

S.A.Baltabayev

*B.Beisenov Karaganda Academy of the Ministry of Internal Affairs of the Republic of Kazakhstan
(E-mail: baltabaev.sabyrgali@mail.ru)*

Formation and development of international legal system for protecting children`s rights

The article deals with the formation and development of the international legal system for the protection of children's rights. The author analyzes international experience in protecting the rights of children and examines the international legal norms establishing the rights of children. At the present stage, on the background of recent events, the protection of children's rights are becoming increasingly important. Increasingly children worldwide are subjected to violence, both in armed conflicts and in a peaceful environment — in the community, in educational institutions and in the family. These facts are not permitted in modern world. Policy for children in every country should be based on accurate knowledge and understanding of the situation of children and their needs.

Key words: children, children's rights, protection of children's rights, declarations, conventions, international law.

The Universal Declaration begins by recognizing that 'the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world' [1]. Human rights are the natural part of every member of the society since his/her birth. Through the implementation of the rights and freedoms of the individual manifests the uniqueness, reveals the creativity and capabilities of each person. The future of every nation and humanity completely depends on the young generation. Therefore promotion and protection of children's rights is a major challenge modernity and the international community must be concerned in the decision of its issues [2].

Major role in the development of standards of social protection of children played non-governmental organizations, in particular Worldwide «Save the Children» Alliance whose founder was an Englishwoman Eglantyne Jebb. In 1923, the organization has developed a declaration containing the basic conditions that must be followed by a society to ensure the proper protection of children and care about them [3; 21]

In 1924 the League of Nations in Geneva, at its 5th session, adopted the Declaration of the Rights of the Child proposed by the International Save the Children Union. It was the first international legal document in the field of protection of the rights and interests of children [4].

However, the system of international protection of children's rights as part of human rights has been developed after World War II in the United Nations, one of its underlying principles was the proclamation of respect for human rights and freedoms without any discrimination. The principle to respect for human rights was enshrined in the UN Charter.

The preamble to the Charter stated the determination of the peoples «to reaffirm faith in fundamental human rights, in the dignity and worth of the human person». In accordance with paragraph 3 of Article 1 of the Charter of the United Nations one of the goals of the organization is to «to achieve international cooperation...in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion» by promoting the United Nations' universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion» (Paragraph 3 of Article 55).

Charter also identified agencies that coordinate cooperation of states to protect human rights: The General Assembly shall initiate studies and make recommendations (Article 13), The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions (Article 68). For these purposes there were also set up special bodies as the universal character (Human Rights Commission), and functional — for the protection of certain categories of people (Commission on the Status of Women (CSW), the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the United Nations High Commissioner for Refugees (UNHCR), the United Nations Congress on the Prevention of Crime and the Treatment of Offenders) [5].

Hence, the Charter of the United Nations created the legal basis for the formation of an international mechanism for protection of human rights, which includes the development of international standards in the field of human rights protection and development of international monitoring bodies for their compliance.

There was the need to develop measures to protect the rights of the child, because of his/her physical and mental immaturity and it is required the allocation of the international protection of children's rights in a particular direction. To this end, the United Nations created the Social Commission and the United Nations Children's Fund (UNICEF).

In addition, the protection of the rights of children in some areas are engaged in the specialized agencies of the United Nations: International Labour Organization (ILO), the World Health Organization (WHO), the United Nations Educational, Scientific and Cultural Organization (UNESCO).

The United Nations Children's Fund exclusively deals with children's problems. UNICEF was approved by General Assembly Resolution 57 (1) on December 11, 1946. The International Child Development Centre operates as part of UNICEF. It was created in 1988 as a specialized research and training institutions in the core of financial support from the Government of Italy.

The international protection of children is carried out in several directions: 1) developing declarations, resolutions and conventions aimed at the preparation of international standards in the sphere of protection of the right of the child; 2) establishing of a special monitoring agency for protection of the rights of the child; 3) assisting in adjustment of national legislation to international commitments (implementation activities); 4) humanitarian aid through UN Children's Fund (UNICEF) [6].

The most resultative activities concern the norm development in the sphere of protection of the right of the child. They were carried out along three directions: the codification of the rights of the child in general declarations and conventions on human rights or in international agreements, which regulate the rights of certain social groups, closely connected with the child (women rights) or, to some extent, the relations in the sphere of the family, labour law, education; development of declarations; conventions which specially regulate the right of the child; adoption of the Universal Declaration of Human Rights within the international protection of human rights the UN General Assembly on December 10, 1948 and International Covenants on Human Rights in 1966. The declaration and covenants made a number of provisions directly related to the rights and interests of children: the principle of equality of children, rules on the protection of mothers and children, the protection of children from exploitation, the right of children to education.

The Declaration and the Covenant enshrines the principle of equality of children. The Covenant on Civil and Political Rights establishes that 'every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State' (Paragraph 1, Article 24).

Covenant on Economic, Social and Cultural Rights prohibits discrimination for reasons of parentage or other conditions (Paragraph 3, Article 10).

The importance of protecting the health of children and their rights are of international legal norms on the prohibition of child marriage. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962) provides for the adoption of legislative acts by the state, sets the minimum age for marriage. The Convention prohibits the «marriage with a person under the specified age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses» (Article 2) [7].

It should be also noted international agreements relating to slavery and the slave children, and on combating trafficking in women and children for prostitution. In 1953, the General Assembly in its resolution 794 (8) approved the Protocol amending the Convention on Slavery in 1926. The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery adopted by a conference in Geneva in 1956. The Convention provides, in particular, the abolition of the institution, similar to slavery, exploitation of child labor. This implies any institution or practice, «whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour» (Article 1) [8].

October 20, 1947 the UN adopted a Protocol to the International Convention for the Suppression of the Traffic in Women and children (1921) and to the Convention for the Suppression of the Traffic in Women (1933). The Convention and the Protocol stipulates the obligation of States to prosecute those involved in the involvement of women in prostitution and trafficking of women and children, inform each other information on professional traffickers of women and children.

December 14, 1960 UNESCO adopted Convention against Discrimination in Education, having the obligation of States to prevent discrimination in education based on race, sex, language, religion, social origin, political opinion, and to take, if need be, all measures to eliminate discrimination in education. The Convention, in particular, contains a provision under which the State undertakes to make primary education free and compulsory (Article 4) [8].

There should be noted the international agreements on the protection of women and children in armed conflicts. Geneva Convention for the Protection of Civilian Persons in Time of War of 1949 and the Additional Protocols to the Geneva Conventions, adopted in 1977, allow women and children the special protection from the effects of hostilities. In 1974 adopted the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, the declaration contains recommendations for countries special protection to women and children belonging to the civilian population.

The Convention adopted by the International Labour Organization contained the international standards on labor protection of children. Let's analyze the content of some of them. The Convention concerning Minimum Age for Admission to Employment was adopted in 1973. According to the Convention the States undertake «to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons» (Article I) [8].

The Declaration on the Rights of the Child became as a special document completely devoted to the rights of the child. It contains the principles on which any state policy providing for the rights of the child should be based. In the preparation of the Universal Declaration of Human Rights, the Economic and Social Council invited the Commission on Human Rights to consider both the Universal Declaration of Human Rights and the draft declaration on the rights of the child. In 1946, the Economic and Social Council decided that, although the principles of the Geneva Declaration shall remain applicable, the United Nations needs to be updated document, the relevant statutory goals of the United Nations in the field of human rights. November 20, 1959 the UN General Assembly in its resolution 1383 (14) adopted the Declaration on the Rights of the Child. Declaration of the Rights of the Child 5 expanded principles of the Geneva Declaration (1924) to the 10 principles.

One of the most important achievements and significant result of the international human rights system is not only the international community's recognition of the fact that «the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well after birth», but also the recognition of the rights of children as independent entities [9]. This principle enunciated in the Declaration of the Rights of the Child, were developed in the 30-day anniversary of the Declaration, when the 20 November 1989 at the General Assembly adopted the Convention on the Rights of the Child. The Convention is the first widely recognized international instrument in which the rights of the child acquired the force of treaty law [10; 40]. By May 2002 it was ratified by 191 countries.

The basic premise of the Convention on the Rights of the Child is that the child is born with inherent rights of all human beings, and fundamental freedoms. The Convention contains four basic postulates:

- Children, regardless of color, sex, language, religion, political or other opinion, national, ethnic or social origin, economic status and physical condition, any other status of the child, his or her parents or guardians should not be discriminated against;
- Children have the right to survival and development in all aspects of life, such as physical, emotional, psychological, cognitive, social and cultural;
- The overriding interests of the child should be taken into account when making decisions or actions directly related to the child or group of children. It must adhere to both the government, administrative and judicial authorities and the family in making any decision;
- Children should be seen as active participants in all that concerns their lives, and to be completely free to express their thoughts. They have the right to have an opinion and the right to have to reckon with him/her [11].

People from different countries, cultures and religions make an effort that each of the 2 billion children living in the land could have the right to survival, education and health care; they care about the atmosphere within the family, its culture; protect against all kinds of exploitation and violence; allow the child to be heard and to do everything that children's views would be taken into account when dealing with important issues.

All countries, that ratified the Convention, are responsible for the realization of children's rights. The ongoing changes are under the supervision of the UN Committee on the Rights of the Child (CRC),

which formed within the framework of the Convention. This Committee is an international elected body of 10 independent experts with experience in the field of children's rights. It may make suggestions and give advice to governments and to the General Assembly on ways to achieve the goals of the Convention. Member States shall report to the Committee, within two years after the ratification of the Convention and then every five years. The writing of reports are supported by consultation with non-governmental organizations (NGOs) and specialized agencies such as the UN Children's Fund (UNICEF), to reflect a more complete and realistic picture of the situation regarding the rights of the child in the country.

The Committee meets three times a year in Geneva, in a session open to the public, for the consideration of reports. Observations and recommendations received during the meetings, distributed and serve as a basis for discussion and debate about ways to improve the lives of children at the national level [12]. The effectiveness of the Committee's work can be seen in the adoption of laws protecting the rights of the child, as well as the creation of special bodies and mechanisms, for which children are the priority.

In 1990, the leaders of more than 150 countries around the world have turned to the discussion of issues related to the political and humanitarian rights of the child within the framework of the World Summit for Children. The meeting adopted a Plan of Action for the next ten years, with clear objectives to ensure the health and safety of children around the world, and launched a campaign for the ratification and implementation of the Convention on the Rights of the Child. The action plan was aimed at reducing infant and maternal mortality, preventing the spread of disease, illiteracy and malnutrition. In accordance with the needs envisaged the possibility of free access to primary education, clean drinking water, healthy food, the provision of adequate sanitary standards of living conditions and protection against epidemics, as well as the prevention of violence and war.

Millions of young lives were saved due to the commitments made at the World Summit and enshrined in the Universal Declaration on the Survival, Protection and Development of Children [13], as well as the Action Plan for the Implementation of the Declaration in the 1990s. So, in 125 countries, 80% of children were immunized against common childhood diseases such as measles and tetanus. In 1999 alone, about 70% of the world's children under five years were vaccinated against poliomyelitis. Around 12 million children are no longer at risk of being exposed to mental retardation as a result of iodine deficiency. More children than ever are in school. Children were able to organize their own parliaments and the peace movement. Many countries have enforced laws that reflect the Convention on the Rights of the Child [14].

At the Millennium Summit of the United Nations (2000), a number of following universal values were reaffirmed: freedom, equality, solidarity, tolerance and non-violence; as well as the need to respect and implement the rights of the child as one of the key elements on the way to economic and social progress [15; 68].

The impact of the Convention on Rights of the Child actively manifested in the last twenty years of XX century and created a need for organization of the movement, which brings together all those who care about the young generation and consider their issues.

In order to help the spontaneous mass movement to become an official «public voice», six organizations working with children, — the Bangladesh Rural Advancement Committee, Netaid.org Foundation, PLAN International, Save the Children, World Vision, United Nations Children's Fund (UNICEF) — in 1999, announced their decision to establish a Global Movement for Children, which aims to unite all those who believe that the rights of children should be a priority for both parents in one particular one family, and to the government of each state. «Movement should become an unprecedented moral force which pay attention to the problems of childhood and adolescence. These issues hitherto has been given insufficient attention» [15; 4].

The main purpose of this international event is to create the necessary mechanisms for the participation of children in decision-making related to their activity. If specify the aims of the movement, there can be distinguished the desire to protect adolescents from turning them into a «lost generation», to prepare them for entry into adulthood and develop economic and social policies, laws, budgets and programs that promote human development; ensure that the priority of efforts to prevent and overcome problems such as HIV / AIDS, drug addiction, alcoholism, juvenile delinquency and prostitution, ethnic rejection, exploitation and violence; to improve the conditions that enhance the positive contribution to society through education, economic, civil, social and spiritual quest. The priority themes are health care, development and protection of children; education, social position of women and children; protection measures for children in especially difficult situations or in special institutions [16].

The global information and communication revolution has opened up new opportunities to participate in the development and protection of the rights. These features are shown in the branching of the Global Movement for Children. The new century has brought new concepts and policies of adults against children. There was a definition — «Leadership Initiative». This concept refers to the process of social and political mobilization based on the premise that «inspired leadership» can change the world for children. The initiative is to create an alliance of influential actors who have the power to create national legislation, policies, budgets, institutions and programs that influence the social behavior of children and adolescents. UNICEF claims that «inspired leadership» — the key to changing the world for children within one generation.

Government actions are necessary, but they are insufficient without the broad support of participants, which should contribute to the realization of children's rights. Nelson Mandela and Graça Machel — two international leaders involved at the moment of bringing together different sectors of society to the problems of childhood and how to resolve them through the initiation to the ideas of the World Movement [15; 17].

The voice of each child suffering from poverty, epidemics, war and discrimination, is a call to action for the Global Movement for Children. The movement launched the campaign «Say Yes for Children», whereby people of all ages, different social groups and political status could participate in solving urgent problems to create a better world for children. Through this international campaign, launched in March 2001, people around the world expressed in several areas that are most needed to improve the lives of children. Every citizen could say «Yes» to 10 actions necessary to improve the living standards of children and adolescents. The campaign took place through the distribution of questionnaires in educational institutions of different levels, media coverage and information on television and the Internet. The results of this campaign were presented at the Special Session of the UN General Assembly on Children in New York in May 2002.

The movement seeks to influence the decisions that will be developed by political leaders during the meeting, and set them on a more thorough review of their decisions.

Special session of the UN General Assembly on Children was held in New York from 8 to 10 May 2002, where our country was represented by the National Report and the final results of the action. The Heads of State and Government, non-governmental organizations, representatives of the children and the children themselves took part in this event. The Secretary-General of the United Nations opened the session with a report on the progress that had been achieved for 10 years. During the event delegates work out an agreement on the best actions for children for the next decade.

The right of children to participate in the special session confirmed by a number of the meetings, exemplified by the unprecedented gathering of Asian children aged 11 to 18, which took place in April 2001 in Thailand. In Kathmandu, a group called The Change Makers, representing children from the eight South Asian countries, presented their own vision of the future dialogue with the authorities of the youth. At the same time, children from 27 countries in Europe and Central Asia met in Budapest to work out the agenda for young people in Europe and Central Asia. Similar meeting took place a little earlier, in November 2000, in Amman (the children of the Middle East and North Africa have gathered at a regional youth forum) [15; 7].

The effectiveness of the Global Movement for Children can be traced to reduce the number of children living in poverty or who have poor health; reduction of child mortality and the number of those in need; ascending number of people, directly or organized to help children; to strengthen volunteerism around the world; on the degree of realization of children's rights in the XXI century and as the implementation of government promises.

Policy for children in every country should be based on accurate knowledge and understanding of the situation of children and their needs. The objective of UNICEF and many other international and national organizations, movements and initiatives is a special mission to assist the Government in the implementation of commitments to implement the provisions of the Convention on the Rights of the Child. These associations should play the role of a «catalyst», seeking from governments, public institutions and potential donors to mobilize resources and actions to ensure the position in which the rights of children would be in the spotlight and takes a leading place in the programs of the country.

All this is necessary, more than ever, to the entire international community and individual countries have come to realize that the needs of children and protection of their rights is the first and most important step on the path to health and development of society and the nation as a whole.

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С.А.Балтабаев

Балалар құқығын қорғаудың халықаралық-құқықтық жүйесінің қалыптасуы және дамуы

Мақалада балалар құқығын қорғаудың халықаралық-құқықтық жүйесінің қалыптасуы мен дамуының сұрақтары қарастырылған. Автор балалар құқығын қорғаудың халықаралық тәжірибесін саралаған, балалар құқығын бекітетін халықаралық-құқықтық нормаларын зерттеген. Қазіргі кезеңде соңғы жылдардағы орын алған оқиғалардың көрінісінде балалар құқығын қорғаудың маңыздылығы артуда. Әлем бойынша әскери қақтығыстарда, сондай-ақ бейбіт өмірде — қоғамда, оқу орындарында және отбасында зорлық-зомбылыққа ұшырайтын балалардың саны өсіп келеді. Бүгінгі күнде мұндай жайттарға жол беруге болмайды. Сол себепті әрбір елдегі балалар мүддесіне арналған саясат балалардың шынайы жағдайы мен олардың қажеттіліктерін нақты білу мен түсінуге негізделуі тиіс деп есептейді автор.

С.А.Балтабаев

Становление и развитие международно-правовой системы защиты прав детей

В статье рассматриваются вопросы становления и развития международно-правовой системы защиты прав детей. Автор анализирует международный опыт по защите прав детей, изучает международно-правовые нормы, устанавливающие их. На современном этапе, на фоне событий последних лет, отмечает автор, вопросы защиты прав детей приобретают огромное значение. В статье подчеркнута, что все больше детей по всему миру подвергаются насилию, как во время военных конфликтов, так и в мирной среде, — в обществе, в учебных заведениях и в семье. В современном мире такие факты недопустимы, поэтому автор считает, что политика в интересах детей в каждой стране должна основываться на точном знании и понимании настоящего положения детей и их потребностей.

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