of world's population and are our "projection of the future." We should prepare and convince them to work together, to build a new and better, commonly shared homeland.

So, the educational engagement in partnership dialogue is indispensable (this is the third premise of my paper). Such a perspective opens up a new, global perspective on public goods, such as: more inclusive cooperation and global civil society.<sup>2</sup> A new era of participation approaches come to life; approaches where multicultural and intercultural conjunctions become a priority. In that perspective the aims of my paper are: 1) to look for references to children's rights to intercultural learning in the most basic international documents about human and children's rights; 2) to show the importance and ways of multidimensional vocational training of European teachers; and 3) to present some teaching-learning methods/strategies, and some thematic publications and teachers' manuals which may ease the development of pupils' and teachers' intercultural competences, and at the same time – to bring about the child's right to learn how to live in multicultural European society.

## Child's right to intercultural learning

Let us quote philosopher and economist Amartya Sen – Nobel Laureate in Economics in 1998 "for his contributions to welfare economics:"

The human development approach is a major advance in the difficult exercise of understanding the successes and deprivations of human lives, and in appreciating the importance of reflection and dialogue, and through that advancing fairness and justice in the world.<sup>3</sup>

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<sup>2</sup> Examples of civil society influence on global norms in historical perspective are: the global diffusion of the women's suffrage movement, the antislavery movement and the Red Cross movement. Recently, global civil societies influenced more open access to AIDS medicines and campaigns opposing violence against women. Cf. *ibidem*, p. 111.

<sup>3</sup> *ibidem*, p. 24.



The human development approach will be properly realized if people, being aware of their rights, use them to uncover facts, situations, and processes, and utilize them to create new and ethically worth situations. Young generations should be the main goal of that civic and human education. So it is indispensable to present them their rights and teach them how to use them in intercultural contacts, enabling them to build a multicultural society based on the commonly accepted need for understanding and co-existence.

Thinking about children's rights in the optic of multicultural problems I would like to refer to the main documents in that field.

The Universal Declaration of Human Rights (UDHR) is a document adopted in 1948 by the United Nations General Assembly and signed by 28 countries. Another 8 (including Poland) abstained to signed the document.<sup>4</sup> The Declaration was a response to the experiences of World War II. It became the first global expression of rights to which all human beings are inherently entitled. In other words human rights are understood as the inalienable, fundamental rights of every person regardless of their race, colour, nationality, place of residence, sex, sexual orientation, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status (compare: Article 2).<sup>5</sup> The Declaration consists of 30 articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions and laws. We can speak about human rights principles, as they are: universal, interdependent and indivisible. Each person has them without exception or discrimination.

According to multicultural challenges the principle of interdependence and indivisibility are worth stressing. We agree that human rights are complementary. So, if in certain cases one right is denied, another may also be negatively affected. Likewise,

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<sup>4</sup> Abstention of the Soviet block was connected with objection to too abstract and general expressions in the text of Declaration; communist countries also pointed out: 1) that there was no information about war propaganda that should be forbidden, 2) that scientific research results should be used only for peaceful reasons, 3) and that serious gaps in protection of ethnic minorities had been left. Cf. J. Kolarzowski, *Powszechna Deklaracja Praw Człowieka – historycznym przełomem*, <<http://www.racjonalista.pl/kk.php/s,4710>> (access: 06.01.2014).

<sup>5</sup> *The Universal Declaration of Human Rights*, <<http://www.un.org/en/documents/udhr/>> (access: 06.01.2014).

the improvement of one right may facilitate the advancement of others. Human rights include: civic and political rights (the right to life and liberty), and economic, social and cultural rights (the right to employment, social security and education). Because rights are interdependent, the development of one right may be a key which unlocks the passage to others. Thus education may be the key to such rights as health, employment or freedom of thought and religion.

Looking for more precise presumptions and content that may be treated as solid background for cultural and multicultural child's activity, we can mention:

- Article 19, which speaks about everyone's right to freedom of opinion and expression, understood as the right to seek, receive and impart information and ideas.
- Article 26, which refers to education and stresses that education should be directed to the full development of the human personality, and should promote understanding, tolerance and friendship among all nations, racial or religious groups.
- Article 27, which speaks about everyone's right to participate in the cultural life of the community, to enjoy the arts, and enjoy the protection of his/her moral and material interests resulting from any scientific, literary or artistic production of which he is the author.<sup>6</sup>

The Convention on the Rights of the Child (CRC) is another international document, a universally agreed set of non-negotiable standards and obligations. In 1989 world leaders finally admitted that children need a special convention because people under 18 often require special protection and care. The leaders also wanted to confirm to the world that children have rights. The CRC is the first legally binding document incorporating a full range of human rights, including civic, social, economic, and cultural rights. The Convention has achieved nearly universal acceptance – up till now it has been ratified by 193 countries. The Convention consists of 54 articles, which include children's rights to meet their basic needs and expanding their opportunities to reach their full potential. The document sets out four core principles, which are: 1) non-discrimination, 2) devotion to best interests of the child, 3) the right to life, survival and development, and 4) respect for the views of child. Children should be

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<sup>6</sup> Cf. *ibidem*.

free from hunger and want, neglect and abuse. Children are neither the property of their parents, nor helpless objects of charity. In that new vision of the child we should not think about the child's needs but rather about his/her rights. The child as an exceptional individuality, and as a member of a family and community has rights and responsibilities appropriate to his/her age and stage of development. Looking for presumptions for multicultural education and further engagement in socio-cultural activity we should pay attention to the following articles:

- Article 17, which stresses the child's right to an access to information and material from a diversity of national and international sources, promoting his/her social, spiritual and moral well-being. States' Parties should encourage international co-operation and with the mass-media in the production, exchange and dissemination of information from a diversity of cultural, national and international sources.
- Article 28, which expresses the child's right to education, thus eliminating ignorance and illiteracy throughout the world.
- Article 29, which shows that education of the child should be especially directed towards the development of the child's personality, talents; development of respect for human rights and fundamental freedoms; development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; preparation of the child for a responsible life in a free society, in the spirit of understanding and friendship among all peoples; development of respect for the natural environment.
- Article 30, which relates to the problem of minorities or persons of indigenous origin.
- Article 31, which is devoted to child's rest, leisure, play and recreational activities, thanks to them a child should participate fully in his/her cultural and artistic life.<sup>7</sup>

To the abovementioned principles we can add another, which proposes an interesting perspective to the subject: a child's right to multicultural development. In 1979 Czech-French jurist, Karel Vasak at the International Institute of Human Rights in Strasbourg

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<sup>7</sup> *Convention on the Rights of Child*, <<http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>> (access: 17.12.2013).

suggested the division of human rights into 3 generations.<sup>8</sup> The idea followed three watchwords of the French Revolution: liberty, equity and fraternity.

The first generation of human rights – the “blue” one – deals with “liberty.” The rights include freedom of speech, the right to a fair trial, freedom of religion and voting rights, freedom of association, right to life, privacy, equality and freedom from discrimination, slavery and torture.

The second generation of human rights – the “red” one – is related to “equity.” It was recognized after World War II. “Red” rights guarantee different members of society equal conditions and treatment. They include a right to be employed or to have unemployment benefits, to housing, health care and social security, to education, food and water.

The third generation of human rights – “green” rights – relate to “fraternity.” Those rights house a huge spectrum of rights, like: group and collective rights, to self-determination, to economic and social development, to healthy development, to natural resources, to communication, to participation in cultural heritage, to intergenerational equity and sustainability.

All those three colour-generations of human rights may be used in multicultural education. Finding inspiring topics in each group may uncover an extremely broad range of challenging themes for children and youth at every level of education.

Multicultural education is a way of learning about others and about ourselves. Comparison of similarities and differences often give unpredictable results and show inspiring solutions. Universal documents approve the foundations of human life, aspirations, needs, aims, wishes, cultural expressions have similar roots. At the same time, wise intercultural education encourages children to penetrate cultures, looking for non-ignorable differences. They include: 1) objective elements – living conditions (geographical place, climate, local food); 2) social elements – the social character of life (norms, education, science, public institutions, philosophy, religion, etc.); and 3) external and internal personal elements – individual life (appearance, way of dressing, makeup,

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<sup>8</sup> Cf. K. Vasak, *Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give force of law to the Universal Declaration of Human Rights*, “UNESCO Courier” 30:11, Paris 1977. See also: K. Vasak, *The International Dimensions of Human Rights*, Paris 1982.

individual knowledge, skills, attitudes to values, personal identity, ability to communicate with other people, to interpret their words and behaviours).

All of those facts can be explored through intercultural education.<sup>9</sup> The more we penetrate other cultures, the more we have the chance to learn about ourselves.

### Pre-service teachers' education and his/her vocational development in the face of new social needs and challenges

If we truly want to give our children a better life, make them happy and educate them to become responsible adults we need to be sincere in our contemporary efforts – our promises and realizations. Children have the right to live in truth, equity, a healthy environment, to feel free to express their thoughts and emotions, develop their skills and talents, and be proud of their cultures and traditions.

Our contemporary life has been undergoing huge changes in many dimensions, also in socio-ethnic structure. Societies are not mono-cultural nations any more – they are multicultural. That is still a fairly new, but already common situation. Thus, it demands new type of education – one which takes under consideration students' differing backgrounds, traditions, ways of thinking and interpreting facts, possibilities of expressing their thoughts, and observed things and situations through the abilities of their mother tongue and the second language they use. Such various ideas and practice of fostering children, add new and challenging "colour" to twenty-first century. education.

It is quite obvious that teachers and educators should be prepared for their role in a totally new or refreshed way.<sup>10</sup> Pre-service teachers' education and all forms of in-service vocational education should be based on multicultural foundations in order

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<sup>9</sup> A. Portera, *Intercultural and multicultural Education. Epistemological and Semantic Aspects*, in: *Intercultural and Multicultural Education. Enhancing Global Interconnectedness*, eds. C.A. Grant, A. Portera, New York, London 2010. See also: A. Portera, *Intercultural education in Europe: epistemological and semantic aspects*, "Intercultural Education" December 2008, vol. 19, no. 6, p. 481-491.

<sup>10</sup> Cf. S. Palka, *Pedagogika w stanie tworzenia*, Kraków 2003.

to present societies, and should meet human goals through developing intercultural relations, as the most desirable aspect of contemporary life.<sup>11</sup>

Such new vocational teacher training is especially demanding because usually contemporary intercultural activities are not sufficient.<sup>12</sup> Today most often multicultural training is connected with business, the economy and market needs. Some multicultural courses for employees are held in big, international corporations, only for pragmatic reasons. People must manage to understand each other, communicate, or react properly to carry out their tasks. That type of multicultural training only offers technical solutions through analyzing some cases, and presents some acceptable ways of behaving in typical situations in a workplace or in international trade. Those activities may be called “adopting” ones. “Adopting reactions” are not creative behaviours. Now the time has come to commonly develop intercultural competences by a human approach. There is a huge range of possibilities when undertaking this challenge through formal and informal education. Thinking about teacher training and vocational activity we may admit that multicultural education already has quite an impressive background in the form of UN, UNESCO and other organizations.

First of all we should recall UN’ Millennium Development Goals (MDGs). Those are eight international development goals that were established in 2000. Nations and international organizations committed to achieve those goals by 2015. Two of these goals: to achieve universal primary education and to develop a global partnership for development clearly fit the topic of this paper.<sup>13</sup>

Over a decade many enterprises and initiatives have been undertaken to achieve those goals. A new initiative, called *MY World* has been started. *MY World* is a United Nations global

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<sup>11</sup> Cf. A. de Tchorzewski, *Edukacja wobec problemów transformacji, integracji i globalizacji*, in: *Etos pedagogów i edukacji wobec problemów globalizacji*, eds. U. Ostrowska, A. de Tchorzewski, Bydgoszcz 2002, p. 17-27.

<sup>12</sup> Cf. A. Rogalska-Marasińska, *Kształcenie, doszktałenie i doskonalenie zawodowe nauczycieli wobec potrzeby międzykulturowej edukacji*, in: *Nauczyciel kreator rzeczywistości edukacyjnej. Kształcenie – teoria – praktyka nauczycielska*, ed. U. Szuścik, Bielsko-Biała 2013, p. 163-180.

<sup>13</sup> *We can end poverty. Millennium Development goals and beyond 2015*, <<http://www.un.org/millenniumgoals/>> (access: 10.12.2013).

survey for all citizens of our planet. Its aim is to capture people's voices on different and crucial topics to show world leaders and decision-makers what really bothers people regardless of their colour, gender, occupation, language, etc. Everyone can vote – children and adults – by taking part in an on-line survey and choosing six priorities from sixteen options.<sup>14</sup> Choosing them people can participate in shaping our world beyond 2015. The immediate profit of filling the survey is that one feels a part of planetary event, and a part of real multicultural society, which develops intercultural relations. The interactive map shows how people vote at the same time in different parts of the world. It moves us emotionally and helps to understand that there are other people who care, who are engaged in the same problems and think similarly to us. As you can see on a graph, education is on the top in all the categories, except one option – answers of older people (55+) who mainly value healthcare.

It is unique and very optimistic that inhabitants of the Earth representing different cultures and backgrounds perceive education as being of primary value. "A good education" in the survey means that:

(...) all children should have a high quality primary and secondary education that equips for employment and an enjoyable life. Governments and private sector should work together to provide opportunities for lifelong learning and skills development for adults.<sup>15</sup>

If it is to happen, children and youth need a holistic education, which will be wise, thoroughly planned and responsible. Responsibility has its intercultural dimension, thus students have the right to learn about it, to delve into it and experience it with all their senses and intellectual abilities (knowledge, imagination, practice). It is worth remembering that intercultural education is not only a state of openness to others, but also makes individuals consider their own culture, ease comparisons and strengthen the feeling of good tradition, identity and patriotism. Patriotism as it is understood by J. Nikitorowicz as a strong form

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<sup>14</sup> *My World 2015*, <<http://www.myworld2015.org/index.html>> (access: 03.01.2014).

<sup>15</sup> *Ibidem*.

of cultural identity versus nationalism, which represents a community's weakness and fear.<sup>16</sup>

Intercultural education is interpreted as a process of teaching and moral education basically aiming at "shaping the understanding of cultural differences – from subcultures in one's own community to cultures of spatially distant societies – and preparing for dialogue interactions with the representatives of other cultures."<sup>17</sup>

Such valuable, creative and fluent dialogue is indispensable for building a new and multicultural, world society. Children have the right to learn about it, and adults are obliged to teach them how to build and develop such dialogical relations.

Those new expectations lead us look closer to the process of training teachers and preparing them to become vocational professionals. But as Tadeusz Lewowicki notices:

The followers of contemporary standards are trying to convince us that unassisted professional development, reading pedagogical literature, gaining experience (all after studies) contribute to the fact that teachers – by self-development – will do their job better. In many cases this is certainly true but the thing is that they should be already well prepared at the moment they start their job. A fleeting contact with pedagogy and psychology during studies, and committing many teachers to pedagogical and psychological self-instruction, mainly by individual adjustment to the teaching job, causes numerous difficulties, conflicts, failures both on the part of teachers and pupils. This obvious truth refuses to be acknowledged by the so-called decision makers.<sup>18</sup>

In the light of the above citation it is sensible to revise the problem of teacher competences. According to the topic of the text it concerns the process of gaining and developing intercultural competences. I would like to present an interesting new

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<sup>16</sup> Cf. J. Nikitorowicz, *Dylematy patriotyzmu, nacjonalizmu i ustawicznie kształtującej się tożsamości. Wprowadzenie do książki*, in: *Patriotyzm i nacjonalizm. Ku jakiej tożsamości kulturowej?*, ed. J. Nikitorowicz, Kraków 2013, p. 16.

<sup>17</sup> A. Gajdzica, *Assumptions of the integrated education system and possible implementation of intercultural education in classes I–III*, in: *Intercultural Education: Theory and Practice*, eds. T. Lewowicki, B. Grabowska, A. Szczurek-Boruta, Toruń 2007, p. 130.

<sup>18</sup> T. Lewowicki, *Teacher training standards – Poland's 50-year experience*, in: *Education for Teachers and Pedagogues: Issues in International Context*, eds. Z. Jasiński, T. Lewowicki, Opole 2006, p. 29.



approach to teacher competences which may be understood as competences to be developed by teachers in contemporary, common multicultural societies. If these societies plan on being smart, inclusive and sustain human structures, they ought to undertake sustainable development challenges. Thus, new competences to be implemented are the competences for educators in the education of sustainable development.<sup>19</sup> They refer to the UNESCO report on Education for Twenty First Century<sup>20</sup> and the EU recommendation on key competences for lifelong learning. The whole cluster of complementary competences is a set into four categories: Learning to know (*The educator understands...*), Learning to do (*The educator is able to...*), Learning to live together (*The educator works with others in ways that...*) and Learning to be (*The educator is someone who...*). Each category has three similar “departments:” 1) Holistic Approach (with components: a) integrative thinking, b) inclusivity, c) dealing with complexities), 2) Envisioning change: past, present and future (with components: a) learning from the past, b) inspiring engagement in the present, c) exploring alternative futures), and 3) Achieving transformation: people, pedagogy and education systems (components: a) transformation of what it means to be an educator, b) transformation of pedagogy – transformative approaches to teaching and learning, c) transformation of the education system as a whole).<sup>21</sup>

All of the categories reflect to wide range of learning experiences that now have a local-global context, so they need intercultural approaches and interpretation. For example let us take the “Holistic Approach” and go through all four categories of competences. A competent educator in ESD in the holistic approach:

- understands the independent nature of relationships within the present generation and between generations, as well as those between rich and poor, and between humans and nature,
- is able to communicate a sense of urgency for change and inspire hope,

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<sup>19</sup> Cf. *Learning for the future. Competences in education for sustainable development*, UNECE, Switzerland 2011, <[http://www.unece.org/fileadmin/DAM/env/esd/ESD\\_Publications/Competences\\_Publication.pdf](http://www.unece.org/fileadmin/DAM/env/esd/ESD_Publications/Competences_Publication.pdf)> (access: 10.01.2014).

<sup>20</sup> Cf. *ibidem*.

<sup>21</sup> *Ibidem*, p. 13 and 16-17.

- works with others in ways that actively engage different groups across generations, cultures, places and disciplines,
- is someone who is inclusive in different disciplines, cultures and perspectives, including indigenous knowledge and worldviews.<sup>22</sup>

To create such a competent teacher/educator in the field of intercultural understanding he/she should get multidimensional training in pre-service education or by in-service development. For effective preparation it is crucial to extend or deepen his/her knowledge, skills, social and cultural abilities, and attitudes towards himself/herself and others. To fulfill the student's right to learn about multicultural world and Europe teachers should acquire (among the others):

- a deep knowledge, awareness and understanding of the key issues related to intercultural problems and challenges,
- human rights principles,
- a strong sense of their own cultural heritage and identity,
- the ability to think holistically,
- link intercultural understanding to multiple dimensions of sustainable development,
- critical thinking skills to questions of injustice, debate logically and sensitively, and engage learners in such discussions and actions of solidarity,
- skills in teaching and learning methodologies that integrate content and values for multicultural and intercultural understanding across school curricula.<sup>23</sup>

In the light of all those arguments we are convinced that vast and deep teacher multicultural and intercultural education is a must. If we pretend that there is no such new goal we will be taking a step back in our humanity and social cohesion. Technological gadgets will not progress our civilization. Thus, we may agree with Zenon Jasiński and repeat after him:

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<sup>22</sup> Ibidem, p. 14-15.

<sup>23</sup> Cf. J. de Leo, *Education for Intercultural Understanding. Reorienting Teacher Education to Address Sustainable Development: Guidelines and Tools*, Thailand 2010, p. 31.

The question: how and what type of teacher should we prepare, is still pending and open to a public debate.<sup>24</sup>

## Multicultural and intercultural strategies and methods used in future teacher's education

In this part of my text I would like to find out how we can prepare teachers to lead intercultural education for young Europeans. I base it on three elements to show possible solutions. First there is the need to present some theoretical approaches to the term "culture" Second – characteristics of model European inhabitant must be described, and third – a model of developing emotional sensitivity in intercultural relations must be sketched.

A need to describe the term of "culture" in neutral and non-valuating way is one of the core problems in understanding and interpreting culture. Another, older way is a valuating approach – which classifies cultures to higher and lower ones, to better and worse, and to more or less civilized. (...) If we speak about one culture – the term "human culture" indicates the existence of human being in universal categories. When we speak about cultures of societies or continents, we join the term "culture" with examples of human phenomenon dependent on historical and geographical conditions.<sup>25</sup>

In preparing teachers to become proper educators to work effectively with children, teachers must be able to distinguish what type of culture they are working on with their pupils. Do they stress the universal dimension of human beings, or is the main problem of a lesson to get closer to a specific culture, peoples or nation?

Secondly, after Poland's entry into European structures and membership in the EU there was a huge common debate in Poland about European identity. At that time many research surveys were conducted in order to uncover and estimate how young

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<sup>24</sup> Z. Jasiński, *A word about programs and standards of educating teachers and pedagogues in Poland*, in: *Education for Teachers and Pedagogues: Issues in International Context*, eds. Z. Jasiński, T. Lewowicki, Opole 2006, p. 33.

<sup>25</sup> J. Nikitorowicz, *Międzykulturowość jako kategoria kultury i edukacji*, in: *Kultura w edukacji międzykulturowej – konteksty teoretyczne i społeczno-polityczne*, eds. T. Lewowicki, A. Szczurek-Boruta, B. Grabowska, Toruń 2013, p. 16.

Poles understood their European identity. Their answers enabled to form a set of interesting values. Polish students from secondary schools thought that European citizen should be:

(...) tolerant, educated, concerned about natural environment, honest, respectful for other nations, aware of European cultural roots, interested in cultures and lives of other nations, living without prejudice and superstitions, being free of hatred towards other nations, free of aggression, violence, and egoism.<sup>26</sup>

That set of values shows how properly Polish children were prepared to entry into wider multicultural structures. We can proudly say that their consciousness of themselves and other people created a model of desirable thinking and acting. Nearly a decade has passed from that survey. Those children are young adults now; maybe they have their own families and children. During that period of time a lot of changes have happened in our society. It is quite possible that now those young parents will need more help to foster and educate their children and develop similar attitudes. That is why a huge role of teachers and educators emerges from the ocean of doubts, social insecurity and an unknown future. If we truly want to build a happy multicultural society, teachers must undertake various possibilities to show learners attractive ways to gain it. Those endeavours should be strengthened by emotional elements which are always present when real interpersonal or intercultural relations take place.

Milton Bennett is known as the author of so called Bennett Scale or Developmental Model of Intercultural Sensitivity (DMIS). The model is organized into six stages which correspond to different ways in which people may react to cultural differences. The framework shows possible increasing sensitivity thanks to cognition and the emotional experiencing of other cultures. The attitude towards them changes from "cold," unimportant, neutral, and even hostile, to sophisticatedly inclusive and assuming creative integration. The first three stages are "ethnocentric" (denial, defence, minimization) – as individual sees his/her own culture as the core of reality. The three other stages are

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<sup>26</sup> Z. Jasiński, *Postawy młodzieży z polskich pograniczy wobec „innych”*, in: *Wybrane problemy edukacji i eurointegracji*, eds. Z. Jasiński, S. Kaczor, Opole 2005, p. 67.

“ethnorelative” (acceptance, adaptation, integration) as individual experiences his/her culture in the context of other cultures.<sup>27</sup>

In the context of European multicultural challenges Bennett Scale (DMIS) is a very inspiring tool, and may be a very helpful and worthy of consideration as a framework. But in the process of developing teacher’s abilities to work in multicultural classes and helping children to achieve their right to holistic, thus multicultural and intercultural education the teacher should have some reflections. First of all, that the model refers to the concept of multiplicity of cultures (practically existing cultures), not to the idea of one, human culture existing as a universal category. Secondly, that the idea of the DMIS scale was developed in America, and it perfectly corresponds to that social situation, which is the same as in Canada or Australia. All those countries went through similar processes of self-formation. In Europe the situation is absolutely different. We have old, historically formed cultures which become host cultures to immigrants ones. On the background of these premises a reflective educator should state some questions, like:

1. What stage of DMIS am I now at?
2. What stage are my students at, thus what is the level of our intercultural competence?
3. How far do we want to proceed in the model?
4. What kind of changes, corrections should we implement to the model to make it more suitable to European conditions? What should be revised?

In recent years multicultural countries undergo huge changes, revise their previous attitudes to minorities, indigenous people and other still excluded groups. Educators in those countries work in multicultural environments based on very interesting and continuously improved materials. The proper realization of multicultural topics gives a positive result. Children develop their intercultural experiences, learning much more about others and about themselves. They change, formulate their own opinions, thus they proceed on the Bennett scale. But such situation often

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<sup>27</sup> Cf. M.J. Bennett, *Becoming Interculturally Competent*, in: *Toward Multiculturalism. A Reader in Multicultural Education*, ed. J.S. Wurzel, Newton MA 2004, p. 62-77.

has other side.<sup>28</sup> Adults, parents may have an antagonistic attitude to such changes. Let's read the example from German school:

Malika is a 12-year-old Muslim girl. She attends a public school where around one-third of the pupils are Muslims. (...) Malika wears a hijab, just like her mother, because that is what her parents tell her to do. Malika is very much interested in religion and in expressions of cultural and religious diversity. (...) Malika is an eager participant in debates. All this has led her to reflect on her position vis-a-vis Islam. She is now certain that she never wants to have a boyfriend who is not Muslim, that she will never drink alcohol or eat pork (except in hotdogs, but that is not really meat, is it?), and that she will no longer wear hijab. When she communicates the latter decision to her parents, they do not agree. (...) The parents blame school for indoctrinating their child.<sup>29</sup>

It is absolutely clear that multi-ethnicity creates many problems. Teachers have to cope with them. One of the means in that endeavour is a consequently enlarging set of books, manuals for teachers, toolkits and other educational materials.

1. *Play it Fair! Human Rights Education Toolkit for Children*<sup>30</sup> – the toolkit helps to promote human rights and reinforce values that derive from fundamental principles contained in the Universal Declaration of Human Rights. The human rights promoted in the toolkit are: cooperation, respect, fairness, inclusion, respect for diversity, responsibility and acceptance. The toolkit is intended for primary school children (aged 6 to 12) and educators – especially summer camp leaders and educators in after school activities, thus the toolkit is especially handy in non-formal education programs.

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<sup>28</sup> Cf. A. de Tchorzewski, *Wielopłaszczyznowa odpowiedzialność nauczyciela*, in: *Odpowiedzialność jako wartość i problem edukacyjny*, ed. A. de Tchorzewski, Bydgoszcz 1998.

<sup>29</sup> E. Brems, *Inclusive universality and the child-caretaker dynamic*, in: *Re-conceptualizing Children's Rights in International Development*, eds. K. Hanson, O. Nieuwenhuys, New York 2013, p. 216.

<sup>30</sup> *Play it Fair! Human Rights Education Toolkit for Children*, Equitas – International Centre for Human Rights Education, Montreal, Canada 2008, <[http://equitas.org/wp-content/uploads/2010/11/2008-Play-it-Fair-Toolkit\\_En.pdf](http://equitas.org/wp-content/uploads/2010/11/2008-Play-it-Fair-Toolkit_En.pdf)> (access: 04.01.2014).

2. *All Different, All Unique*<sup>31</sup> – it is a document called a “Youth-friendly” version of the UNESCO Universal Declaration on Cultural Diversity. The background of the document comes from the premise that young people are key stakeholders when it comes to questions of human rights, development and cultural diversity. They are the main force to keep good changes being continued. To undertake responsible activities they need to understand words and senses of stated messages. *All Different, All Unique* contains 12 Articles of the UNESCO Declaration. Each Article includes: youth-friendly text, voices from the OXFAM – International Youth Parliament, and discussion and/or voices points. The document has a very colourful, cover design and the illustrations are funny making the document friendly to young readers.

3. *Exploiting Multiculturalism, Anti Bias and Social Justice in Children's Services*<sup>32</sup> – is a book which refers to Australian society. The purpose of the publication is to offer an introduction to ideas about the importance of multiculturalism in the everyday work of educators working in children's services in NSW. There are some references to tough relations between indigenous (Aboriginal inhabitants) and immigrants throughout nearly 300 years of their history. The book is not intended to give complete answers how to “do” multiculturalism but to encourage personal reflection, be used as a discussion starter for staff and parent meetings, and become an orientation guide for new staff, students and volunteers.

4. *Dzieci i młodzież w procesie kształtowania postaw kulturowych*<sup>33</sup> – is a book of Polish authors and practitioners (university and secondary school teachers) which presents 35 scenarios of practical lessons in the field of multicultural education, preceded by thorough theoretical comments. Each of the scenarios has been realized during in-service training vocational studies for teachers from Silesia Region. Scenarios can be treated

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<sup>31</sup> *All Different, All Unique*, <<http://www.unicef.org/magic/resources/Cultural-DiversityUNESCO.pdf>> (access: 04.01.2014).

<sup>32</sup> M. Giugni, *Exploiting Multiculturalism*, NSW, Australia 2007, <[http://www.cscentral.org.au/Resources/Exploring\\_Multiculturalism.pdf](http://www.cscentral.org.au/Resources/Exploring_Multiculturalism.pdf)> (access: 05.01.2014).

<sup>33</sup> Cf. *Dzieci i młodzież w procesie kształtowania postaw kulturowych. Przewodnik po ścieżkach edukacji regionalnej, wielo- i międzykulturowej*, eds. T. Lewowicki, J. Suchodolska, Kraków 2012.

as practical models ready to be used by other educators or as an inspiration for more personal projects by other readers.

As we can see to achieve a child's right to be prepared to live in a contemporary – multicultural – society teacher's training must be multidimensional. Apart from theoretical knowledge and methodological skills he/she should be very creative and match what he/she has learned to ever new, unrepeated situations. It demands that the teacher act in a unique way, to be an individual.<sup>34</sup> Individualistic educators must have the courage to act differently, break out of narrow schemes and routines. The educator should be happy to suggest his/her students to enter into the unknown without fear, and show that something interesting, moving, and thus important may happen to them. Intercultural meetings should bring deep experiences joining what our students already know with something new, even unexpected.<sup>35</sup>

## Conclusion

It is a child's right to be developed holistically, by answering his/her individual and social needs.<sup>36</sup> The uniqueness of each child as a human being is unquestionable. If we add to that statement his/her cultural background, challenges for teachers and educators rise. Young people constitute about 20% of global population. So they are an important part of the world. It is not only a question of an amount, but of an idea of future life they want to take from us, accept, and continue. If we feel the responsibility for our children, we should be obliged to do everything to let them conduct the world in the best possible way. But at the moment the world we are passing to them is not flourishing. People who anticipate the consequences of the current situation put a lot of effort into changing that situation. International organizations

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<sup>34</sup> Cf. K. Duraj-Nowakowa, *Indywidualizm pedagogów akademickich: zagrożenia i perspektywy*, „Horyzonty Wychowania”, 12 (2013) 24.

<sup>35</sup> Cf. A. Rogalska-Marasińska A., *Humanizm – dialog – tożsamość. Edukacja europejska na tle wyzwań globalnych*, Łódź 2010, and A. Rogalska-Marasińska, *Odpowiedzialność nauczyciela muzyki za całościowy rozwój swojego ucznia – hermeneutyczny sens obcowania z muzyką*, in: *Konteksty kształcenia muzycznego*, eds. E. Kumik, G. Poraj, Łódź 2012.

<sup>36</sup> Cf. K. Duraj-Nowakowa, *Integrowanie edukacji wczesnoszkolnej: modernizacja teorii i praktyki*, Kraków 2009.



proclaim declarations and other documents to make our life more humane. Special attention is paid to children. In the XXI c. life in multicultural societies is becoming typical. So it is the duty of adults to teach children how to live in such societies. Young generations have the right to learn how to undertake common initiatives, cooperate, change standards of living, and promote sustainable development to help our planet rebuild itself. Children should trust each other, have time and possibilities to play and laugh together, and feel free and happy. Multicultural education and ESD should go hand in hand to create synergetic future. That should be a global endeavour.

European society is becoming more and more multicultural. Such an organism needs new approaches in education. Candidates for teachers and already working pedagogues need to learn new educational strategies/methods and ways to implement them in practice. They have to develop new competences needed in the schools of a multicultural European society. Educators must be prepared for their multicultural mission. Thus multicultural topics, classes, courses in teacher vocational training should get a permanent place and important position. Are we prepared? have we already risen to that challenge? The near future will give us an answer.

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REVIEWS



RECENZJE



**Marshall B. Rosenberg, *Living Nonviolent Communication: Practical Tools to Connect and Communicate Skillfully in Every Situation: Practical Tools to Connect and Communicate Skillfully in Every Situation*, Sounds True, Canada 2012, pp. 170.**

Communicating with another person is perhaps the most difficult of arts. The search for communication, for sympathy – that is, a safe dimension in which I, as a person, can feel understood and comprehended by others – is one of the fundamental human desires. The need to be understood and accepted by another person is also one of the key factors determining proper social development. Unfortunately, the mutual communication is often fraught with fear, frustration, disappointment – feelings which further compromise our ability to communicate. Not infrequently in our endeavours to satisfy our own needs we lose sight of another person's needs, and his defensive reaction exacerbates our sense of misunderstanding and loneliness. Thus we find ourselves one step away from resorting to a hostile language. We start using a language that is hurtful, creates a divide within ourselves and in relation to others, and builds walls of misunderstanding, beyond which the MIScommunication kills us.

Marshall B. Rosenberg's latest book *Living Nonviolent Communication: Practical Tools to Connect and Communicate Skillfully in Every Situation: Practical Tools to Connect and Communicate Skillfully in Every Situation* is a summary of the Author's many years of experience and work in building communication between people that is based on understanding and empathy. The author is a clinical psychologist engaged in the search for peaceful ways of resolving conflicts between people. Brought up in a restless district of Detroit, Michigan, he decided to discover a method of communication that would foster sympathy and prevent violence. Whilst working with diverse social groups, including businessmen, teachers, priests, prisoners and leaders of the warring nations, he developed a new way of communicating,

known as the *Nonviolent Communication*. Rosenberg wanted to propagate the knowledge of communication and compassion techniques necessary for the maintenance of peace around the world, especially in war-torn countries. To this end he founded the Center for Nonviolent Communications (CNVC), an international non-profit organization that offers workshops and training in 35 countries, and became a Director of Educational Services there. He has initiated peace programs in war-torn areas including Rwanda, Nigeria, Malaysia, the Middle East, Serbia, Croatia, and Ireland. Those experiences have led the Author to formulate the main thesis of the book, namely that all conflicts can be resolved peacefully and to the satisfaction of all parties involved.

To convince the reader, M.B. Rosenberg invites him to a journey through which one can be guided by the presented book. The journey is divided into 6 stages (chapters):

1. We can work it out. Resolving Conflicts Peacefully and Powerfully
2. Being me, loving you. A Practical Guide to Extraordinary Relationships
3. Getting past the pain between us. Healing and Reconciliation Without Compromise
4. The Surprising Purpose of Anger. Finding the Gift
5. Raising Children Compassionately. Parenting the Nonviolent Communication Way
6. Practical Spirituality. The Spiritual Basis of Nonviolent Communication

The first step is gaining conviction that peaceful resolution of conflicts, without resorting to force, aggression or a hostile language, is possible. That such communication can bring down walls that used to protect us against the world and makes us still feel safe and fulfilled. We build the basis of such communication when we completely abandon our desire to force others to do what we want them to do. Instead, we redirect our energy to creating circumstances that can satisfy the needs of everyone. Only when both parties can be certain that their needs and values will be respected, a true cooperation in resolving the conflict can take place.

But how can we change our way of thinking and communicating with others, especially with those close to us? In chapter 2 the Author describes individual cases from workshops that become an illustration of the process of changing and transforming



the relations between people who are close to each other. Practical tips on how to talk to others, express one's needs and voice requests without criticising or evaluating can provide the reader with a practical guide to close unresolved relations.

The ability to communicate without violence inspires reconciliation and lasting peace. Chapter 3 includes material gathered during practical workshops, the aim of which was to rebuild the relationships, heal wounds, resolve conflicts and reach reconciliation, and it presents the beauty of mutual understanding, in which "the language of the heart" transforms us.

In chapter 4 the Author draws our attention to the creative role of anger in our life. According to Nonviolent Communication, anger is an alarm signal which we can read as information about our unsatisfied needs without resorting to punishment and inflicting mutual suffering.

Chapter 5 is a highly inspirational proposal of the practical application of the Nonviolent Communication in the process of bringing up children. Drawing references to his own experience as a parent, coach and teacher, the Author shows how easily and naturally children engage in the Nonviolent Communication dialogue, thus becoming equal partners in creative conflict resolution.

The closing Chapter 5 constitutes a kind of an interview with the Author and deals with spiritual basis of the Nonviolent Communication – the communication that can be perceived as a kind of spiritual practice and a certain way of life. It includes a number of interesting reflections of the Author on the issue of spirituality in human life and development, and on the role of God in building creative relations with others.

The book lacks a traditional introduction outlining the presented issues, or a conclusion indicating key problems and summarising the presented issues. The reader may be left feeling that the book lacks closure, the text is open and, in my opinion, that there is a certain lack of frameworks. Analysing the content structure of the book we may have an impression that it contains a discussion on the Author's six other books dealing with the issues presented in particular chapters. If we are familiar with other works of the Author, the content of the book will not substantially expand our knowledge of the Nonviolent Communication. Nevertheless, it evidently organises the information, additionally providing valuable practical examples. The presented

book is an attempt at summarising the many years of work and experiences of the Author of the *Nonviolent Communication*. In a concise and organised way it presents its key principles and methods. It may prove particularly valuable for those who are familiar with the method and other works of M. Rosenberg, and who work on turning their words into windows rather than walls, as in Ruth Bebermeyer's poem:

Words are Windows (or they're Walls)<sup>1</sup>  
"I feel so sentenced by your words,  
I feel so judged and sent away,  
Before I go I've got to know  
Is that what you mean to say?  
Before I rise to my defense,  
Before I speak in hurt or fear,  
Before I build that wall of words,  
Tell me, did I really hear?  
Words are windows, or they're walls,  
They sentence us, or set us free.  
When I speak and when I hear,  
Let the love light shine through me.  
There are things I need to say,  
Things that mean so much to me,  
If my words don't make me clear,  
Will you help me to be free?  
If I seemed to put you down,  
If you felt I didn't care,  
Try to listen through my words  
To the feelings that we share."

Małgorzata Kozak  
Jagiellonian University

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<sup>1</sup> M.B. Rosenberg, *Nonviolent Communication: A Language of Life*, Second Edition, Encinitas, CA: PuddleDancer Press 2003, p. 2.

**Andrzej Zwoliński, *Krzywdzone dzieci (Abused Children)*, Wydawnictwo WAM, Kraków 2012, pp. 359.**

The popularization of the idea of “children’s rights” that began in the twentieth century and their constant development increased the awareness of children’s special needs and their protection. These processes, however, did not eliminate threats lurking around the child whose rights, despite official declarations of their respect are not only are not implemented, but are even breached.

Andrzej Zwoliński in his monograph *Abused Children* writes about the most serious threats faced by the modern child. These are: risk of abortion, abandonment, loneliness, sale, neglect, violence, demoralization, hunger. The book consists of a preface and seventeen chapters: 1) “The unborn child” 2) “The unwanted child” 3) “Designer Children” 4) “Solitary children” 5) “Children for sale” 6) “Savage children” 7) “Agressive children” 8) “Juvenile criminals” 9) “Suicidal children” 10) “Street children” 11) “Shameless children” 12) “Sexually abused children” 13) “Child-soldiers” 14) “Hungry children” 15) “Children in sects” 16) “Children of the media” 17) “What is childhood?”. Each of the sixteen chapters is devoted to the presentation of a different risk of childhood. In the last seventeenth chapter, the author reflects on what “childhood” is and how one should interpret the term “child.”

Chapter one “The unborn child” refers to the abortion issue regarded as the most serious danger which undermines the primary right of every human being – the right to life. Zwoliński presents the history of abortion,<sup>1</sup> political background and legal solutions adopted with the aim of promoting abortion, statistics on abortions performed in selected countries and the effects of abortion. Finally, he refers to the teaching of Catholic Church on respect for nascent human life. “The unwanted child” is a chapter

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<sup>1</sup> He pays particular attention to the issue of abortion in Russia and China.

in which the author presents contemporary demographic problems of countries with domination of the anti-birth attitude negating the need for and happiness of having children. Zwoliński draws attention to the problem of the “sexualisation of life” separated from procreation and the growing contraceptive industry associated with it. He also writes about the rejection of children who are sick, disabled or unplanned. “Designer Children” are those who are not born out of unconditional love for the adoption of human life, but on the whim of adults who use medical intervention in the creation of human being by choosing the corresponding genetic traits or who agree to deprive of life of children who were not born such as were “expected.” The problem of designer children is also a problem of children conceived by in vitro fertilization, as well as children whose development is programmed not by their natural abilities and talents but according to the plans and expectations of their parents. In Chapter four “Solitary children” the author devotes himself to the problem of child’s loneliness that can take the threefold form – physical loneliness, resulting from the lack of parent/ parents or social marginalization; mental loneliness, resulting from child’s emotional isolation and moral loneliness being “a lack of connection with values, symbols and patterns.”<sup>2</sup> The widely recognized problem of child trafficking is described in the fifth chapter: “Children for sale.”

Zwoliński describes the dealings of the trade of embryos, sperm, stem cells of the unborn child, the problem of the adoptive and slave trade of children. In the next chapter “Savage children” the author discusses the problem of overprotection, lack of protection over children and education errors in relation to the child. On the effects of violence on the child and its consequences which affect the shaping of the child’s attitude towards themselves, others and the world, the author writes in chapters titled “Aggressive children” and “Juvenile criminals.” Murders of children committed by parents, child suicide and its prevention is presented in the chapter “Suicidal children.” The phenomenon of the so-called “street living children” who live and work in the streets is one of the most common threats faced by the modern child. The number of street children reaches 90 million.<sup>3</sup> Beside

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<sup>2</sup> A. Zwoliński, *Krzywdzone dzieci*, Wydawnictwo WAM, Kraków 2012, p. 70.

<sup>3</sup> Ibidem, p. 197.

there are also “street working children” – “children working on the street but maintaining contact with families and usually returning home for nights,” and “children at risk” meant as “children who are working hard, who very often stay in prison, who are subjected to violence and harassment, who live in conditions which deny any rights of the child.”<sup>4</sup> In the tenth chapter “Street children” Zwoliński cites most common causes of the phenomenon of the so-called “street children,” statistical data reflecting the scale of the problem and ways of preventing it. The next two chapters entitled “Shameless children” and “Sexually abused children” refer to the risks associated with the sphere of children’s sexuality, such as the phenomenon of child pornography, child prostitution and child abuse crimes. The use of children as soldiers in hostilities and its effects on the future lives of children affected by the burden of participation in hostilities, is described by the author in the thirteenth chapter “Child-soldiers.” Famine, which every day victimize 35 thousand children,<sup>5</sup> the experience of illness and death of a child are presented in chapter fourteen “Hungry children.” Chapter fifteen “Children in sects” reveals the devastating impact of the sect on the family and the danger of the entanglement of a child in a sect in the school environment. The so-called “monitor upbringing of the child” in front of the TV or computer and their impact on child development has been described by the author in the sixteenth chapter “Children of the media.”

In the final eighteenth chapter “What is childhood?” Zwoliński presents the psychological, philosophical, sociological, cultural and legal concepts of “a child” and “childhood.” He looks at the phenomenon of “childishness” of contemporary adults. He ends his reflections with the statement:

It seems that the modern ideal of society has become a society without adults. So you can think while following the escape of contemporary culture in the world of children’s illusion, ease and lightness. But this is not the whole truth about the present while at the same time millions of children are condemned to take roles of adults. Children themselves talk about it. These are children working, wandering the streets as beggars, children who prostitute themselves, children who are abused, children crossing

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<sup>4</sup> Ibidem, p. 196.

<sup>5</sup> Ibidem, p. 284.

obstacles to get a piece of bread, little soldiers on the front lines of modern warfare, juvenile criminals performing crimes to save loved ones, children sold as slaves, children abducted by gangs searching for organs for transplantation, as well as juvenile suicides – who protest against the atrocities of the world not with their tears but with their lives. The dotage of the world of adults and the precocious growth of many children compose two strands of contemporary childhood. Will the future be bright for all the children one day and will they be fully deserving the name of “child?”<sup>6</sup>

The book *Abused Children* by Andrzej Zwoliński is an interesting reportage about the dangers of modern childhood. Reportage, as the author indicates in it the main threats to the rights and welfare of the child, without a very detailed analysis. Due to the high topicality of the issues and the “light penmanship” of the author, the book is highly recommended to be read by those who deal in their every day life with issues of children’s rights and their protection.

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<sup>6</sup> Ibidem, p. 356-357.

GALLERY OF THE  
„HORIZONS OF EDUCATION”

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GALERIA  
„HORYZONTÓW WYCHOWANIA”





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## Leszek Misiak: Paintings – Graphics – Drawings

Creativity is a value which man needs in every area. Unfortunately, this point has not always been obvious for all.

As the great scholar, philosopher Władysław Tatarkiewicz, wrote:

The man has even more non-biological needs. Among them there are expression, the need to speak out, and to release his mental life. One also needs creativity. There are also needs for order, harmony, possible perfection, and beauty. (...) Now, these needs – of expression, creativity, harmony and beauty can be fulfilled mostly by art.<sup>1</sup>

There are only two languages to catch the word: one which is spoken by Good, and the other spoken by people – nature and art make the latter one.<sup>2</sup>

In that way, described by W. Tatarkiewicz, they thought till the early twentieth century. The criteria for beauty have been overvalued since long time ago. It is believed that beauty can also be stuck in ugliness, for example in wrinkled face of an old man, which is interesting and therefore beautiful.

The concept of beauty is subjective.

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<sup>1</sup> W. Tatarkiewicz, *Parerga*, PWN, Warsaw 1978, p. 91.

<sup>2</sup> Ibidem, p. 95.

G. Braque was saying that “the art should bother.”

Until the twentieth century, the purpose of art was to sublimate, and to be a relief and contemplation of beauty, order, and harmony. However, a huge change took place in the perception of art. Currently, an idea and shocking the recipient matter and not the value of the work, the value that is everlasting.

Religion and art are anchored in the very specific Civilization. Both the visual arts and architecture, unmistakably inform us to which circle of Civilization they belong. The art has religious origins (...).<sup>3</sup>

Professor Leszek Misiak is an artist who does not shock by his works. He is the Professor of the Academy of Fine Arts in Kraków. We can say that he is one of the pillars of this Academy. He is engaged mainly in painting (he leads painting class) but also in graphics and drawing. He is respected and liked and his works are widely known and appreciated. He is also known as an excellent teacher. He belongs to these teachers who possess both a deep knowledge about art and ability to properly convey it to students. This is not an easy task because the theory and artistic practice does not necessarily go hand in hand.

A detailed list of exhibitions by Leszek Misiak included here demonstrates his enormous artistic achievements. His work undergone the continuous evolution, striving for the abstraction from realistic themes and forms. As Władysław Strzemiński says: “It should be total unity of what is painted with the surface on which these shapes are painted. Shapes with the surface of the picture should form a unity, complete and inseparable.”<sup>4</sup> The concept of unity in all dimensions is extremely valuable. In Leszek Misiak’s painting we can also observe, among other values, this unity, which consists of a usually open composition and sophisticated colour.

When looking at such pictures like “NIEBO I ZIEMIA” (“HEAVEN AND EARTH”) from 2009 (ink drawing), “ZIEMIA (“EARTH”) from 2007 (tempera technique), and “ZIEMIA” (“EARTH”) from 2009 (ink drawing), we can observe the unity of form, colour and content. Ploughed fields, sky and land to the horizon involve the

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<sup>3</sup> J. Żylińska, *Czym jest dla mnie modlitwa*, “Znak” 1997, no. 9, p. 54.

<sup>4</sup> W. Strzemiński, in: *Artyści o sztuce*, PWN, Warsaw 1969, p. 60-461.

viewer to go ahead and meet with the Unknown, with a Mystery that is hidden faraway behind the horizon.

The method – the technique of making these images is perfect. Slightly different, compositionally deepened, are two images entitled also "ZIEMIA" ("EARTH"), from 2011. In one of them a warm green contrasts with a beautiful grey of the rest of the picture. They should pay particular attention to the silence, the peace and tranquillity that emanates from these images. You can look at them and look long, remembering similar motives seen before in nature.

However, the originality of these pictures are taken from the imagination of the author. There are no such fields in nature. Throughout all the works of this artist, in paintings, graphics and drawings, the simplicity and synthesis of form predominates. However, his works are rich in expression, harmony and texture, and the colour is extremely diverse deciding about emotions. It just moves us profoundly.

I have the impression that the artist considers both "SKY" and "EARTH" in philosophical manner. A kind of philosophy and the mystery can be also seen in paintings entitled "BRAMA" ("GATE") from 2007. The closure of these gates should be read symbolically.

It is widely believed that the work of each artist is a reflection of his personality. This is also the case when we are looking at and feeling works of Leszek Misiak. We can tell a lot about his disposition and personality, which are undoubtedly rich in knowledge and artistic ability but above all in the peace, quiet and kindness.

Dear Professor, we thank You very much for sharing your works with the "Horyzonty Wychowania" ("Horizons of Education"), congratulate and wish You further successes.





LESZEK MISIAK

Born in 1943 in Brzezín.

He studied in the Academy of Fine Arts in Cracow in the Painting Department under the direction of Prof. Waclaw Taranczewski and graduated with Distinction in 1968. He began work as a teacher in 1969. He currently runs the Painting Workshop in the Painting Department. He is a tenured professor. He paints, draws and does prints. He has taken part in over 130 joint exhibitions both in Poland and abroad. He has organized over 40 individual exhibitions. He has won several dozen prizes and awards in painting, drawing and prints competitions.

Works in Collections:

National Museum in Cracow, Łódź Museum of Arts, Szczecin National Museum,

The Leon Wyczółkowski Museum in Bydgoszcz, The Górnośląski Museum in Bytom, Musée d'art. et d'Histoire Fribourg, The Gewerbemuseum – Winterthur, The Museum of Contemporary Art – Skopje, Portland Oregon Art Museum, The Historical Museum of the City of Cracow, Collections of the Consortium of National Art Schools in Cracow, The Collection of the Cultural Centre in Nowa Huta, The Academy of Fine Arts Museum, as well as private collections in Poland and abroad.





"Heaven and Earth", egg tempera, 100 x 70 cm, 2010







"In the Direction of the Forest", egg tempera, 100 x 120 cm, 2008



"Heaven and Earth", egg tempera, 100 x 120 cm, 2008





"Earth", egg tempera, 100 x 140 cm, 2007



"Earth", egg tempera, 100 x 120 cm, 2007





"Gate", egg tempera, 92 x 73 cm, 2007





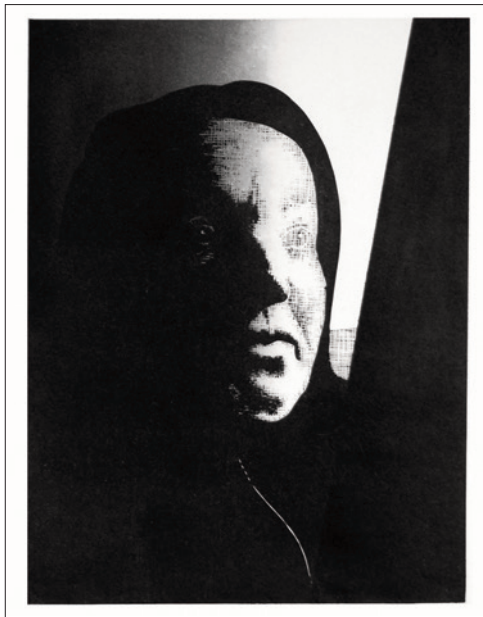
"Gate", egg tempera, 92 x 73 cm, 2007





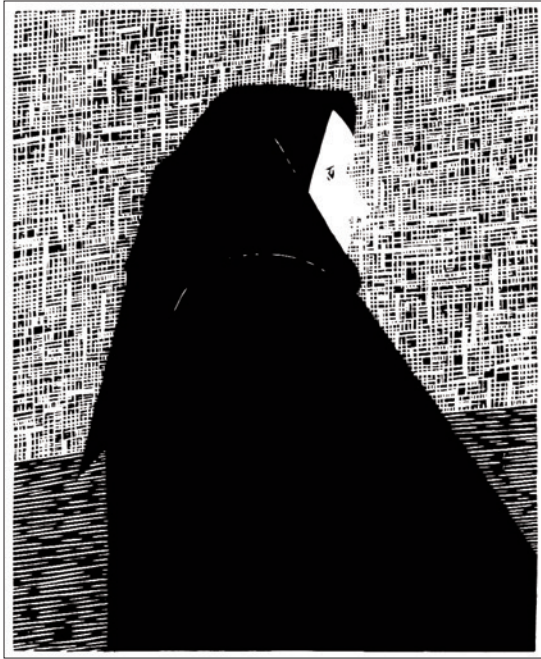


"Old Lady", linocut, 100 x 70 cm, 1980

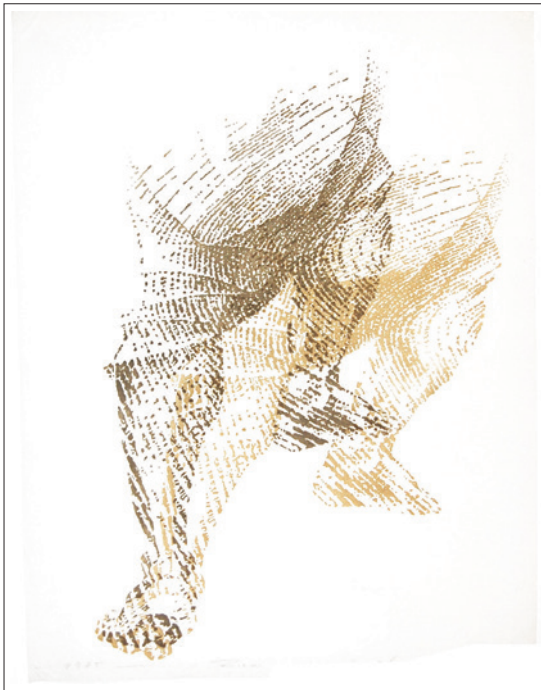


"Old Lady", linocut, 50 x 39 cm, 1985





"Old Lady", linocut, 50 x 39 cm, 1985



"The Earth's Inheritance", linocut, 70 x 50 cm, 1975





"Earth", ink, 34 x 49,5 cm, 2009



"Heaven and Earth", ink, 34 x 49,5 cm, 2009





"Earth", tempera, 50 x 65 cm, 2011



"Earth", tempera, 50 x 65 cm, 2011





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„Horyzontów Wychowania”

Roczna prenumerata „Horyzontów Wychowania” (kwartalnik od 2014 r.)  
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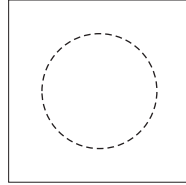
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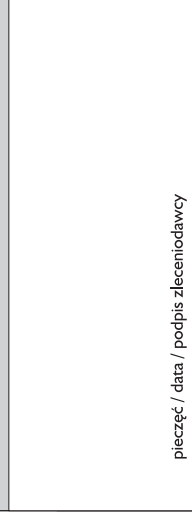
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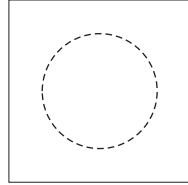
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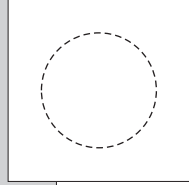
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