

**RIGHTS OF THE CHILD IN INTERNATIONAL LAW:
REPORT OF THE CONFERENCE***

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The child – a human being before eighteen years old, as provided by the Convention of the Rights of the Child, defines it by the only one aspect – an age. This does not seem to be a satisfactory solution and leaves some questions on at least two points: the scope of legal protection of the child in different branches of international law and institutions that should provide assistance over set regulations. Higher mentioned questions gave an incentive to organize a conference about children rights in international law and in particular to analyze those rights as protected human rights, as a part of the rights of international humanitarian law of armed conflicts, as an important part of international labour law and especially rules provided by International Labour Organization, the same as World Trade Organization, European Union Family Law, Association of South-East Asian Nations (ASEAN) and international criminal law. Conference was organized by the Chair of the Protection of Human Rights

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and International Humanitarian Law and was held at the University of Cardinal Stefan Wyszyński, Faculty of Law and Administration on 22.3.2013. The character of the conference was interdisciplinary since participants were not only academic lawyers but also specialists of political science, psychology, pedagogy and practicing lawyers working in the Office of the Polish Ombudsman for the Rights of the Child, Ministry of Labour and Social Policy – Department of Foreign Adoptions, and Attorneys and Law Firms. During the Conference 22 presentations were made. Together 40 people took part in it. They were representatives of 15 institutions, including 12 Universities and Academies, such as: Silesian University in Katowice, University in Białystok, Adam Mickiewicz University in Poznań, Jagiellonian University in Cracow, Nicolaus Copernicus University in Toruń, Casimir the Great University in Bydgoszcz, University of Warsaw, University of Zielona Góra, Police Academy in Szczytno, Polish Naval Academy of the Heroes of Westerplatte in Gdynia, Academia Ignatianum in Cracow, and – last but not least – Cardinal Stefan Wyszyński University in Warsaw.

Presentations provided during the conference delivered a detailed analysis of the rights of the child in different fields and extent of their protection. They were grouped in four sessions and each of them provided five or six presentations. After a short introduction and welcoming remarks made by Vice-Dean of the Faculty of Law and Administration of the Cardinal Stefan Wyszyński University in Warsaw – Professor Piotr Zapadka, the first session was moderated by Professor Katarzyna Myszona-Kostrzewa from University of Warsaw. She paid attention on the number of children living in poor conditions and staying without access to education. The first presentation in this session was made by Dr. Wojciech Burek from Jagiellonian University in Cracow, under the title: *“Poland as a state party to the 1989 Convention of the Rights of the Child”*. His presentation consisted of two parts: the first in which ratification process of the Convention¹ and Optional Protocols were presented and the second – problems with Polish reservations and declarations to the Convention and the character of Poland’s cooperation with the Committee on the Rights of the Child. He also described how Poland implemented

¹ Convention on the Rights of the Child, New York, 20.11.1989, 1577 U.N.T.S. 31.

Convention and the first two Optional Protocols² in the light of the Concluding Observations of the Committee on the Rights of the Child. The second presentation was delivered by Dr. Dobrochna Bach-Golecka from University of Warsaw under a title “*The right to life of unborn children in international law*”. This presentation analyzed the norms of international law concerning the right to life of children in pre-natal phase. The author described two perspectives: due to the development of legal regulations protecting life in pre-natal phase within the internal legal systems of the states and the second, due to the influence stemming from bioethics and legal developments protecting the life of embryos, understood as entities where a human life potentially begins. The third presentation of Ms. Joanna Przyjemska was about selected aspects of legal protection of youvenaire internauts. She emphasized the problem of dangerous use of internet by children and the need for specific legal regulations in that area. The last presentation of Ms. Paulina Wójcicka from Cardinal Stefan Wyszyński University, described the right of the child to be brought up in a family. It was a synthetic description of a foster care system in Poland. The author introduced an international adoption as one of the form of alternative care for the child, which may be considered only if the child cannot be placed in a foster or an adoptive family or cannot, in any suitable manner, be cared for in his or her country of origin.

The second session was moderated by Professor Joanna Nowakowska-Małusecka from Silesian University in Katowice. This part of the conference gave a detailed analysis of regulations of the rights of children provided by international organizations such as European Union, International Labour Organization, World Trade Organization, and Association of South-East Asian Nations (ASEAN). The first presentation was prepared by three authors from the University of Białystok: Professor Maciej Perkowski, Ms. Marta Perkowska and Ms. Iwona Lewkowicz. They described the right to a proper education, European Union and the prevention of children and pupils abuse. Authors paid attention on the urgent need for EU support programs for schools concerning drug

² Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, New York, 25.5.2000, 2173 U.N.T.S. 222; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, New York, 25.5.2000, 2171 U.N.T.S. 227.

prevention activities for children and young people. Among a number of EU challenges, preventing addictions among children and adolescents is one of the most important problems and today it is treated as a kind of social pathology. Health and safety of citizens are EU priorities and its purpose is to ensure equal access to high quality health care. The authors also emphasized that within the EU institutional system the European Commission plays a specific role in the implementation of EU health policy. In addition, together with Member States it is focused on continuing to construct the “area of freedom, security and justice”. It is backed by EU specialized bodies, including the European Monitoring Centre for Drugs and Drug Addiction, established to provide objective information regarding drugs, the European Police Office Europol and Eurojust agency. The second presentation responded to the first and was made by Dr. Maciej Mączyński, who spoke about rights of children in academic education. The third speech made by Dr. Marcin Sokołowski from Adam Mickiewicz University in Poznań was about the best interest of the child in family law of the European Union. He emphasized that European Union creates its own family law which follows the rules of international regulations. The best interest of the child is one of the basic categories of international family law. However, European Family Law provides two aspects of regulations: material and procedural, in which the best interest of the child is based. It provides regulation of judicial efficiency to avoid delays, transparency and predictability of proceedings in family courts, the same as a real ability to cooperate between Member States national courts in family cases. The fourth presentation was made by Dr. Joanna Markiewicz-Stanny from University of Zielona Góra, under a title: *„Elimination of the worst forms of the work of child in standards and activity of the International Labour Organization”*. She considered the scope of the state’s obligations concerning the implementation of standards in the title area. The author mentioned ILO’s Minimum Age Convention No. 138³ and the Worst Forms of Child Labour Convention No. 182⁴, the same as ILO’s International Programme on Elimination of Child

³ Convention concerning Minimum Age for Admission to Employment (No. 138), Geneva, 26.6.1973, 1015 U.N.T.S. 297.

⁴ Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182), Geneva, 17.6.1999, 2133 U.N.T.S.161.

Labour. The fifth presentation, made by Dr. Bartosz Ziemblicki, was about the impact of World Trade Organization on the rights of children. He described how the law of WTO regulates trade and influences also other aspects of life such as children rights. This impact can be made by several trade measures, such as import prohibitions, trade sanctions, generalized systems of preferences or obligation waivers. Dr. Ziemblicki in details analyzed the right of WTO member to introduce import prohibition of goods manufactured by child labour. His presentation also considered whether a WTO member is allowed to introduce individually trade sanctions with an aim to protect the children's rights externally and also whether generalized systems of preferences or obligation waivers may be applied for the same reason. The last presentation made by Dr. Joanna Rezmer from Nicolaus Copernicus University in Toruń, was about protection of children rights in Association of South-East Asian Nations (ASEAN). The author described children rights as a subject of dialogue and cooperation among ASEAN Member States since 1980. She analyzed such documents as: a Declaration of Principles to Strengthen ASEAN Collaboration on Youth (1983), Resolution on the ASEAN Plan of Action for Children (1993), Declaration on the Commitments for Children in ASEAN (2001), ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004), Ha Noi Declaration on the Establishment of Welfare and Development of ASEAN Women and Children (2010). The conclusion was very clear that most of them repeat selected standards stemming from the International Bill of Human Rights, but create no “added value” and omit some vital universally accepted children's rights. Dr. Rezmer mentioned also a newly established ASEAN Commission for the Promotion and Protection of the Rights of Women and Children, which could contribute to the progress of human rights, but its political nature and the lack of strong monitoring powers raise serious doubts about the efficiency of its work.

The third session, moderated by Professor Elżbieta Karska from Cardinal Stefan Wyszyński University, started from the presentation of Professor Joanna Nowakowska-Małusecka from Silesian University in Katowice, which questioned if it is possible to grant a status of refugee to the child-soldier? The second presentation of this session was provided by Dr. Marta Szuniewicz from Polish Naval Academy of the Heroes of Westerplatte in Gdynia, and dealt with international protection of separated children in armed conflicts. She analyzed the scope of

protection provided for separated children on the basis of provisions of international humanitarian law, Convention of the Children's Rights and such institutions as: proper identification, no separate evacuation, no early adoption, tracing of family members, prompt family reunification, education and special material privileges. The third presentation was about war-children: a situation of the child conceived by rape during armed-conflict and was made by Dr. A. Wedeł-Domaradzka from Casimir the Great University in Bydgoszcz. She spoke about situations in which a rape occurred and socio-religious context in the individual countries, such as abortion or murder after birth, lack of registration, lack of citizenship, discrimination and unequal treatment, poorer access to health care, forced adoptions. The author indicated the need to ensure the protection of affection that must be taken both in terms of already existing legislation as well as in the context of specific legal needs. The fourth speech of Dr. Marta Prucnal from Academia Ignatianum in Cracow was about the role of international organizations and institutions in the context of the protection of children from participating in hostilities. She spoke about the international community steps taken to stop the cruel practices of using children in hostilities and actions of institutions and organizations, operating both at national and international level. Dr. Prucnal presented the following problems: establishment of law, monitoring a compliance with international obligations, enforcing violations of these obligations the same as assisting and supporting former child soldiers. The last presentation of this session made by Dr. Agnieszka Szpak from Nicolaus Copernicus University in Toruń analysed unintended consequences of the ICC Lubanga judgement⁵ in the context of the crime of conscripting and enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities. She critically analyzed International Criminal Court judgment in the *Lubanga case* of 2012 which convicted for conscripting or enlisting children under the age of fifteen into armed forces or groups or using them to participate actively in hostilities. Dr. Szpak criticized ICC judgment for interpretation of terms: "direct" and "active" participation in hostilities which has serious legal consequences.

⁵ Case of the Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, ICC Judgment, Trial Chamber I, 14.3.2012.

The fourth session, moderated by Professor Karol Karski from University of Warsaw was mainly based on the topic of humanitarian law and international criminal responsibility for the breach of children rights. Ms. Aleksandra Dłubak from Foundation “Central and Eastern European Initiative for International Criminal Law and Human Rights” talked about legal provisions against child soldiers in international criminal law from the humanitarian and human rights law perspective. She described three modes of conduct: conscripting, enlisting and using children in armed conflict on the basis of Geneva Conventions, Additional Protocols, human rights treaties and international criminal law. Dr. Elżbieta Morawska from Cardinal Stefan Wyszyński University in Warsaw provided a presentation on “*The prohibition of children’s involvement in armed conflicts. Instruments of international human rights and humanitarian law*”. She spoke about the sense of protection, nature and specificity of children’s situation in selected African and Asian countries. The main attention was paid on the fact that despite of bans provided by international humanitarian law, thousands of children have been conscripted forcibly into military units and used as soldiers, spies, scouts and carriers. Dr. Paweł Jaros from Cardinal Stefan Wyszyński University in Warsaw talked about protection of the rights of the child in armed conflict and the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure⁶. He paid attention on legal consequences of the Protocol in international and national law systems and especially in the procedural aspect of communications. After that Ms. Katarzyna Gałka from Cardinal Stefan Wyszyński University in Warsaw provided a presentation on the special protection of children in peace agreements, which analyzed it in the context of special needs of the child and in different phases of conflict and post-conflict situations. As the last before Ms. Vita Zahurowska told about the protection of children belonging to national minorities during an armed conflict. She presented that problem in the context of international humanitarian law regulations and a legal situation of minorities. The last presentation and concluding remarks of the whole conference were made by Professor Elżbieta Karska who was talking about specificity of violations of the rights of the child committed by private military and security companies.

⁶ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, New York, 19.12.2011, A/RES/66/138.

Most presentations were prepared to publication which additionally included some other aspects of analysis, made by those Authors who were not able to participate in the conference or did not make their presentations but have been interested in the topic of the protection of the rights of children very much. Professor Katarzyna Myszone-Kostrzewa delivered a text on *“Public international law and the rights of children and parents”*, Professor Zbigniew Rudnicki from Cardinal Stefan Wyszyński University in Warsaw wrote about *“Geneva Declaration of the Rights of the Child of 1924”*, Ms. Małgorzata Andrzejczak-Świątek from Police Academy in Szczytno prepared an article on *“Selected international standards of public administration activity in cases concerning children”* and Mr. Paweł Gorajewski from Cardinal Stefan Wyszyński University in Warsaw and Supreme Administrative Court wrote a text about United Nations Special Representative of the Secretary General for Children in Armed Conflict. All of them were published three months after the conference as the second issue of the academic series: *“Human Rights and International Law”* under the title: *“Rights of the Child in International Law”* under the chief editor of Professor Elżbieta Karska⁷. This book was reviewed by Professor Janina Ciechanowicz-McLean from University of Gdańsk and Professor Zdzisław Galicki from University of Warsaw.

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⁷ Elżbieta Karska (ed.), *Prawa dziecka w prawie międzynarodowym* [The Rights of the Child in International Law], *‘Prawa Człowieka i Prawo Międzynarodowe’*, No. 2, Katedra Ochrony Praw Człowieka i Prawa Międzynarodowego Humanitarnego Uniwersytetu Kardynała Stefana Wyszyńskiego, Warszawa 2013, pp. 355 (ISSN 2300-3472; ISBN 978-83-64298-00-4).

⁸ Paweł J. Jaros (ed.), *Prawa dziecka: Dokumenty Rady Europy* [The Rights of the Child: Council of Europe Documents], Biuro Rzecznika Praw Dziecka, Warszawa 2013, pp. 984 (ISBN 978-83-89658-01-2).