

Effects of Non-Recognition of Children as Citizens and of Exclusion from the International System upon their Human Rights

1. Introduction

Even though international affairs limits citizens' participation in its formulation, it has developed a human rights doctrine that recognizes civil and political rights to the common citizen. International human rights legislation, developed since the adoption of the Universal Declaration of Human Rights in 1948, protects individual citizens. An incipient "recognition of democratic rights" has emerged in the international system. The debate on democratizing the international system extends also to other aspects, such as democratizing the UN Security Council, establishing an elected UN assembly or providing real powers to the democratically-elected European Parliament. However, children rights and their participation in the international system have only marginally been recognized as part of this debate, even though it has a profound impact upon their welfare. A system of international children rights institutions that includes conventions and international organs has been established since 1989, but it lacks efficiency in terms of enforcement.

As the most vulnerable sector of the world population, children suffer the impact of international policy decisions in a very direct manner. Despite the effect of the foreign policies of states upon their welfare, children are not afforded any voice in their formulation. There is an inherent contradiction between democratic politics and the denial of voice or participation to this sector. Thus, the question to formulate is to what extent does the marginalization of children from international policy formulation aggravates their human rights and democratic participation.

The problem is associated to internal issues such as the lack of recognition of children civil and political rights in most states and the consequent reluctance of governments to recognize and implement these rights internationally. This reluctance to recognize civil rights to children, to afford them a voice in public decisions that might affect them and to guarantee them legal personality are based on arguments such as their "immaturity" (UNICEF, 2002b:3), "lack of understanding" of politics, and the danger of challenging the "authority" of institutions, such as the family (Flekkoy, 1991:50).

There is no denying that children need guidance and that their levels of maturity do not always allow them to make appropriate decisions. But even if this is recognized there is no ethical justification for denying them a voice or some kind of participation as citizens entitled to human rights that would allow them articulating their needs.

Despite the fact that the lack of enforcement of children rights can be a potential threat to international peace, the international community has not responded adequately to the issue. Overall human rights violations have been identified as “precursor events to violent conflicts and military hostilities” (Jongman, 2001). Simultaneously “...gross human rights violations and large-scale humanitarian emergencies are a consequence of armed conflict.” (Jongman, 2001). Despite UNICEF’s call for children’s neutralization, they are still the largest victims of civil and international conflicts (Ressler, et al.:51-52). As millions of young people are being exposed to systematic and massive human rights violations, the potential for future conflict is being increased exponentially.

Table 1. Children affected by war 1986-1996 (UNICEF’s State of the World’s Children 1996)

Killed	2 million
Disabled	4.5 million
Left homeless	12 million
Orphaned	1 million
Psychologically traumatized	10 million

Children rights have been codified only recently in international agreements, even though ethical considerations would dictate that, taking into account their vulnerability, they should be given priority in international human rights legislation. (United Nations, 1990:3) The Convention on the Rights of the Child, the first major international convention on children rights, was only adopted in 1989.

Progress in solving children rights issues cannot be sustained as long as they are not given a voice in the decisions that affect them. The conceptual transformation involved in such a significant reform would confront resistance from a large sector of public opinion. However, a similar situation presented itself when women’s rights and the abolition of slavery were initially proposed.

Some states have taken the initiative in addressing children issues. Sweden, Denmark, Netherlands, Norway and Finland have adopted most international conventions protecting children and have legislated internally to protect children from any type of domestic abuse (Flekkoy, 1991:196-205). These states rank the high in children participation. Internationally, UNICEF has emerged as the main advocate for protecting children rights. Greater enforcement could strengthen the international children rights institutions

and would turn these into an international policy priority. Otherwise, the current situation of large-scale abuses against children rights will constitute a continuing threat to international peace.

2. Democratic and Human Rights Theory

If children continue to be excluded from political decisions and from civil participation, then the likelihood of strengthening the international protection of their rights will diminish. Contemporary democratic and human rights theory has progressively evolved to recognize human rights and equality of increasing sectors of the population. However, recognition of children rights is still limited. As an integral and essential sector of humankind it is ethically unacceptable to exclude children from some type of civic participation.

The resulting contradiction is that democratic and human rights theories have thus far being unable to provide children a legitimacy that could justify their participation, which is the only guarantee against their second-class status as citizens. In a majority of states children are denied equality before the law, full legal personality, recognition as first class-citizens, and political rights¹. The political and civil status resulting from this discontinuity necessarily generates subtle discrimination. As children have no institutional channels to articulate their concerns these are not taken into consideration by the political elites in policy formulation. As children are not given the possibility of expressing their concerns through any institutions or tribunals the possibilities of protecting their human rights are diminished.

Recognizing full political rights to children is universally recognized as unworkable; children, particularly the youngest, cannot acquire an understanding of politics. However, some kind of participation or voice in public and civic life potentially advances their rights and increases the possibility that their interests be taken into consideration by the political elites (Beetham, 1985:103).

This argument is based upon certain theoretical principles:

- 1) Children rights will only be respected when they are given a voice. Political systems, including “liberal democratic”, have the tendency to ignore those sectors that do not organize themselves or protect their rights (Cot, et.al, 1985:238), 2) A “democratic” system can only be legitimate and fully developed when it includes every sector of society. If democracy is a system of government that is defined by participation in

¹ In a majority of countries children are neither recognized a right to present a case in the justice system nor any type of participation in political processes.

public affairs, it cannot claim to be a developed system as long as it excludes a large sector of the population.

- 2) The exclusion of children creates an inherent contradiction within the democratic system.
- 3) Mobilization by NGOs and Inter-Governmental Organizations (IGOs) is necessary for advancing children rights. NGOs and IGOs are quintessential to the development of contemporary international democracy, as they amplify citizens' participation as well as small and medium states' participation in international affairs. (Seara, 1995:412-414) Their work in advancing human rights has contributed to democratize political systems as well as the international system. NGOs generate international pressure in favor of citizens both within internal political systems and in the international system; thereby democratizing political systems and becoming an integral part of international democracy itself.
- 4) Greater attention to children issues will strengthen world peace. Violence and abuse against children manifests itself in further violence in society. (Jongman, 2001)
- 5) From an ethical standpoint, children ought to become the priority in every society and in the international system. (Comité Internacional de la Cruz Roja, 2003c:2) Lack of voice for children in public and international affairs aggravates abuse, discrimination, exclusion and specific problems like abduction, abandonment, enslavement, and military recruitment as public opinion is unaware of the dimension of the crisis and does not pressure the political elites to solve thus issue.
- 6) As the most vulnerable sector of society, children are entitled to special protections both nationally and internationally².

Some international conventions recognize certain rights to children but not all states have legislated to follow through on these international compromises. While the universal character of rights and freedom is recognized³, there is a *de facto* exclusion of children from claiming some of these rights. Children confront limitations to their freedom and equality even in the most civically liberal states as their civil rights are only partially recognized and their political rights are non-existent.

While the international community recognizes the universal character of rights and freedoms, children are never guaranteed all the rights and freedoms set forth in international conventions⁴. It is universally assumed that, in their case, human rights recognition is limited. Children's life, liberty and security are the most precarious, even though

² Both the Declaration on the Rights of the Child (1959) and the Convention on the Rights of the Child (1989) make reference to the significance of providing special protection to children.

³ See Universal Declaration on Human Rights.

⁴ The Universal Declaration on Human Rights states that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind".

international conventions recognize these rights to every human being equally (Bellamy, 1999:1-3)⁵. As an example, only forty states (e.g. Sweden, Finland) have prohibited corporal punishment of children. The majority of states has not legislated against it despite the fact that torture or cruel, inhuman or degrading treatment are prohibited by international conventions⁶.

In its article 6 the Universal Declaration of Human Rights recognizes the universality of rights. However, children are denied full legal personality in a majority of states, contradicting the right of equal recognition before the law to all human beings⁷. No state enforces complete equality before the law for their children citizens. Children are the only citizens whose equality, while theoretically proclaimed through international conventions is universally unenforced, even by those states that are more advanced implementing civil rights. The right to an effective remedy by competent tribunals and to fair and public hearings is not recognized to children or is severely limited in most states⁸.

The international community accepted at least a moral commitment to these principles when it drafted and ratified the Universal Declaration of Human Rights and a legal commitment when its members signed other international human rights conventions such as the International Covenant on Civil and Political Rights. Nowhere in these instruments are children explicitly or implicitly excluded from exercising these rights. While the Convention on the Rights of the Child makes a significant contribution towards the recognition of children rights, it falls short on a few issues and does not go as far as recognizing full civil equality for children. The Convention on the Rights of the Child does not recognize the right of children to resort to the judicial system in order to obtain reparations for any grievance suffered. Denial of this right effectively prevents them from acquiring full citizens' rights and recognition as legal persons.

Human rights are universally recognized by state actors which are signatories to different international instruments. Albeit there are still different interpretations about human rights there is no questioning about their validity. The abolition of slavery, factory legislation, popular education, trade unionism, and women's rights provide evidence of how the concept of human rights has taken roots and become universally accepted (Claude, 1989:15). The prohibition of torture, slavery, genocide, and state terrorism, the multiple conventions that have been negotiated and signed, including the Charter of the United Nations with its commitment to human rights, and the international institutions that have been

⁵ Article 3 of the Universal Declaration states that "Everyone has the right to life, liberty and security of person."

⁶ See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. The Preamble of this Convention states that no one is to be subjected to torture.

⁷ Article 7 of the Universal Declaration of Human Rights.

⁸ These rights are recognized by articles 8 and 10 of the Universal Declaration of Human Rights.

established to protect human rights, such as the UN Human Rights Council or the Council of Europe, all point towards this universal acceptance of the idea of human rights.

However, children rights have been promoted only since the late 1980s. Even though most states signed the 1989 Convention on the Rights of the Child, many have neither legislated internally to adapt their laws to the Convention nor implemented its clauses. Human rights theory recognizes that human rights are not subjected to spatial or time considerations (Peces-Barba, 1993:17). Universalist theories recognize that they are inherent to every human being. They are accepted as part of human nature. Despite the widespread acceptance of this doctrine children are unjustifiably excluded from exercising certain rights, their rights partially recognized and marginally enforced. The result is a human rights situation inconsistent with proclaimed democratic and human rights theory.

3. The Impact of Politics upon Children

The recognition of children rights has been slow and difficult despite the imperative to tackle their particular needs. The concept of democracy as a government by citizens has evolved slowly and has not been fully developed. No state, however democratic, guarantees absolute equality or participation to all its citizens. Not all groups can influence politicians equally⁹. Within democratic systems attention is also given to groups which, because of their electoral weight, can alter the results of elections. Political elites and political parties, interested mainly in power and re-election, respond mostly to these influences. (Duverger, 1981:153)

Overwhelmingly, they tend to ignore children issues. They seldom address these issues. Almost no political party places children issues as a priority in its program. No government in history has ever claimed legitimacy based on the issue of the defense of children rights. Parties have presented themselves as defenders of the working class, of women's equality of the environment, of other groups or of ideals like liberty, ecology, peace or equality. But no party has ever presented itself as primarily a defender of children.

A majority of countries does not recognize political rights to minors. Only a few states, including Nicaragua, Austria, Argentina and some British dependencies have recognized political rights for citizens aged 16-17 (Asamblea Nacional de la República de Nicaragua. 1988:12). In Nicaragua, the first state to recognize political rights to 16-17 year-old citizens, this sector had a significant role in the overthrow of dictator Anastasio

⁹ For an explanation of oligarchic power over political parties and systems see Duverger, M. 1981. "La oligarquía de la dirección," in Blondel, J. et al. 1981. *El Gobierno: Estudios comparados*. Alianza Universidad, Madrid.

Somoza in 1979. Citizens this age potentially have an interest and understanding of politics as developed as 18 year-olds. This lack of recognition of political rights is one of the reasons why children rights are so overwhelmingly ignored. This sector of the population is denied a voice in all the decisions that affect it. Arguments are presented that children are neither mature nor prepared to take on certain responsibilities (UNICEF, 2002b:3). There is no denial that children need education and orientation and that their maturity levels are not elevated. At very young ages they would not be able to understand politics. However, some policies could potentially facilitate greater attention to children rights. Recognizing political rights to 16-17 year old citizens is one such policy. Establishing a children's ombudsman could be another policy that would focus greater attention to children rights from the political elite. If the children's ombudsman can articulate the concerns of children and protect their rights, then establishing such an institution would represent a significant step towards solving the invisibility of children rights. There is no ethical justification not to give children, at least 16-17 year-old ones, even a voice in the political decisions that affect them or to provide them an institutional means that allows them to denounce violations of their rights.

Recognizing their voice in national and international affairs is of particular importance given their social, economic, political and familiar vulnerability. (United Nations, 1990:1) Their status is one of the most urgent ethical problems faced by the international community as children are the main victims of wars and massive human rights violations. Despite this international emergency, children rights have not been urgently addressed. The fact that the International Convention on the Rights of the Child was drafted after all the main UN human rights conventions reflects how low children rights rank in the multilateral diplomatic priorities.

There certainly are some institutions that have promoted children rights. The main ones are the United Nations Children Fund (UNICEF), the Global Movement for Children and the UN Committee on the Rights of the Child. The recognition of their rights has certainly made some advances. (UNICEF, 2001a:1-30) But this recognition is still partial. On most children rights issues results are largely unaccomplished. International politics, upon which children have no influence, also has an impact on their rights.

4. Absence of Political Rights

Lack of Voice and Representation

Neither political systems nor the international human rights system recognize political rights to children. The international system is comparatively more advanced than national political systems with respect to children rights. The establishment of UNICEF

in 1946 was a significant step in developing children rights. UNICEF has not only fulfilled the function of providing emergency aid to children but also of protecting their rights. UNICEF researches every aspect of children rights. It has become the main lobbyist for children at both the national and the international level¹⁰.

The United Nations is the only organization that mildly gave a voice to children at the 2002 World Summit for Children¹¹. Though it was not a permanent voice, this event established a precedent. Some states, like Costa Rica, Denmark, Finland, New Zealand, Norway and Sweden have given a limited and indirect voice to children by establishing children's ombudsman institutions that articulate their rights on their behalf. (UNICEF, 1997:2-6) The UN Committee on Children Rights also monitors and lobbies for their rights.

Establishing a voice for children would not alter a political system nor challenge the parent's authority over children in any manner¹². In fact, 194 states, except Somalia and the United States, have already made a compromise to enforce children rights when they ratified the International Convention on the Rights of the Child. (UN High Commissioner for Human Rights, 2003:1) Establishing an institution that represents children does not necessarily imply recognizing them effective political rights. However, an "institutional" voice, like the children's ombudsman has demonstrated to advance children rights and issues by inserting these into the public debate and by pressuring political elites to respond to children rights and needs, resulting in more proactive policies in their favor. (Flekkoy, 1991:17-21) Establishing a children's ombudsman would allow an effective implementation of the obligation that states acquired when they signed the Convention on the Rights of the Child.

A children's ombudsman would represent a step in democratization, both internally and internationally. The children's ombudsman and similar institutions process children's concerns and input, transmitting these to governmental authorities. Afterwards, it is the government's responsibility to take the initiative to address these concerns.

Progress in children rights does not occur equally in every state. But the initiative of the pioneering states (Sweden, Finland) has become a paradigm for thirty eight more

¹⁰ UNICEF undertakes concrete initiatives aimed at obtaining governmental and inter-governmental international commitments to children rights and welfare such as: 1) Promoting the negotiation and signing of conventions and declarations committing world governments with children rights. These include the Convention on the Rights of the Child (1989) and the World Declaration on the Survival, Protection and Development of Children (1990), 2) Organizing the 1990 World Summit for Children and the 2002 Special Session for Children, and, 3) Establishing a program of UNICEF's international "Priorities for Children" (UNICEF, 2002c).

¹¹ During the event a session was organized in which children, who were part of some countries' delegations, were given the opportunity to express their views.

¹² Articles 3 and 5 of the Convention on the Rights of Child recognizes parents as the ultimate authority over children.

states and potentially for the one hundred and fifty-eight that have not established this type of institutions. The historical evidence indicates that initial advances in women's rights (England), environmental legislation (Germany, New Zealand, Sweden, France) and minority rights (France, Netherlands) had a paradigmatic effect on other states. (Claude, 1989:15)

Children's interests have traditionally been represented and safeguarded by adults. Children have not only denied political rights and participation but also civil rights, such as the right to present a case in court. Their opinions are usually invisible to the public. In many states, children and adolescents can get married and be recruited into the armed forces, but their political rights are not recognized. (UNICEF, 2002b:9-14) As a result their rights are not addressed. UNICEF proposes that in response to this situation governments establish specific mechanisms that recognize children's opinions, such as ombudsmen offices (UNICEF, 2001a:1)¹³.

As civil and political institutions have not created a tradition of consulting children, they have been left without representation or any possibility of defending their rights. While the use of violence has been outlawed in most legal systems, almost all make an exception with respect to children, remaining the only citizens whom it is lawful to use force against. The fact that children enjoy no political participation, have no direct access to the justice system and that political elites do not prioritize children rights¹⁴ does not signify that no policies are implemented in their interest¹⁵. Certainly almost every state has adopted legislation to protect them, though enforcement is more dubious. The international community has adopted international conventions and has organized some summits on children rights. But these international initiatives are still at a developing stage and need larger input from children themselves. The ability of international institutions to pressure enforcement by states is also limited. The Committee on the Rights of the Child only monitors the implementation of the Convention in ten states each year. Moreover, it can only make recommendations and pressure governments but it cannot enforce compliance.

¹³ The Bolivian authorities have taken the initiative by establishing municipal Offices for the Defense of Children (UNICEF, 2001a:16).

¹⁴ The Justicialista Party in Argentina is an exception to the rule. In 1950, it proclaimed in its political program that children should be given a "privileged" status in governmental decisions. (Salazar Mallen, R. 1973:251).

¹⁵ See country reports to the UN Committee of the Rights of the Child. www.ochr.org.

5. Limitations to the Recognition of Civil Rights

The international community has adopted international instruments like the Convention on the Rights of the Child (1989) that protect children rights¹⁶. Many other international instruments, such as the International Covenants, the Genocide Convention, and the Convention against Torture protect all citizens, including children, from many of the crimes that they are being subjected to. Despite these universally accepted conventions and the mandatory obligations that these create, the civil rights of children are constantly under attack, particularly in war-affected states.

This is a problem of immense proportions that affects millions of children, not only in developing or war-torn states, but globally. These civil rights violations occur in contravention of international human rights law and international humanitarian law. Some of the worst of these civil rights violations include: 1) sexual exploitation, 2) slavery, 3) torture, 4) child recruitment, 5) child abuse and, 6) child labor (Ressler, et al., 1993:113-121). Even credible international institutions and NGOs, like the United Nations Human Rights Council (UNHRC) and Amnesty International (AI) have not emphasized this situation enough. It must be acknowledged that the NGO Human Rights Watch has developed a particular interest in children rights and includes a chapter on these rights on their country and annual reports.

Table 2. Worst Violations of Children Civil Rights

Slavery and child labour
Torture
Infanticide
Child trafficking
Child recruitment

Child Recruitment and Violations of International Humanitarian Law

In situations of armed conflict, children are executed, mutilated, imprisoned, tortured, sexually abused, denied due process, abducted and recruited into the military (Comité Internacional de la Cruz Roja, 2001:1). Major violations of international humanitarian law against children are widespread. As an example, during the course of the civil wars in Iraq and Syria, the Islamic State of Iraq and Levant (ISIS) terrorist organization has recruited, abducted, sexually abused children and has enslaved and sold girls belonging to religious minorities. (UNGA A/HRC/27/60, 2014:1-43) Moreover, the Syrian government has also committed serious crimes against children. Other grave

¹⁶ Article 2 of the Convention on the Rights of the Child declares that “Member States shall respect and ensure the rights set forth in the present Convention to each child subject within their jurisdiction”.

situations include the Democratic Republic of Congo (DRC), where rebels undertake terrorist tactics systematically exterminating, recruiting and torturing children, the Central African Republic (CAR), Iraq, and Somalia. (Office of the Special Representative of the Secretary-General for Children and Armed Conflict, 2013:1-30) There is no military necessity that can justify such policies. While armed conflicts have historically affected children, violations of international humanitarian law against children are increasing in frequency and are committed by both national armies and irregular forces. (UNICEF, 2002b:568) Conflicts increasingly affect civilians, particularly vulnerable sectors like children and women. In 2001, 120,000 children were combatants in Africa alone. (Jongman, 2001) Torture and extrajudicial executions are also utilized against children as a collective punishment or as a means of intimidation (Corradini, 2001: 114).

Children are also the main victims of landmines. (UNICEF, 1994:5) Some of the worst violations of children human rights occur within the context of civil and international wars. Child recruitment, one of the worst violations of children rights, is also an integral part of civil and international conflicts. Recruited children are tortured, sexually abused and exploited. Child recruitment responds to a scarcity of adult volunteers (Ressler, et al., 1993:117). Child recruitment is also a form of child exploitation, child trafficking and child abduction. Child soldiers are more easily manipulated (Ressler, et al., 1993:118). It is the most repressive regimes that give the greatest emphasis to military and paramilitary training of children (Ressler, et al., 1993:118).

Children's Detention

Armed conflict, political persecution or instability, or absence of democracy and civil rights can lead to the illegal detention of children in violation of major international law instruments. Under detention children are tortured, physically and psychologically abused and subjected to extrajudicial murder. As an example, under Israel's military occupation of the Palestinian Territories, children are subjected to illegal and arbitrary detentions in which widespread use of torture has been reported. (Coalition to Stop the Use of Child Soldiers, 2008: 256-261)

Children in Especially Difficult Circumstances

This concept refers to children who not only do not enjoy basic social rights but also suffer particularly harsh conditions that endanger their life and dignity (Espert, 1988:10). Within this group UNICEF includes working children, abandoned and street children, institutionalized children, abused children, children affected by armed conflict and children affected by natural disasters. Children in Especially Difficult Circumstances constitute one of the most vulnerable groups and one of the gravest cases of civil rights violations. They tend to become the most invisible and marginalized sector of the children

population. They usually do not enjoy even the most basic rights to health services and to education. Without any educational alternatives the potential for them to become major targets of violence or for them to turn to violence is greatly amplified. While UNICEF actively helps Children under Especially Difficult Circumstances, achieving a satisfactory solution requires greater involvement from multilateral organizations and from governments.

Child Labour and Slavery

The International Labour Organization (ILO) calculates that about 168 million children are working world-wide (International Labour Organization, 2001). Children's lack of access to education and parents' lack of income alternatives contribute to child trafficking and labour exploitation. (Corradini, 2001:39). Governments are largely responsible for this situation; children issues are not their priority, enough resources are not invested in their education, child abuse and exploitation are not repressed sufficiently, and legislation does not go far enough to protect children. Governments usually invest greater resources in arms than in children. Approximately 1,747,000,000 dollars are spent annually on military defense world-wide (Stockholm International Peace Research Institute, 2014). If only a fraction of this income was divested towards children's needs the improvement in children rights could be significant.

6. Protection of the Child under the Convention

The Convention on the Rights of the Child (article 1) defines the child as every human being below the age of 18. The Convention is flexible regarding the beginning of childhood as this was the only alternative to assure universal recognition since difference among states on this issue are significant. However, there is no question that after birth the child is guaranteed all the rights in the Convention. The Convention warrants certain rights to every child: 1) best interest of the child, 2) name, identity and birth registration, 3) special protection, 4) right to life, including no capital punishment, 5) no separation from family, 6) freedom of thought, 7) no arbitrary interference, 8) health, education and cultural rights, 9) protection from economic exploitation, 10) protection from sexual exploitation, 11) protection from child trafficking, 12) protection from torture, and, 13) application of international humanitarian law to children. (UNICEF, 2002b:1)

The Convention is universally ratified. However, it has not been enforced equally in every state. The Committee on the Rights of the Child (CRC) monitors implementation of the convention. In some states and region, particularly in Europe, the CRC has been able to promote a legal culture of children rights. Even if enforcement is discontinuous,

an international consensus has emerged on the content of children rights law as demonstrated by universal ratification.

7. International Institutions of Children Rights

International institutions established to protect children rights mildly protect against violations. The international scheme of protection of children rights is composed of three major actors and institutions. These are: 1) Children's international advocacy groups, 2) International conventions protecting children rights, and 3) Children rights summits organized by the United Nations that discuss and propose solutions to their problems. International institutions protecting children rights are still incipient and developing. Consequently, their efficiency is still limited.

The international advocacy groups include NGOs and IGOs. The United Nations Children's Fund (UNICEF) is particularly significant. Not only does it provide emergency aid for children but it has also become the main international advocate for children rights. Other IGOs, like the International Labour Organization, have strongly lobbied for child-related causes like abolition of child labor. The UN has also established a Committee on the Rights of the Child, which monitors the implementation of the Convention on the Rights of the Child. Humanitarian NGOs like the International Committee of the Red Cross (ICRC), Human Rights Watch (HRW) and the Coalition to Stop the Use of Child-Soldiers lobby for the abolition of child military recruitment and for enforcing international humanitarian standards to the underage population.

These organizations have also been active in promoting international conventions that protect children rights. The Convention on the Rights of the Child (1989) is the major treaty protecting children rights. Ratifying parties can be denounced for violating these before the UN Committee on Children Rights. Other instruments like the Convention on the Worst Forms of Child Labour (1999) and the Optional Protocol on the Involvement of Children in Armed Conflict (2000) also protect children from abuse and exploitation.

International summits organized by the UN, like the World Summit for Children (1990) and the Special Session for Children (2002) have placed children rights on the international agenda and have served to strengthen, at least rhetorically, governmental commitment to these rights. The organizations, conventions and summits constitute a first step in the creation of an international system of children rights protection. But while their significance should not be underestimated, these international institutions constitute only a first step that needs further development and more effective enforcement.

8. International Protection of Children Rights

The Convention on the Rights of the Child (1989) legally attaches signatory states to comply with children rights. The UN Committee on the Rights of the Child (UNCRC) is authorized to monitor each states' compliance. The Committee has found that even the most advanced states in children rights enforcement, such as Sweden and Finland commit violations. (Hewlett, 1993) Violations of the Convention on the Rights of the Child and of humanitarian conventions include: 1) child slavery, 2) violations of Geneva Conventions clauses against children, 3) child recruitment, 4) human trafficking, 5) child pornography and prostitution, 6) child abduction, 7) torture and mutilation of children. (Human Rights Watch, 2006)

Table 3. IGOs and International Tribunals that Protect Children Rights

Inter-Governmental Organizations
UNICEF
UN Committee on the Rights of Child (UNCRC)
The UN Special Representative on Children and Armed Conflict
International Labor Organization (ILO)
World Health Organization (WHO)
International Criminal Court (ICC)

The international response to massive violations of children rights has come mostly from some Inter-Governmental Organizations (IGOs) such as UNICEF, the UNCRC and International Labour Organization (ILO) and Non-Governmental Organizations (NGOs) such as Human Rights Watch (HRW), Save the Children International and Defense for Children International. The efficiency of enforcement mechanisms of children rights law could be improved if other bodies, such as the UN Security Council became more involved (Childwatch International Research Network, 1993:7).

Massive violations of children rights constitute a threat to international peace, generating potential for future conflict (Jongman, 2001:1). Human rights violations are the main variable that explains most contemporary conflicts (Jongman, 2001:1). This situation would merit more forceful policies enforcing children rights law. The UN Security Council has authority under the UN Charter to undertake an effective response against grave situations like child slavery in Sudan, Boko Haram kidnapping of girls in Nigeria or violations of humanitarian rules perpetrated against children in Uganda by

the Lord's Resistance Army¹⁷. Nevertheless, it has not recognized the urgent need for decisive measures against these threats to international peace.

Table 4. NGOs that Advocate Children Rights Protection

Non-Governmental Organizations
Defense for Children International
International Committee of the Red Cross (ICRC)
Human Rights Watch
Child Soldiers International
Childwatch International
Save the Children International

The Security Council has approved few resolutions on children and armed conflict [(UNSC Resolution 1460 (2003), UNSC Resolution 1612 (2005), and UNSC 1882 (2009)]. These resolutions are not forceful enough, requiring only reports about application of humanitarian laws to children. UNSC Resolution 2143 (2014), which calls upon eight states to end child recruitment in national armies, has achieved some success as some of these states (Yemen, DRC, Chad, Somalia, Afghanistan, South Sudan) have begun taking measures to achieve this objective¹⁸. The 1990 UN World Summit for Children and the 2002 Special Session on Children placed greater attention on children rights, but children rights are still not a priority in multilateral organizations.

The Security Council has neither tackled the gravest situations, nor impose sanctions under Chapter VII of the UN Charter nor send peacekeeping forces to protect children. One exception might be MONUC, the UN mission in the Democratic Republic of Congo (DRC), which is authorized to use all means necessary to protect civilians and that participated in operations with the Congolese Armed Forces to protect civilians from Rwandese rebels. (France 24) In the DRC, the majority of civilian victims of conflict are children and women.

The UN Security Council could regard massive violations of children rights as a “threat to international peace and security”. (Hawkins, 2003:64-65). While the UN Security Council has no capacity to act on every human rights violations issue, it could adopt a more effective policy against genocide, trafficking or slavery affecting children. This issue is important not only from an ethical standpoint but also from a political

¹⁷ The Security Council has expressed “concern” for child recruitment and for sexual abuse against female children in Sudan but without any corresponding action. (UNSC Resolution 1591 (2005) and UNSC Resolution 1714 (2006)) It has not pronounced itself on child slavery in Sudan as a threat to international peace and security. The Security Council has not even passed a resolution on the Chechnyan conflict.

¹⁸ See children and armed conflict

perspective. Considering that these violations threaten international peace, UN Security Council actions would be not only ethically but also politically justified.

Table 5. Conventions and International Instruments that Protect Children Rights

Conventions
Declaration on the Rights of the Child (1959)
Convention on the Rights of the Child (1989)
IV Geneva Convention (1949)
Statute of Rome (1998)

Table 6. Summits on Children Rights

Summits
1990 World Summit for Children
2002 Special Session on Children

9. Millenium Development Goals and Children

The Millenium Development Goals (MDG) established in 2000 by the UN General Assembly have had a positive effect on children rights. (Ki-Moon, 2007:1-3) Advances have been accomplished on education. More children are enrolling in the pre-primary and primary levels and more children with disabilities are also enrolling. On pediatric health, under-five child mortality has fallen. Some progress has been achieved as a result of the MDG regarding children in armed conflict. Less children are fighting in national armed forces as a result of member states’ commitment to MDG.

In the child trafficking issue, more governments have signed international agreements to combat trafficking. On child labour, a larger number of states are combatting the worst forms of this children rights violation and less children are working as a result. On violence against children, more states have banned corporal punishment against children since the adoption of the MDG in 2000. Progress is reported on decreasing the number of female children subjected to genital mutilation. Child marriage has also declined as a result of state action against it. More states have signed the Convention on Persons with Disabilities, which protects disabled children.

The adoption of the MDG has proven one of the most successful instruments in promoting progress on children rights. However, there are still massive violations of children rights that need to be tackled by the international community.

10. Proposals for Improving Children Rights

Additional measures are needed to strengthen these institutions. It could be further developed through the adoption of policies such as: 1) Adopting international treaties that would make infanticide a “crime against humanity”, 2) Establishing “child-keeping operations” when the lives of children are in jeopardy as a result of armed conflict or genocide, 3) Strengthening or establishing the institution of the children’s ombudsman, 4) Establishing an International Children’s Ombudsman, 5) Strengthening children’s voice at the internal and international political levels, and, 6) Monitoring children rights worldwide through a Children International Human Rights Index (CHILDEX).

Infanticide: Crime against Humanity

Despite the fact that the international community agrees on its grave character, infanticide is not specifically recognized as a crime against humanity in international law. Infanticide should not be defined exclusively in terms of the non-political execution or assassination of children (any person from zero to seventeen years old) but would also apply to this crime committed for political, ideological or military reasons. It should be considered both as an individual or as a mass crime. The adoption of a Universal Convention on Infanticide and Other Crimes against Children would be strengthen international mechanisms on children protections. Infanticide should be defined in all its forms as a crime against humanity and as a violation of *ius cogens* rules. Infanticide could be considered in the context of armed conflict. In such circumstance it is also considered also a war crime. Infanticide committed for political, ethnic or religious reasons should be considered a crime against humanity. Infanticide should be ranked as the gravest of these crimes. The adoption of this convention could open the possibility for the assumption of jurisdiction by international tribunals and by internal tribunals under the universality principle of jurisdiction. Tribunals in Belgium, Spain, France, Germany, Switzerland, Sweden, Italy and Argentina have already assumed “universal” jurisdiction over *ius cogens* crimes, even if these crimes have not affected them directly.

Considering infanticide as a crime against humanity unto itself would elevate the profile of children rights internationally. Even when crimes against humanity have been processed by international tribunals, children rights have not occupied a primary role¹⁹. Even though children are considered theoretically primordial in most states, international law enforcement has not followed up on this universal principle.

A Convention on Repression of International Crimes against Children should also adopted that includes international crimes, such as torture of children, child trafficking and exploitation, state terrorism against children and infant genocide. While repression

¹⁹ The case against Liberian President Charles Taylor included a charge of child recruitment.

of child trafficking is included in the Convention on the Rights of the Child, it does not specify nor requires possible measures to combat this type of human traffic. A Convention on Repression of International Crimes against Children would define these as crimes upon themselves independent, but not incompatible with other international crimes such as torture, state terrorism or genocide. The International Criminal Court (ICC) should assume jurisdiction over these new crimes, even if that means amending the Convention of Rome. In fact, the ICC has already banned military recruitment of children, considering it a war crime.

Another proposal would establish a category of crimes against infant humanity. The ICC would give priority to this category of crimes over all others. This proposal would eventually have profound effects in terms of transforming international law and ethics in relation to children.

Representation at the United Nations

Children's representation at the international level could be established at the United Nations, either in the General Assembly or ECOSOC or both. It could start in the form of observer seats for regional children's ombudsmen and for children rights NGOs, but it should also include children representatives from member states whenever children issues are being discussed. There is already a precedent in children's participation at the UN Special Summit for Children (2002) in which children representing member states and NGOs had a voice in deliberations. Children's representation at the UN could have a paradigmatic effect, providing a model for member states to consider greater participation for children in their political and civil institutions. It could also encourage recognition of limited political rights in the form of lowering the minimum voting age to 16. The General Assembly could hold a Biennial Special Session for Children. Recognizing associate membership or observer status to a larger number of children rights advocate NGOs at the ECOSOC is another possibility²⁰. A permanent voice for children rights advocates at the UN would keep the issue on the international agenda.

Children Ombudsman

Children Ombudsman were initially established in the 1970's in Scandinavian states. Some states established this institution, including Austria, Costa Rica, Germany, Israel, New Zealand, Norway and Sweden. A total of forty-four countries have this type of office. The establishment of a Children Ombudsman has proven successful. In Norway, some arguments were presented against the establishment of such an office: 1) that the Ombudsman would be a threat to parental authority, 2) that the Ombudsman might become an excuse for other groups and bodies responsible for children to diminish or

²⁰ Save the Children International already has general consultative status.

relinquish their responsibilities, 3) that the funds allocated should rather be used to strengthen other existing efforts or services for children (Flekkoy, 1991:50) However, the establishment of Ombudsman offices at the national and regional levels would result in numerous advantages: 1) It could act as a voice for presenting the concerns of a sector of the population that has no political influence, ameliorating their lack of political representation or voice in public affairs and of recognition by the rest of society as a legitimate social group. In fact, one of the functions of the Children Ombudsman would be to act as a voice for articulating children's concerns and problems, 2) It could act as the defender of children being subjected to systematic abuse or negligence. As in Norway, children should be able to present cases to the Children Ombudsman Office. A well-functioning and competent Children Ombudsman should be able to prevent the abuse of this institution against parents, focusing on merit-based cases of real abuse or negligence.

Peace-Keeping Operations focused on Children

Authorizing "child-keeping operations" by the UN Security Council that would be sent when there is imminent danger of infanticide, massive child recruitment or policies of torture, enslavement, traffic or genocide against children is another potential policy that could protect children rights. These should include international police, civilian personnel and military observers to those countries that cannot deal with these issues. Sudan, where children have been kidnapped and enslaved by government forces, would also be a good candidate for a possible "child-keeping operation" to prevent further kidnapping and enslavement. Uganda, where the Lord's Resistance Army has been also kidnapping, recruiting and massacring children, is another potential candidate. These operations could be sent to protect sites frequented by children like schools. States where children are kidnapped and tortured or abused by police forces or death squads like Brazil or the Philippines are also candidates. States or territories that are under military occupation, like the West Bank and Gaza, should also be considered. The UN "child-keeping operations" would protect schools and families.

Establishment of an International Alliance for Children

A step in this direction has already been taken through the Global Movement for Children. This organization is made by a group of child-advocacy organizations and some renowned international figures and former Heads of State and Government like Graca Machel, Former First Lady of Mozambique and of South Africa. However, for the alliance to have a significant impact it must incorporate governments from states parties to the Convention on the Rights of the Child. In order to have a strong impact as many international actors as possible must be committed to it. Once this is accomplished

children issues profile would increase in the international agenda and, eventually, in national agendas as well.

It is also important that the most renowned IGOs and NGOs, such as the International Committee of the Red Cross and the Federation of Red Cross and Red Crescent Societies, Amnesty International and Greenpeace join this alliance and relate children concerns to their objectives, positioning these as a top priority. As an example, in its annual report, Amnesty International could dedicate a chapter to the children rights and violations of the Geneva Conventions against them in state. The priorities of this international alliance are: 1) female children's education, 2) children and AIDS, 3) violence against children, 4) child survival, 5) children on the move, 5) and, 6) child traffic. Other potential issues that the Global Movement for Children could consider are peace and security, the environment, health, education, the struggle against poverty, as these relate and affect children. These issues are of particular importance to children. Also, civil rights, children's voice in governmental and non-governmental institutions, and children on distress, such as children in especially difficult circumstances, abandoned children, tortured children, working children, and children maimed by mines or by war and humanitarian law violations against children are particularly significant for strengthening children rights. The Global Movement for Children has implemented a fundamental policy that consists on the participation of children themselves on the 2002 UN Special Session for Children. Participating children included 242 girls and 162 boys from 154 states and from 106 NGOs. Should this precedent be reproduced at other international fora children participation would significantly advance and gain legitimacy.

International Monitoring of Children's Situation through a Children International Human Rights Index (CHILDEX)

In order to monitor progress in children rights, a Children International Human Rights Index (CHILDEX) has been developed and proposed. CHILDEX can be used to measure each state's progress. CHILDEX can serve not only to measure each state's progress in relation to children rights and welfare, but it could also become an instrument that pressures each state to implement reforms in order to improve their ranking.

11. Indexes that Measure Children Rights

Conventions and UN summits on children rights promote enforcement of these rights. However, monitoring is also essential in strengthening enforcement. "Indicators for implementation of human rights are essential for developing a strategy for the promotion and protection of those rights and, indeed, for democratic development." (Theede, 2001:259). Indexes can contribute significantly to monitor progress on children rights

universally. Thus, indexes measuring children rights indexes are fundamental in designing an international children rights strategy.

Table 7. Indexes of Children Rights: Childwatch International Monitoring (Children’s Rights Project), Child Risk Measure, and CHILDEX

Index	Variable(s) Measured	Indicators
Childwatch International Monitoring (Children’s Right Project)	Compliance with the International Convention on the Rights of the Child	Economic, Social and Cultural Rights Indicators Childhood Social Indicators Child Rights Indicators
Child Risk Measure	Child Risk	Mortality, Underweight, Schooling,
CHILDEX	Children human rights by state	Education, Health, Children Participation

Childwatch International Monitoring Children’s Rights Project and the Child Risk Measure

These two are composite indexes developed by UNICEF and its partners. The Indicators for Children Rights Project, later known as the Childwatch International Monitoring Children Rights Project, was proposed in 1993 by the Swedish and British Save the Children chapters, the CRC, UNICEF and Childwatch International to identify and develop indicators for monitoring implementation of the Convention on the Rights of the Child (Childwatch International, 1993:2). This index considers that the Convention guarantees rights that are difficult to measure and that concepts such as “the best interest of the child” in the Convention are not clearly defined and can only be interpreted by national or international tribunals. This index measures to what extent state parties are implementing the Convention. The index has a practical, specific and significant objective. Monitoring compliance with the Convention is fundamental in strengthening children rights globally as it builds pressure for states to improve their performance.

The Child Risk Measure (CRM), also developed by UNICEF, measures the level of risks that a child faces and the probability of a “full and healthy development” for a child in each state. These indicators compose the index:

- 1) Under-five mortality, 2) Moderate or severe underweight, 3) Primary schooling, 4) Likelihood of risk from armed conflict, and, 5) Likelihood of risk from HIV/AIDS. These risks are more common in developing states. Risks that affect developed states,

such as “alienation and loneliness”, are not incorporated. (UNICEF, 1999:1) UNICEF acknowledges that some factors that generate risk to children such as child labor, sexual exploitation, and lack of family support are not incorporated into this index either, as data is often not available. (UNICEF, 1999:1)

Indicators associated to political instability, such as genocide, torture, state terrorism, extrajudicial executions, abduction by state security forces that affect children are not included. Social indicators such as delinquency, forceful recruitment into criminal organizations or abduction are also excluded. A thorough index measuring child risk would measure these variables as these represent a significant risk to children. Nevertheless, it is certainly accurate to state that these variables are not easily measurable and data on many of these could be very difficult to gather, even in developed states.

This index does not assess the overall children rights situation. However, the CRM is useful as a measuring instrument of the “risk” affecting children, a significant factor in children welfare. (UNICEF, 1999:1).

Children Rights Index (CHILDEX)

An International Children Human Rights Index (CHILDEX) has been developed that monitors children rights universally. (Arroyo-Rojas, 2011: 24-56) Furthermore, this index could potentially contribute to induce governments to improve their children rights standards²¹. A composite index is proposed consisting of eight indicators. Ranks from 1 to 10 were assigned to quantitative data, obtained from UNICEF and other IGOs for eight indicators that are essential for attaining children rights:

- a) Adoption of international instruments that protect children rights. This indicator is essential because children rights conventions generate juridical obligations for signatory states.
- b) Enforcement of children civil rights. This enforcement is limited as children in a majority of states have neither a recognized independent access to the justice system nor an ombudsmen institution to represent and demand their rights.
- c) Access to education. Education is the most fundamental right that a child is entitled to. It is his/her most significant instrument to improve his life. Access to education is highly associated to children’s welfare in any state.
- d) Pediatric health services. Despite improvements in most regions greater investment in health services for children is still necessary to assure universal access to this fundamental right.

²¹ Public opinion can have a positive impact in terms of pressuring the international community to act in favor of human rights. Though the UN Security Council has reacted slowly and lately to Darfur’s genocide, its policies have responded largely to international public opinion.

- e) Children's voice in public affairs. Children cannot attain a fully developed system of rights or protection until this right is not only recognized but also implemented, through a children's ombudsman or any other alternative method.
- f) Rights of female children. While some progress are reported in various states and regions, attainment of significant advances in human rights must necessarily achieve attaining equal opportunities and non-discrimination for the female child.
- g) Child recruitment and violations of humanitarian law affecting children. This is an alarming and grave crisis affecting multiple states and all region that must receive priority from the UN Security Council and from other multilateral institutions as it constitutes a grave threat to international peace.
- h) Children's poverty. Poverty is not only a humiliating violation of children rights but it also menaces the possibilities that each child is entitled to achieve their full life potential.

Five levels ranked each indicators' values for every state. These are:

- a) High (9-10). These states reflect a high level of priority on children rights.
- b) Medium/High (7-8). Some policies undertaken on children rights but some violations persist.
- c) Medium (5-6). Some policies undertaken but violations are significant on some issues.
- d) Low/Medium (3-4). Severe problems regarding children rights.
- e) Low (1-2). Grave and extreme children rights abuses common.

The mean among the indicators represents a state's CHILDEX value. [(e.g. Sweden (10+10+10+10+8+10+10+9=77/8=9.63), Botswana (10+9+9+2+5+5+9+3=52/8=6.50)]

CHILDEX's purpose is measuring children rights enforcement universally, serving an academic purpose by monitoring each state's progress and acting as a policy instrument that pressures governments to improve their children rights policies. Furthermore, it could be useful to children rights advocate NGOs and IGOs, allowing them to compare performance among Convention signatories.

12. Representation in Internal Political Systems and Increased Profile for IGOs and NGOs in Protecting Children Rights

What is being proposed is not conceding political rights to children, but certainly providing them a voice in internal political systems. This proposal might be criticized as unrealistic. Conceding political and civil rights to women was also initially considered idealistic. As was already presented, an alternative would be establishing national

children ombudsman's offices. But other policies can also be developed, as has happened in Bolivia, which has established Offices for Children Protection in every municipality. There is no fixed formula for this achieving this end. The objective is that governments learn to listen to children's needs and feel compelled to respond.

With regard to political rights, the proposal of lowering the voting age to 16 should be considered. Citizens at that age can have enough understanding of politics that should entitle them to be listened to and oblige political elites to take their concerns into account. There is not one reasonable argument to exclude citizen 16-17 years old from exercising their political rights. Nicaragua was a pioneer in this initiative, recognizing citizens of that age political rights in 1987. Voting age for 16-17 years old citizens could also encourage political elites to take children concerns more seriously since this electoral population might be also demand initiatives addressing the needs of children all ages.

IGOs, particularly the United Nations, and NGOs should set the example by adopting similar procedures. Once these organizations give children a voice within their structures, other organizations and eventually governments might follow the example as the concept becomes more acceptable.

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