


## Legal Features of Children’s Rights and Duties During Armed Conflict: The Ukrainian Case

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**Abstract:** It is universally recognized that children are the most vulnerable and unprotected category of civilians. Moreover, when it comes to the period of any armed conflict. The twentieth century is the Century of the Child. The international community’s actions, which were reflected in the adoption of a number of international legal treaties establishing the legal status of the child in general and securing the rights of each child, are evidence of this. The rights of a child are one of the key elements of the legal construct of the legal status of a child. This article analyzes children’s rights both during the peaceful period and during the armed conflict. The article examines a number of international legal treaties which enshrine children’s rights during armed conflict. Conventional wisdom does not refer to children’s duties. However, the period of armed conflict is fundamentally opposite to the peaceful period of the State’s existence. During an armed conflict, it is not always possible to fulfill children’s rights. On the contrary, this period is marked by increased risks to children’s lives and health. Moreover, it is necessary to take into account the nature of contemporary armed conflicts (their methods and means). The period of armed conflict produces new rules of behavior (which may be restrictive) that are intended to maximize the life and health of each child. The behavioral rules form a number of duties that are collective in nature (their fulfillment is entrusted to the children’s legal representatives, public administration bodies, and children themselves with due regard to their age). Based on the Ukrainian case

study, the author analyzes a number of duties arising during an armed conflict, and the fulfillment of which is entrusted to several actors, including children. During the course of writing the article, the author used the method of document analysis. First of all, the researcher analyzed international legal acts related to the topic of the study. The second level of legal acts that were analyzed were Ukrainian legal acts depending on their legal force. Simultaneously with the analysis of regulatory acts, the author reviewed the academic literature that formed the scientific basis of this study. This helped to analyze the children's rights and duties during armed conflicts. The scientific basis of the study is based on scientific publications in the field of children's rights in general. The author used a systematic process during the writing of the article, involving reading, identifying specific provisions, and categorizing information. The generalization method was applied on the basis of the comparison, which helped to formulate the relevant conclusions to the article.

## 1. Introduction

Being a child is a period of life when everyone begins to actively explore the world, grow, and develop. Childhood is the most carefree period of life. Each armed conflict is primarily a change in the usual way of life for children and a darkening of their childhood. Back in 1989, when the Convention on the Rights of the Child was adopted, the international community stated that children have the right to special care and assistance. During the twentieth century, the legal status of the child as a whole was formed. The key elements of this legal structure are rights and duties. Time of armed conflict is a specific period, given the increased risk to the life and health of every child. The number of children living in conflict zones has almost doubled since 1990. Therefore, the issue of child protection during armed conflict is increasingly becoming one of the main topics at the international community level such as the International Conference on Protecting Children in Armed Conflict<sup>1</sup>

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<sup>1</sup> "International Conference on Protecting Children in Armed Conflict," Government.com, May 8, 2023, accessed May 14, 2025, <https://www.regjeringen.no/en/whats-new/international-conference-on-protecting-children-in-armed-conflict/id2975968/>.

Nuremberg Forum 2024 “For Every Child: Protecting Children’s Rights in Armed Conflict”;<sup>2</sup> International Summit on the Rights of the Child.<sup>3</sup>

During any armed conflict, children are the most defenseless category of the population and those who are most in need of attention from the state, represented by public administration bodies. Such a period generates new types of social relations and, therefore, a separate legal regulation and a set of rights and duties. Children are no exception.

## 2. Children’s Rights: Theoretical Background

There are generally known two theories of the category of rights: the theory of will and the interest theory of law.

The so-called theory of will (or theory of choice) states that to have a right means to have the right to freely choose from some available options. The essence of the right is the realization of freedom of will. The right holder has a certain degree of control over the duties of others (authorized to demand fulfillment or refuse to fulfill such duties). The main problems with the theory of will arise in relation to situations of incapacitated rights holders (such as infants, persons with mental illness). It is difficult to argue that the law authorizes such persons to exercise their will to control the duties of others. This would mean that such persons could not have any legal rights. It is also difficult to reconcile the theory of will with some so-called inalienable rights that exist and are enforced by law regardless of the will of their full beneficiaries.

The interest theory states that the core of a right is the legal protection of the interest of the right holder. Legal rights correspond to certain duties of other persons that limit the freedom to infringe upon the interest protected by the right. To have a right therefore means to be a beneficiary of

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<sup>2</sup> “Nuremberg Forum 2024 ‘For Every Child: Protecting Children’s Rights in Armed Conflict,’” International Nuremberg Principles Academy, accessed May 14, 2025, <https://www.nurembergacademy.org/public-discourse/nuremberg-forum/nuremberg-forum-2024>.

<sup>3</sup> “Speech of His Holiness Pope Francis to the World Leaders Participating in the Summit on Children’s Rights,” The Holy See, February 3, 2025, accessed May 14, 2025, <https://www.vatican.va/content/francesco/en/speeches/2025/february/documents/20250203-summit-diritti-bambini.html>.

a duty imposed for the benefit (interest) of the right holder.<sup>4</sup> Interest theory is the one that works from the perspective of children.

Both the international community and representatives of the doctrine faced the question of how to construct the category of children's rights, taking into account the main feature of the child population – age. The approach proposed by Katherine Hunt Federle to building the legal category of children's rights used as the basis for this paper.

A child's need for protection is itself a right – for example, to care and nurture or to live permanently in a safe and loving family. This approach to rights as the needs of the child that need to be protected is entirely consistent with the interest-based theory of rights. According to this theory, certain individual interests give rise to rights, although the theory itself leaves open the question of what interests actually give rise to rights. Rights are thus those interests that are deemed worthy of protection; thus, any duties that arise are the result of the recognition that a particular interest merits such protection.

Those who argue that children have rights under the interest theory invariably define as rights those interests that are closely related to the child's need for protection. For example, a child's interest in being cared for, nurtured and loved deserves protection as a right. A child's basic interests, such as the need for food, shelter and love, may require protection as a right and may take precedence over other types of interests as rights, such as the need for education. One might even say that a child's status as a child creates a specific set of rights based on the child's developmental and other needs. Interest theory thus has the advantage of allowing us to speak of children's rights without reference to their power to oblige others.

By viewing rights in this way, it overcomes one of the main difficulties in articulating children's rights. Typically, to have a right, a person must have the capacity to insist that those who have a duty fulfill that duty – once they have decided to pursue their right. Since children are generally thought to lack this capacity, it seems particularly fruitless to say that children have

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<sup>4</sup> Tomasz Pietrzykowski, "Beyond Personhood: From Two Conceptions of Rights to Two Kinds of Right-Holders," in *New Approaches to the Personhood in Law Essays in Legal Philosophy*, eds. Tomasz Pietrzykowski and Brunello Stancioli (Frankfurt am Main: Peter Lang, 2016), <http://dx.doi.org/10.2139/ssrn.2597028>.

rights, since they seem to lack the ability to demand the fulfillment of the relevant duties that follow from the exercise of rights. Having a right without the power to exercise it is not much of a right.

The theory of interest, at least at first glance, tries to solve this problem of having a right without the ability to exercise it. Since a right is an interest based on the child's need, the right exists regardless of who the obliged person is or how he or she fulfills his or her obligations. Thus, it can be said that a child has the right to care regardless of who is the person who has the corresponding obligation to provide such care. Moreover, if this person does not fulfill his or her duty, the right still exists. Thus, the theory of interest provides an explanation of the rights of the child that is not tied to the capacity of the rights holder.

The challenge is that, even in theory, someone other than the child must ensure that his or her rights are respected. Since the interests that are defined as contributing to the exercise of rights are always protective, they inevitably confirm the lack of capacity of children. Thus, interests, even those that give rise to rights, continue to contribute to children's lack of legal capacity.<sup>5</sup>

There is both a theoretical and a practical component to this question. From a theoretical perspective, the construction of rights for children has been problematic because of the organizing influence of capacity on theories of rights. Our tradition of rights, which emphasizes autonomy and individuality, limits the class of rights holders to those who have legal capacity. What does it mean to be a competent rights holder may vary from one approach to rights to another, but it is clear that capacity is a prerequisite for having those rights in the first place. So, in developing a theory of children's rights, we are drawn into a debate about children's capacity; the difficulty, of course, in the debate about children's capacity is that we simply cannot say with any degree of legal, psychological or sociological certainty that children are capable.<sup>6</sup>

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<sup>5</sup> Katherine Hunt Federle, "Children's Rights and the Need for Protection," *Family Law Quarterly* 34, no. 3 (2000): 422–23, <http://www.jstor.org/stable/25740300>.

<sup>6</sup> Katherine Hunt Federle, "Constructing Rights for Children: An Introduction," *Family Law Quarterly* 27, no. 3 (1993): 302, <http://www.jstor.org/stable/25739942>.

Their capacity stems from the peculiarity of the children's part of the population – their age range. Consider that this is the main feature, as it is the basis for the derivatives that can be divided into two groups – psychological/physiological and legal. Given their age, children cannot fully exercise their “children's” rights provided for in legal acts on their own, and do not have sufficient capacity to protect their rights, because in most cases a legal representative must be involved (a legal peculiarity). Given the age criterion, children have specific needs, interests, and rights (a legal peculiarity). Children are characterized by social and psychological immaturity and, as a result, increased trust in others and an inability to objectively assess life situations (psychological/physiological peculiarity).

This dilemma has both theoretical and practical components. On the theoretical side, constructing rights for children has been problematic because of the organizing effect of capacity on rights theories. Our rights tradition, which emphasizes autonomy and individuality, limits the class of rights holders to those with capacity. What it means to be a competent rights holder may vary within a particular account of rights, but it is clear that capacity is a prerequisite for having those rights in the first instance. In constructing a rights theory for children, then, we are drawn into a debate about their competencies; the difficulty, of course, with arguing about the capacity of children is that we simply cannot say with any degree of legal, psychological, or sociological certainty that children are competent.

However, the construction of children's rights must include someone else responsible for ensuring that the rights of the child are respected, and this theory would seem to be a good one.<sup>7</sup> This “someone else” should be, first of all, the child's legal representative. At the same time, the state, represented by public administration bodies, has a dual role: (1) supervising the integrity of the legal representative of the state; (2) the state creates the conditions under which children's rights are realized. These entities are the agents who help children to realize their rights owing to their age and limited capacity.

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<sup>7</sup> Federle, “Children's Rights and the Need for Protection,” 422–23.

Visa Kurki considers this issue through the prism of legal personhood (legal rights and/or duties), which is represented by an active and passive scale and is divided into purely passive legal capacity (infants have rights but at the same time do not have the competence to exercise them and do not bear responsibility), dependent legal personality (this is the case for most children who have survived their first years of life – such children have some control over their rights and duties and can bear some responsibility; thus, they are not completely passive, but they are not independent either), and independent legal capacity (adults).<sup>8</sup> But it is still worth clarifying the division into the age of childhood and the scope of legal capacity accordingly. This issue is determined by each state at the legislative level.

The Ukrainian legislator made the following decision on this question.<sup>9</sup> By Ukrainian law, children are divided into two categories: minimally capable (a person under the age of 14 – part 1 of Article 31 of the Civil Code of Ukraine) and minors (a person aged 14 to 18 – part 1 of Article 32 of the Civil Code of Ukraine). The minimally capable have partial civil capacity. As for minors with incomplete civil capacity, the following should be noted. In accordance with Article 313 of the Civil Code of Ukraine, it is stipulated that persons who have reached the age of 14 have the right to free independent movement throughout Ukraine and to choose their place of residence. Persons under the age of 14 are allowed to move throughout Ukraine only if accompanied by one of their legal representatives or an authorized person. Minors in Ukraine have a significant scope of rights and are liable for damages on a general basis.

The Polish lawmaker used a slightly different approach. The Civil Code<sup>10</sup> distinguishes two periods of childhood: the first, from birth to reaching the age of 13 (Article 12), the second, from 13 to 18 years old (Article 15). These two periods define the person – the child – as a minor.

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<sup>8</sup> Visa Kurki, "Active but Not Independent: The Legal Personhood of Children," *Griffith Law Review* 30, no. 3 (2021): 395–412, <https://doi.org/10.1080/10383441.2021.1996881>.

<sup>9</sup> The Civil Code of Ukraine, Vidomosti Verkhovnoi Rady Ukrainy 2003, No. 40–44, item 356, as amended.

<sup>10</sup> Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny (Journal of Laws 1964 no. 16, item 93) [Act of 23 April 1964 – The Civil Code].

Minors who have reached the age of 13 have limited capacity for legal acts, whereas persons who have not reached the age of 13 do not have any capacity for legal acts.<sup>11</sup>

An analogous approach is applied in the Civil Code of Hungary.<sup>12</sup> Thus, Hungarian legislation divides childhood into two periods: from birth to the age of 14 and from 14 to 18. “Minor” is the term used to describe both periods. Minors shall have limited capacity to act if they have attained the age of 14 and do not lack the capacity to act (Section 2:11). Minors who have not attained the age of 14 shall have no capacity to act (Section 2:13).

In France, the legislature does not distinguish between different ages of children. The general concept is used – the minor – the individual of either sex who has not yet reached the age of 18 (Article 388 of the Civil Code of the French Republic).<sup>13</sup>

To sum up, each European country adopts its own approach to the issue at hand. At the same time, there is a similarity in the approach to the classification of children’s age in terms of legal capacity among European countries.

In contrast, Brazilian lawmakers have taken a rather different approach. Article 2 of the Statute of the Child and Adolescent<sup>14</sup> defines a child as a person who has not yet reached the age of 12 and an adolescent as a person between the ages of 12 and 18.

Duty is a separate legal category closely related to the category of rights. Henry T. Terry considered duty as the direct description of conduct commanded or forbidden. Duties therefore are the primary legal entities.<sup>15</sup> A legal duty is a legal condition of a person that commands or prohibits a certain action. The act can be called the content of the duty; it is what must be described when defining a specific duty. Duty is a condition, merely as a result of law.

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<sup>11</sup> Elżbieta Szczot, “‘Person’ in the Polish Family and Guardianship Code,” *Philosophy and Canon Law* 7, no. 2 (2021): 1, <https://doi.org/10.31261/PaCL.2021.07.2.06>.

<sup>12</sup> Act V of 2013 on the Civil Code of Hungary (as in force on September 1, 2023).

<sup>13</sup> Code civil des Français, accessed July 7, 2025, [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006070721/](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/).

<sup>14</sup> Brazil: Statute of the Child and Adolescent, Law n° 8.069, July 13, 1990, accessed July 7, 2025, <https://www.refworld.org/legal/legislation/natlegbod/1990/en/74276>.

<sup>15</sup> Henry T. Terry, “Legal Duties and Rights,” *The Yale Law Journal* 12, no. 4 (1903): 185–212, <https://doi.org/10.2307/781938>.

Jaap Hage defines duties as a particular kind of relation between agents and action types. Every duty has a duty-holder, and this duty-holder is an agent. An agent is an entity that can perform acts. Duties come in two variants: duties to do and duties not to do (duties to refrain).

Duties also come in two other variants, which are distinct from the duties to do and to refrain: duties to do something and duties to do something in a particular way. Duties always refer to action types or “actions.” Action types must be distinguished from act tokens, or “acts.” Acts are concrete events, linked to a particular place and time, that have actually taken place. Most duties are the result of rule-application; they are attached by some rule to an existing fact situation.<sup>16</sup>

There is no common practice of discussing children's duties. However, they have certain duties, and even more so in times of armed conflict. Children's duties have their own specificity, just as with children's rights, namely the age of the children. An obligatory condition for their formation is a collective form of implementation, which requires a combination of efforts of several actors (legal representatives, representatives of public-administration entities, etc.).

### 3. The Historical Roots of Formulating Children's Rights During Armed Conflict

Prior to the twentieth century, a child was not recognized as a person at all. In colonial times, children were considered the property of their parents. Children as property had no independent rights, and parents had the final say in the supervision, discipline, custody and control of their children. Accordingly, the state did not interfere in family life.<sup>17</sup>

It is not novel to suggest that the documents that began and developed the liberal rights tradition were products of particular historical and social contexts, and thus in many ways reflect particular bargains reached by given individual rulers and those over whom they held power.<sup>18</sup> Children's rights

<sup>16</sup> Jaap Hage, “Duties, Obligations and Rights,” 2021, accessed May 14, 2025, [https://www.academia.edu/59920943/Duties\\_Obligations\\_and\\_Rights](https://www.academia.edu/59920943/Duties_Obligations_and_Rights).

<sup>17</sup> Karen M. Staller, “Children's Rights, Family Rights: Whose Human Rights?” *International Review of Qualitative Research* 4, no. 2 (2011): 175, <https://doi.org/10.1525/irqr.2011.4.2.171>.

<sup>18</sup> Jean Thomas, “Our Rights But Whose Duties? Reconceptualizing Rights in the Era of Globalization,” in *Boundaries of State, Boundaries of Rights: Human Rights, Private Actors, and*

are no exception. The historical context that triggered the consolidation of children's rights at the international level is expressed by the First and Second World Wars.

World War I was a shocking experience behind the front lines, the vulnerability of the civilian population was dramatically exposed, as women and children became actual as well as symbolic victims of the war (the evidence of starving children throughout Europe, etc.). World War II exposed a landscape of even greater destruction and horror in which children died in millions – the direct targets of belligerents and the subject of inhuman “scientific” experiments, as well as collateral damage. Wars of the twentieth century had changed. The direct targeting of civilian populations became a more “normal” part of twentieth-century warfare, obscuring earlier distinctions between military and civilian arenas. Children had become more explicitly victimized.

A major shift in thinking occurred during the progressive era (roughly 1880–1914).<sup>19</sup> Among the social factors that strongly influenced the final product, three deserve some attention: (1) the role of NGOs, (2) the emergence of Sweden as an international influence in matters of civilian relief and assistance, and (3) the role of women<sup>20</sup> (Ellen Key, a Swedish intellectual, an author of the book *The Century of the Child*, fueled the process of the social inclusion of children and the full membership of boys and girls in the human structure;<sup>21</sup> Eglantyne Jebb, the founder of the Worldwide Save the Children Alliance, drafted the Geneva Declaration of the Rights of the Child). No wonder that the role of women was of great importance for the formation of a child as a person, because it is inherent in nature that a woman gives life and lays the foundations for every child.

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*Positive Obligations*, eds. Anat Scolnicov and Tsvi Kahana (Cambridge: Cambridge University Press, 2016), 3, <https://ssrn.com/abstract=2881454>.

<sup>19</sup> Staller. “Children’s Rights, Family Rights,” 174–75.

<sup>20</sup> Paula S. Fass, “A Historical Context for the United Nations Convention on the Rights of the Child,” *The Annals of the American Academy of Political and Social Science* 633, no. 1 (2011): 23, <https://doi.org/10.1177/0002716210382388>.

<sup>21</sup> Elin Eriksen Ødegaard and Jorunn Spord Borgen, eds., *Childhood Cultures in Transformation: 30 Years of the UN Convention on the Rights of the Child in Action Towards Sustainability* (Leiden: Brill, 2021), 14, <https://www.jstor.org/stable/10.1163/j.ctv1sr6k8f>.

In a world of adults, children could not claim their rights on their own. Since the ranks of childhood are continuously depleted by entry into adult life, no “children’s movement” on the model of the women’s movement or of civil rights movements can be envisaged.<sup>22</sup>

The main ideas that prevailed in the twentieth century are that children are people; they have the right to pursue individual interests as they see fit, to have their claims considered fairly, and to have their best interests assessed in terms of pragmatic consequences.<sup>23</sup> By giving children individual rights, we indicate awareness of children’s unique experiences, capabilities, and vulnerabilities as a group that needs protection.<sup>24</sup> Children are persons and the law should recognize that fact, although it will take some doing. And adults have made efforts.

#### 4. Legal Framework of Children’s Rights During Armed Conflict

The legal framework for the protection of children’s rights both in peacetime and during armed conflict began to develop. The overall regulation of children’s rights is performed at the international and regional levels. The international level:

- (I) the Geneva Declaration on the Rights of the Child (1924);<sup>25</sup>
- (II) the Universal Declaration of Human Rights (1948);<sup>26</sup>
- (III) the Declaration of the Rights of the Child (1959);<sup>27</sup>
- (IV) the Convention on the Rights of the Child (1989).<sup>28</sup>

The regional level, as exemplified by Europe, is covered by acts such as the Treaty of Lisbon,<sup>29</sup> the Charter of Fundamental Rights of the European

<sup>22</sup> Onora O’Neill, “Children’s Rights and Children’s Lives,” *Ethics* 98, no. 3 (1988): 462, <https://doi.org/10.1093/lawfam/6.1.24>.

<sup>23</sup> Henry H. Foster, Jr., and Doris Jonas Freed, “A Bill of Rights for Children,” *Family Law Quarterly* 6, no. 4 (1972): 343–75, <https://www.jstor.org/stable/25739035>.

<sup>24</sup> Ødegaard and Borgen, eds., *Childhood Cultures in Transformation*, 18.

<sup>25</sup> Geneva Declaration on the Rights of the Child adopted on 26 September 1924.

<sup>26</sup> Universal Declaration of Human Rights adopted on 10 December 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

<sup>27</sup> Declaration of the Rights of the Child adopted on 20 November 1959, G.A. Res. 1386 (XIV).

<sup>28</sup> Convention on the Rights of the Child adopted on 20 November 1989, G.A. Res. 44/25.

<sup>29</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007 (OJ C306, 17 December 2007).

Union,<sup>30</sup> the European Union Strategy on the Rights of the Child,<sup>31</sup> and so on.

The Convention on the Rights of the Child (1989) is undoubtedly the pivotal international instrument whose provisions have served as the basis for the development of both regional and national legislation in the field of children's rights, which groups all the rights of children. Since the adoption of the Convention on the Rights of the Child by the United Nations General Assembly in 1989, it has been heralded as a major breakthrough in children's rights, a remarkable achievement in international law, the most widely ratified human rights treaty in history, and the single most comprehensive statement of children's rights ever written. The Convention on the Rights of the Child marked a shift in "attitude towards children and childhood" by acknowledging that "children should be recognized as social actors" and as "participants in society."<sup>32</sup>

The Convention on the Rights of the Child can be summarized as the three P's – Provisions, Protection and Participation. Children's rights can be grouped into the next way:

- (1) The Right to Survival – the right to life, the highest attainable standard of health and nutrition and adequate standard of living, the right to a name and a nationality.
- (2) The Right to Protection – freedom from all forms of exploitation, abuse, inhuman or degrading treatment, and neglect, including the right to special protection in situations of emergency and armed conflicts.
- (3) The Right to Development – the right to education, support for early childhood development and care, social security, the right to leisure and recreation, and cultural activities.

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<sup>30</sup> EU(2012) Charter of Fundamental Rights of the European Union, 2012/C 326/02, October 26, 2012, [https://eur-lex.europa.eu/eli/treaty/char\\_2012/oj/eng](https://eur-lex.europa.eu/eli/treaty/char_2012/oj/eng).

<sup>31</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Strategy on the Rights of the Child, COM/2021/142 final, March 24, 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52021DC0142>.

<sup>32</sup> Staller, "Children's Rights, Family Rights," 176–77.

- (4) The Right to Participation – respect for the views of the child, freedom of expression, access to appropriate information and freedom of thought, conscience and religion.<sup>33</sup>

The majority of countries have adapted their legislation to the new rights of the child provided for by the Convention, thereby greatly improving the legal status of children.<sup>34</sup> The emphasis in its legal interpretation is on children, whose position in society has undergone significant changes over the past decade, namely: from children as objects of rights to children as subjects of rights, and then as active bearers of rights.<sup>35</sup>

All of the above rights of children exist both in peacetime and during armed conflict. Obviously, during an armed conflict, ensuring all of these rights becomes more difficult, and sometimes impossible. During armed conflict, additional risks and dangers to the life and health of children arise. The protection of children in armed conflict was one of the earliest concerns of the international law on the rights of the child; the standard of protection was, however, minimal.<sup>36</sup> All norms related to the rights of children during armed conflict are based on the basic principle that children are entitled to special protection.

For this reason, apart from the above-mentioned international legal acts, the international community has adopted a number of norms that relate specifically to the rights of the child during armed conflict, namely:

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<sup>33</sup> Abhay Vikram Singh, "Theory of Human Rights in Perspectives to Child Rights," *The Indian Journal of Political Science* 73, no. 2 (2012): 372–73, <https://www.jstor.org/stable/41856598>.

<sup>34</sup> Olga Cvejić Jančić, "Rights of the Child in a Changing World," in *The Rights of the Child in a Changing World*, ed. Olga Cvejić Jančić (Cham: Springer, 2016), 1–36, [https://doi.org/10.1007/978-3-319-23189-1\\_1](https://doi.org/10.1007/978-3-319-23189-1_1); Rifkah Anniza Rahman et al., "Ensuring Child Protection in Armed Conflict: An International Legal Perspective Under SDG 16," *Journal of Lifestyle and SDGs Review* 5, no. 3 (2025):e04820, <https://doi.org/10.47172/2965-730X.SDGsReview.v5.n03.pe04820>.

<sup>35</sup> Jana Borská, Jitka Vacková, and Mark A. Small, "United Nations Convention on the Rights of the Child and Its Implementation in the 21st Century," *Kontakt* 18, no. 2 (2016): e96–e102, <https://doi.org/10.1016/j.kontakt.2016.05.005>.

<sup>36</sup> Geraldine Van Bueren, "The International Legal Protection of Children in Armed Conflicts," *The International and Comparative Law Quarterly* 43, no. 4 (1994): 811–12, <https://doi.org/10.1093/iclqaj/43.4.809>.

- (1) The Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949)<sup>37</sup> (formulated the basic principles for protecting children's rights during armed conflict and proposed possible mechanisms for their protection in general terms);
- (2) The Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974)<sup>38</sup> (contains purely declarative provisions, without providing for any mechanisms to protect children during armed conflict, states that children are the most vulnerable category of the civilian population, and that the protection of children is a fundamental obligation of the international community);
- (3) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (1977)<sup>39</sup> (hereinafter – AP I) (the document is more detailed in terms of possible mechanisms for protecting children during armed conflict, for example, evacuation mechanisms);
- (4) The Convention on the Rights of the Child (1989) (separate articles relating specifically to the period of armed conflict: Articles 22, 38);
- (5) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)<sup>40</sup> (arrangements to protect children from being directly involved in armed conflict);
- (6) Rome Statute of the International Criminal Court (2002)<sup>41</sup> (provisions establishing international criminal responsibility for violations of children's rights during armed conflicts);

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<sup>37</sup> Geneva Convention relative to the Protection of Civilian Persons in Time of War adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War.

<sup>38</sup> Declaration on the Protection of Women and Children in Emergency and Armed Conflict adopted on 14 December 1974, G.A. Resolution 3318 (XXIX).

<sup>39</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1) adopted on 8 June 1977 by Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts.

<sup>40</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict adopted on 25 May 2000, G.A. Res. A/RES/54/263.

<sup>41</sup> Rome Statute of the International Criminal Court (last amended 2010), UN General Assembly, July 17, 1998, <https://www.refworld.org/legal/constinstr/unga/1998/en/64553>.

- (7) The Safe Schools Declaration (2015)<sup>42</sup> (ensuring children's right to education and a secure environment during armed conflict);
- (8) Reykjavík Declaration (Appendix II. Declaration on the situation of the children of Ukraine; 2023).<sup>43</sup>

The United Nation Security Council Resolutions should be highlighted as a separate group, as they outline clusters of issues and create monitoring mechanisms to resolve them: Resolution 1261 (1999)<sup>44</sup> – first to recognize the involvement of children as direct participants in armed conflict;<sup>45</sup> Resolution 1379 (2001)<sup>46</sup> – focused on the negative impact of armed conflicts on children and the urgent need for states engaged in armed conflict to ensure that children's basic needs are met; Resolution 1612 (2005)<sup>47</sup> – created the Monitoring and Reporting Mechanism and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, etc.

However, it should be remembered that both the Geneva Conventions and the Convention on the Rights of the Child were written and adopted in the 50s and 80s of the twentieth century. During this period of time, humanity has developed significantly in all spheres of life, including in the field of military equipment and weapons. As a result, modern methods of warfare are significantly different from those of the past. The Ukrainian experience has shown that modern armed conflicts can have territories of possible combat operations, territories of active combat operations, occupied territories, and at the same time attack all parts of the country (even if it is far from the front line). Hence, the provisions of the Geneva

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<sup>42</sup> The Safe Schools Declaration created on 13 July 2015.

<sup>43</sup> Reykjavík Declaration adopted on 16–17 May 2023, 4th Summit of Heads of State and Government of the Council of Europe.

<sup>44</sup> Resolution 1261 (1999) adopted by the Security Council at its 4037th meeting, on 25 August 1999.

<sup>45</sup> Manuchehr Tavassoli-Naini, "Education Right of Children During War and Armed Conflicts," *Procedia – Social and Behavioral Sciences* 15 (2011): 302–5, <https://doi.org/10.1016/j.sbspro.2011.03.090>.

<sup>46</sup> Resolution 1379 (2001) adopted by the Security Council at its 4423rd meeting, on 20 November 2001.

<sup>47</sup> Resolution 1612 (2005) adopted by the Security Council at its 5235th meeting, on 26 July 2005.

Conventions and the Convention on the Rights of the Child are not always fully effective today.<sup>48</sup>

The characteristic feature of most international legal acts is that they establish general principles and rules for legal relations without specifying mechanisms for their implementation. Hence, national mechanisms of a permanent nature with the mandate and capacity to monitor, promote and protect the full range of children's rights, regardless of whether they are directly related to the conflict, are therefore crucial.<sup>49</sup>

## 5. Duties During Armed Conflict

Advances in weapons and military equipment do not stand still. Each armed conflict becomes a platform for the development of new types of weapons and military equipment. For instance, during the First World War, gas was used, and during the Second World War, various types of bombs, including nuclear ones, were used.<sup>50</sup> The armed conflicts of the twenty-first century are characterized by the use of ballistic missiles and unmanned aerial vehicles of various types. Mobility, survivability, rate of fire, combat power, and applicability can be defined as the basic features of the latest weapons and military equipment that meet the principles of modern warfare.<sup>51</sup>

Missiles and rockets revolutionized warfare, allowing armed forces to fight from greater distances. Weapons development has led to the emergence of non-contact operations, when any part of the country can be attacked at any time. The Ukrainian experience can be used as an example. The Ministry of Communities and Territories Development of Ukraine

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<sup>48</sup> Tara M. Collins and Laura H.V. Wright, "The Challenges for Children's Rights in International Child Protection: Opportunities for Transformation," *World Development* 159 (2022): 106032, <https://doi.org/10.1016/j.worlddev.2022.106032>.

<sup>49</sup> Ann Linnarsson and Vanessa Sedletzki, "Independent Human Rights Institutions for Children: An Actor for the Protection of Children's Rights During Armed Conflict?," *Human Rights Quarterly* 36, no. 2 (2014): 447–72, <https://doi.org/10.1353/hrq.2014.0023>.

<sup>50</sup> Gorda Gibradze, Alika Guchua, and Giga Gogua, "The Role of Modern Technologies in Military Conflicts of the 21st Century," *Ukrainian Policymaker* 11 (2022): 26–34, <https://doi.org/10.29202/up/11/4>.

<sup>51</sup> Oleksandr Krakhmalyov et al., "Key Aspects of the Production of Modern Armaments and Military Equipment Systems," *Novum Jus* 17, no. 1 (2023): 119, <https://doi.org/10.14718/NovumJus.2023.17.1.5>.

issued an order categorizing the country's territories.<sup>52</sup> Under this order, the following categories of territories are defined: I. Territories where hostilities are (were) conducted: (1) territories of possible hostilities; (2) territories of active hostilities; (3) territories of active hostilities where state electronic information resources operate. II. Temporarily occupied territories of Ukraine by the Russian Federation. The legal regime of martial law is in effect throughout Ukraine starting from February 24, 2022.<sup>53</sup>

Protection of children's rights and their implementation become difficult, and sometimes impossible, due to these characteristics of contemporary armed conflicts. The period of armed conflict produces additional rules of behaviour aimed at preserving the life and health of children during armed conflict. These rules of conduct form new duties, which are characterized by a collective nature, as they arise for several groups of subjects. These duties arise, first and foremost, for the legal representatives of children and for representatives of institutions where children without legal representatives are placed. These duties are also imposed on the children themselves. However, in fulfilling each duty, it is necessary to take into account the age gradation of children, because an infant, for example, cannot understand what is being said at all due to his or her age.<sup>54</sup>

Using the example of the Ukrainian case study, an overview of possible duties for both adults and children (taking into account the age of the child) is proposed.

I. The duty to complete a full general secondary education. Obtaining a complete general secondary education in Ukraine<sup>55</sup> is a duty under the

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<sup>52</sup> Order of the Ministry of Communities and Territories Development of Ukraine List of territories where hostilities are being (were) conducted or temporarily occupied by the Russian Federation of 28 February 2025, No. 376.

<sup>53</sup> Decree of the President of Ukraine on the introduction of martial law in Ukraine of 24 February 2022 No. 64/2022, Official Bulletin of Ukraine 2022, № 46, item 2497, as amended.

<sup>54</sup> Carmit Katz, Maayan Jacobson, and Ayelet Noam Rosenthal, "Reclaiming Their Rights: A Comprehensive Framework for the Reintegration of Children Abducted and Held Hostage During Armed Conflict and Political Violence," *Children and Youth Services Review* 162 (2024): 107696, <https://doi.org/10.1016/j.childyouth.2024.107696>.

<sup>55</sup> Complete general secondary education in Ukraine is education from grades 1 to 12: primary education is completed within four years; basic secondary education is completed within five years; specialized secondary education is completed within three years.

Constitution of Ukraine<sup>56</sup> (Article 53) (1996). As per Ukrainian law, children living in Ukraine have to go to school at the age of 6 or 7. This duty does not stop during armed conflict. In this regard, Ukraine has introduced alternatives to full-time education, namely “blended learning” – a way of organizing education for learners, which provides for the organization of pupils’ education by combining full-time (daytime) and distance learning in a certain order (week after week, day after day, etc.), as determined by the schedule of classes in the educational establishment.

The implementation of this duty is assigned to legal representatives who are obliged to take measures to enroll the child in school (submitting an application and the necessary documents to the school) and ensure that the child subsequently attends school in accordance with the established daily schedule. Another subject of this duty is the school institution that provides the educational process. The realization of this duty is also imposed directly on children (Article 53 of the Constitution of Ukraine).

If a child has gone abroad and has not completed full general secondary education in Ukraine, he or she must complete it through distance learning. The peculiarities of its organization are also defined in the Regulations on the Distance Form of Complete General Secondary Education and the Methodological Recommendations on Certain Issues of Education in General Secondary Education Institutions under Martial Law in Ukraine (2023).<sup>57</sup>

II. The duty of children granted temporary protection in the European Union to receive education. Ukrainian citizens, including children, have been granted temporary protection status, which was introduced by Council Implementing Decision (EU) establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, with the effect of introducing temporary protection (2022).<sup>58</sup> The specific feature of this mechanism is that it is temporary

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<sup>56</sup> The Constitution of Ukraine, Vidomosti Verkhovnoi Rady Ukrainy 1996, № 30, item 144, as amended.

<sup>57</sup> On approval of methodological recommendations on certain issues of education in general secondary education institutions during martial law in Ukraine Order of the Ministry of Education and Science of Ukraine of 15 May 2023 № 563.

<sup>58</sup> Directive EC (2001) of the European Council on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting

in nature and is only provided for the period during which the circumstances causing the mass influx exist. This is the European Union's first experience with applying this mechanism. The European Union countries have adopted national laws throughout March 2022 and continue to adopt subordinate legislation, so the practice of application is still being developed. This also applies to children.

The European Union countries hosting the highest number of beneficiaries of temporary protection from Ukraine are Germany (1,140,705 people; 27.2% of the EU total), Poland (983,880; 23.4%), and Czechia (379,370; 9.0%). Children accounted for almost one-third (32.0%).<sup>59</sup>

Around half of the Member States have compulsory schooling. For example, States with a constitutional duty for children to complete their school education: Czech Republic (school attendance shall be obligatory for the period specified by law – Article 33); Hungary (Hungary shall ensure this right by extending and generalizing public education, by providing free and compulsory primary education – Article X); Montenegro (elementary education shall be obligatory and free of charge – Article 75); Poland (education to 18 years of age shall be compulsory – Article 70); Spain (elementary education is compulsory and free – Article 27), etc.

Consequently, Ukrainian school-age children face a dual duty to obtain school education. Children must continue their Ukrainian education by distance learning and start attending appropriate educational institutions in their host countries. According to the European Commission's 2024 report, Ukrainian children face the following problems: double educational intensity, language barriers, and capacity problems in host systems.<sup>60</sup>

The subjects of this duty will be, first of all, the child's legal representatives, who are responsible for taking registration measures to enable the

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a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L212, 20 July 2001).

<sup>59</sup> "Temporary Protection for 4.2 Million People in October," Eurostat, December 6, 2024, accessed May 14, 2025, <https://ec.europa.eu/eurostat/en/web/products-eurostat-news/w/ddn-20241206-2>.

<sup>60</sup> "Ukrainian Children in EU Education Systems – What Is the State of Play?," European Commission, July 29, 2024, accessed May 14, 2025, <https://school-education.ec.europa.eu/en/discover/news/ukrainian-children-eu-education-systems-what-state-play>.

child to start studying abroad, and the child themselves, who is to receive education.

III. The duty to go to the shelter if the “Air Alert” signal sounds while the child is in an educational institution. Ukrainian experience shows that the air raid alarm can sound at any time of the day. According to the Air Alert Algorithm, all children in an educational institution, regardless of what they are doing (attending class/eating/recess), must immediately go to a shelter assigned to each school. In the conditions of martial law in Ukraine and in order to ensure the safety of participants in the educational process in the territory controlled by the state authorities of Ukraine, general secondary education in full-time (daytime) form, including the use of mixed learning, is organized if there are objects of the fund of civil defense facilities suitable for sheltering participants in the educational process and to which they are provided with unimpeded access in the educational institution or at a distance of no more than 500 meters from it.

Fulfillment of this duty is primarily the responsibility of representatives of the educational institution where the child is receiving education and stays in accordance with the daily schedule. In addition, this duty also applies to each child individually, who must clearly follow the instructions of adults in such a situation.

IV. The duty to evacuate. The mechanism of evacuation during armed conflict is prevalent throughout humankind’s history. The most striking examples of children’s evacuation during armed conflict are as follows:

- (1) The Spanish Civil War of 1936–1939, during which children were repeatedly evacuated both within Spain and beyond its borders (France, Belgium, Mexico, Switzerland, and Denmark together took in almost 29,000 children, while Great Britain took in 4,000 children). However, the evacuations were carried out in a chaotic manner, so it is impossible to determine the exact number of children whose parents were killed, or those who were placed in “children’s colonies” or sent to third countries and never saw their families again.<sup>61</sup>
- (2) Evacuation of children during the Second World War in Great Britain. In 1939, Operation Pied Piper was carried out, the aim of which was to

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<sup>61</sup> Maggie Brookes, “The Spanish Civil War: A War against Children,” The Historical Writers Association, June 5, 2022, accessed August 15, 2025, <https://historiamag.com/the-spanish-civil-war-against-children/>.

evacuate children *en masse* to safer areas of the country. Children were evacuated without adult supervision (in the summer of 1939, more than 3 million children were evacuated from London and other cities). Most parents remained behind to work and assist in the war effort. The evacuation period officially ended in March 1946.<sup>62</sup>

- (3) Evacuation of children during the armed conflict in Rwanda in 1994, which was unique in that it was organized by the international community. On June 27, 1994, the International Committee of the Red Cross and the United Nations Children's Fund issued a Joint Statement on the evacuation of unaccompanied children from Rwanda (Joint Statement).<sup>63</sup> It is interesting to note that the Joint Statement emphasized that such children should not be referred to as "orphans," because orphan status always requires careful verification. One of the tasks outlined in the Joint Statement was to actively search for the relatives of the children who remained behind, with the aim of reuniting separated children with their family members after the end of the armed conflict. For this reason, a mandatory registration mechanism for children was established, enabling their tracking, informing interested parties, and facilitating family reunification.

The common feature of all evacuations was that children were evacuated without their legal representatives. For many children, this type of evacuation without their relatives was a time of great upheaval and had negative consequences for their health (researchers on this issue claim that there is a phenomenon called "evacuation neurosis," which indicates that children develop neurological diseases after being separated from their families).<sup>64</sup>

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<sup>62</sup> Grace Huxford, "Child Evacuees in the Second World War: Operation Pied Piper at 80," Gov.uk, August 30, 2019, accessed August 15, 2025, <https://history.blog.gov.uk/2019/08/30/child-evacuees-in-the-second-world-war-operation-pied-piper-at-80/>.

<sup>63</sup> International Committee of the Red Cross (ICRC); United Nations Children's Fund (UNICEF); International Federation of the Red Cross and Red Crescent Societies (International Federation), Joint Statement on the Evacuation of Unaccompanied Children from Rwanda, UN High Commissioner for Refugees (UNHCR), June 27, 1994, <https://www.refworld.org/policy/declas/unhcr/1994/en/29395>.

<sup>64</sup> Everett M. Ressler, "Evacuation of Children from Conflict Areas: Considerations and Guidelines," Inter-Agency, December 1992, <https://www.refworld.org/policy/legalguidance/ia/1992/en/61735>.

Ukraine also uses a mechanism for evacuating children, but with certain modifications – the compulsory evacuation of children by force (forced evacuation). In accordance with the Procedure for Evacuation in the Event of a Threat or Emergency, approved by a Resolution of the Cabinet of Ministers of Ukraine (2023),<sup>65</sup> in order to protect children in the area of hostilities and armed conflicts, during martial law, regional military administrations, in consultation with the military command authorities in the relevant territory<sup>66</sup> and the Coordination Headquarters for Evacuation Measures and Effective Response to Mass Displacement of the Population, established by the Cabinet of Ministers of Ukraine, may adopt a decision on the forced evacuation of children with their parents, persons *in loco parentis*, or other legal representatives from a particular settlement in the area where hostilities are taking place. The decision of the regional military administration is made in the form of an order, which must contain the following elements: settlements from which the specified type of evacuation will be carried out; terms of evacuation; assembly and reception points for evacuation; state bodies involved in such evacuation.

Thus, if the regional military administration issues an order to conduct a forced evacuation, the duty to evacuate the specified settlement arises. At the same time, this duty is collective in its form of realization, as it arises for several groups of subjects. In particular, public administration entities that ensure its organization and control, legal representatives of the child, and the children themselves. But it is important to clarify the age at which children have this duty. According to the Law of Ukraine “On Freedom of Movement and Free Choice of Residence in Ukraine,”<sup>67</sup> persons who have reached the age of 14 have the right to freely choose their place of residence. However, this right may be restricted for the period of martial law

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<sup>65</sup> Resolution of the Cabinet of Ministers of Ukraine Procedure for Evacuation in the Event of a Threat or Emergency of 30 October 2013 № 841, Official Bulletin of Ukraine 2013, № 92, item 3386, as amended.

<sup>66</sup> Military administrations are temporary state bodies established by the decision of the President of Ukraine during martial law to ensure, together with the military command, the introduction and implementation of measures of the legal regime of martial law, defense, civil protection, public safety and order, protection of critical infrastructure, protection of the rights, freedoms and legitimate interests of citizens.

<sup>67</sup> Law of Ukraine on Freedom of Movement and Free Choice of Residence in Ukraine of 2003, Vidomosti Verkhovnoi Rady Ukrainy 2014, № 15, item 232, as amended.

(Article 64 of the Constitution of Ukraine). Therefore, the duty to evacuate under the forced procedure also applies directly to children aged 14 to 18. In the case of children under the age of 14, the duty to evacuate remains exclusively the responsibility of the legal representatives of each child.

V. The duty to undergo a certain procedure after returning from deportation. The deportation of children is one of the issues that arises during an armed conflict. The Russian-Ukrainian armed conflict is no exception. Representatives of the Ukrainian authorities have stated that about 20,000 children have been deported/forcibly displaced since February 2022.<sup>68</sup> At the level of international legal regulation, there are no mechanisms for the return of deported/forcibly displaced children. As a result, the Government of Ukraine has defined an algorithm of actions to identify and return children deported or forcibly displaced as a result of the armed aggression of the Russian Federation against Ukraine.<sup>69</sup>

The above algorithm determines that a child, who is returned from deportation or forced displacement, should be taken to the Child Protection Center, where an interview procedure and an assessment of the child's situation and needs will be conducted. The realization of this duty is entrusted to public administration entities that ensure the search for and return of children.<sup>70</sup> The second subject of this duty is the child's legal representatives, who must accompany the child at all times. The third subject is the child himself or herself, as they are the main participant in such an interview procedure.

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<sup>68</sup> "The Scale of the Tragedy," Bring Kids Back UA, accessed May 14, 2025, <https://www.bring-kidsback.org.ua/>.

<sup>69</sup> Resolution of the Cabinet of Ministers of Ukraine Procedure for the identification, return, support and reintegration of children deported or forcibly displaced as a result of the armed aggression of the Russian Federation against Ukraine of 14 May 2024 № 551, Official Bulletin of Ukraine 2024, № 47, item 2928, as amended.

<sup>70</sup> State authorities and local self-government bodies, the Ministry of Foreign Affairs (in terms of finding and engaging new intermediary countries to negotiate the return of children), as well as the Ukrainian Parliament Commissioner for Human Rights, the Joint Center for the Coordination of the Search and Release of Prisoners of War and Illegally Deprived Persons as a Result of Aggression against Ukraine under the Security Service of Ukraine, the Ministry of Social Policy, the State Service for Children, foreign non-governmental organizations.

## 6. Conclusion

Summarizing the above, the following can be stated. The legal category of “children’s rights” has been the property of humankind since the beginning of the twentieth century and continues to develop further. Unfortunately, humanity cannot exist without armed conflicts. Therefore, the protection of children’s rights during armed conflict remains relevant. The study found that the Convention on the Rights of the Child enshrines a list of children’s rights for both peacetime and armed conflict. During armed conflict, there are obviously great risks to children’s lives and health. The realization of children’s rights is not always possible to the fullest extent. The international community has also adopted international legal acts concerning the rights of children during armed conflict.

In times of armed conflict, there are heightened dangers to the life and health of all children living in the territory of the state. Consequently, the period of armed conflict generates new rules of behavior for children aimed at the protection of their lives and health. These rules of behavior form new duties that are collective in nature. Their fulfillment is entrusted to several categories of actors: legal representatives of children, representatives of educational institutions, public administration, and children themselves. Children’s ages must be taken into account, as these determine the scope of a child’s legal capacity.

The Ukrainian case study has shown that, along with rights during armed conflict, children also have duties. In particular, they have the duties to evacuate, to complete general secondary education (both in Ukraine and abroad), to follow a certain procedure during the “Air Alert” signal, to undergo the procedure after returning from deportation, etc.

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