

Eszter Kirs¹:

How Does International Law Protect the Children of a Revolution or a War?

“My mother was raving, begging me to stay at home, asking how I dare to go, they would shoot me dead. Poor mother, she was begging in vain, I went back...” (Pál Kabelács, a former “kid of Pest”)

The recent study is dedicated to the memory of those heroic young boys and girls who put their lives on risk for the noble aim of the independence of Hungary, and who showed unique courage in the course of hostilities.

I.

The majority of the insurgent groups fighting against the communist regime in 1956 were composed of working young people, there were also students joining the fights, but even a lot of teen-agers took up arms to fight against the regime. They used primitive weapons of war, such as small arms or benzene bottles against the Soviet tanks. Later they gained weapons from the police offices, barracks or disarming police officers and soldiers. The insurgent groups usually operated separately, they cooperated with each other only in order to accomplish a more difficult action, such as for beating off a Soviet attack or for destroying a tank. In their successes the continuous support of the local population played a significant role. The groups were organised on a spontaneous basis and there was much fluctuation in them. Those who decided to fight against the regime joined their fellows on a voluntary basis, and they could decide when to quit fighting.² The strongest resistance groups were operating in the 8th District of Budapest at the Cinema Corvin. Numerous young people joined the insurgent groups here. For example, the so-called Kasza-group (their leader was János Kasza) in the Kisfaludy Street included numerous teenager fighters who were called at that time “the Infant Army”.³ Another example can be the “Rigó-group” in the Práter Street. Approximately forty people belonged to it including the Papp-brothers: Gábor, fourteen years old and László, who

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² HORVÁTH, Miklós: 1956 hadikrónikája (War Chronicle of 1956). Akadémiai Kiadó, Budapest, 2003 page 109-111

³ EÖRSI, László: Corvinisták 1956 – A VIII. kerület fegyveres csoportjai (Corvinists 1956 – Armed Groups of the VIIIth District). 1956-os Intézet, Budapest, 2001 page 225-226

was twelve at that time, and also János Bütbös with the age of fifteen. They participated also to the siege at the Köztársaság Square on 30th October.⁴

The fighting brought not only glory but also much suffering and fear to these young soldiers. László Peredi was thirteen years old, and was fighting in the Corvin Alley. He said decades later recalling his personal experiences: *“It was terrible –and maybe, not too many people speak about these things- when I saw collapsing the one whom I shot down. At the age of thirteen am I a hero or a murderer? Even those who were in their twenty’s fit of crying after the first shoot of theirs! One has been dreaming about it till today.”*⁵

Beginning with the discussions on the Deák Square on 30th October, a process began with the aim of centralizing the national armed forces till the new government would be established. Besides, they wanted to wind up the other “illegal” armed groups, and allowed it only for people over the age of eighteen to join the national militias. On the other hand, on account of the attacks of the Soviet troops at the end of October the number of the insurgent groups decreased to a large extent. More militias broke as a consequence of the renewed aggression. Soldiers left the “battlefield” either because they were aware of the hopeless state of the battles, or because more radical civilian leaders played more and more significant role.⁶ In this way, more and more younger people joined the armed groups. They became the reserve army as Rezső Bóna, a former young insurgent unfolded that he and his friends were told like that on the Széna Square when they joined an armed group after 4th November. They were given guns and ammunition and orders related to the watch services. They saw a lot of armed people and most of them were at the age of fifteen to seventeen.⁷

The question arises what could be the reason of the affiliation of the teenage boys. After the words of another “kid of Pest”, László Balázs, who was eleven years old at the time of the revolution, he was playing football with his friends. One day people were coming all along the Mester Street towards the Boulevard shouting: “The revolution broke out! The communism broke down!” They stopped playing football, and he and one of his friends moved towards the Boulevard.⁸ Actually many of them went to the Cinema Corvin just because of curiosity, but many of these curious children became heroes.

In the case of the 1956 Revolution most of the children joined resistance groups voluntarily. In recent armed conflicts all around the world, forced recruitment is more probable. Either bad economic circumstances force young people to fight with the hope of a better future, or children are forced to take direct or indirect part in hostilities because of their specific characteristics. They are cheap, unquestioning obedient and easy to brutalize into fearless killing. These characteristics inspire the leaders of armed groups to chose children to improve their forces. It makes inevitable to establish an efficient legal system in order to prevent child-recruitment and to ensure sufficient repression against the persons responsible for it.

⁴ EÖRSI, László (2001) page 257

⁵ Arcok – Gyerekek, katonák (Faces – Children, Soldiers). Memories of László Peredi and László Balázs. www.1956.hu/arcok/arcok301.html

⁶ EÖRSI, László: Mítoszok helyett -1956- (Instead of Myths -1956-). Noran Könyvkiadó, Budapest, 2003 page 33

⁷ KÓSA, Csaba: “Alhattál-e, kisfiam?” (“Could you sleep, my little son?”). The author’s own edition, 1996 page 46-47

⁸ Arcok – Gyerekek, katonák (Faces – Children, Soldiers). Memories of László Peredi and László Balázs. www.1956.hu/arcok/arcok301.html

II.

At the time of the 1956 Revolution the Fourth Geneva Convention on the protection of civilian population in times of war already existed containing provisions which serve also the prevention of child recruitment. Rules on the establishment of safety zones serve also the aim of protecting children under 15 years from the effects of war, so among others the possible recruitment.⁹ The special care, which is required for children under 15 who are orphaned or separated from their families, protect these extremely vulnerable children from joining armed forces.¹⁰ On the other hand, it must be mentioned that prohibition of recruitment of these children appears in the Convention only related to occupying powers.¹¹ Beyond this weak point of the document, the age limit of 15 years is too low taking into account the interests of children.

The Minimum Age Convention adopted by the International Labour Organization in 1973 does not have any concrete provision on child recruitment, but its third article can be interpreted in a way that it applies also for this kind of “labour”. After this rule all kind of work is prohibited which “by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons” under 18 years old.¹² To be a soldier and to take direct part in hostilities can hardly be held as a work outside this category. Nevertheless, this provision is too wide, so it cannot be regarded as a suitable norm against child enlistment.

The Additional Protocols to the 1949 Geneva Conventions brought positive changes in the line of rules. The relevant article of the First Additional Protocol determined 15 years as age limit for the prohibition of children’s direct participation in hostilities, and it obliged the State parties to endeavour to give priority to those who are oldest between the ages of 15 and 18.¹³ Birth of this concrete regulation was a great step toward suitable legal protection on child recruitment, but it was not strong enough. The expression of “direct” participation means that children still could have been involved in hostilities and activities on the battlefield such as gathering information, transmitting orders or transporting ammunition. The Second Additional Protocol includes provisions ensuring stronger protection in this respect. The age limit is 15 years also in this Protocol, but after its relevant provision children under this age “shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities”.¹⁴ This rule prohibited every form of participation in hostilities that serves the interests of children to a suitable wide extent. Beside this stronger protection must be mentioned that this norm applied already also for non-international armed conflicts, which were not covered by any international treaty till that time.

In 1989 was adopted the Convention on the Rights of the Child, which determined the notion of child as persons below the age of 18 years. There is some inconsistency in the text of this

⁹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War. 12th August 1949 Art. 14

¹⁰ Geneva Convention Relative to the Protection of Civilian Persons. *supra* note 20 Art. 24

¹¹ Geneva Convention Relative to the Protection of Civilian Persons. *supra* note 20 Art. 51

¹² 138 Minimum Age Convention. (International Labour Organisation) 1973 Art. 3 (1)

¹³ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts. 8th June 1977 Art. 77

¹⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts. 8th June 1977 Art. 4 (3)(c-d)

document, as the age limit is 15 related to child soldiering. Actually it repeats the ruling of the first Additional Protocol to the Geneva Conventions stating that:

“2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.”¹⁵

Beyond repeating an already existing but not sufficient rule, it could also distract attention from the stronger protection included in the 1977 Second Additional Protocol. In another point of view, this Convention has great significance, as its near-universal ratification means that the prohibition of the recruitment and use of child-soldiers under the age of 15 has passed into customary international law. This protection is even stronger ensured by the fact that there is no derogation clause in the CRC, which could allow states to put some obligations (for example, the prohibition of child soldiering) ‘on hold’ during situations of emergency.

The increasing of the age limit was declared at the first time in the African Charter on the Rights and Welfare of the Child in 1990. After this regional treaty a child means every person below the age of 18 years, and *“States Parties [...] shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.”¹⁶*

The problem was with all the existing regulations that although they meant international legal obligations, but the violation of these provisions did not result any obvious criminal legal consequence. This situation changed with the adoption of the Rome Statute of the International Criminal Court in 1998. It declared that *“conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities”¹⁷* is war crime, and falls under the jurisdiction of the ICC.

In 1999 the International Labour Organization adopted its 182nd Convention on the Worst Forms of Child Labour. In this document the age limit for the prohibition is determined in 18 years, such as in its Convention on the Minimum Ages mentioned before. The difference is that in this treaty the Organization declared expressly that forced or compulsory recruitment of children for use in armed conflict belongs to the worst forms of child labour, which are prohibited.¹⁸

The latest international legal document on the prohibition of child recruitment is the Optional Protocol to the CRC, which was adopted in 2000. The Protocol prohibits forced recruitment in every case of persons below the age of 18 years. On the other hand, after its text children are protected still only against the direct participation in hostilities, that does not cover tasks which can be carried out on the battlefield and do not mean fighting. In the case of rebel armed groups the protection is much stronger, as it is prohibited for them to recruit or use

¹⁵ Convention on the Rights of the Child. 20th November 1989 Art. 38 (2-3)

¹⁶ African Charter on the Rights and Welfare of the Child. OAU Doc. (AB/LEG/24.9/49/1990) Art. 2 and 22

¹⁷ Rome Statute of the International Criminal Court. 17th July 1998 Art. 8 (b)(xxvi)

¹⁸ 182 Worst Forms of Child Labour Convention. (International Labour Organisation) 1st June 1999 Art. 3 (a)

persons under the age of 18 years in hostilities under any circumstances.¹⁹ In contrast with this regulation, in case of armed forces of a state voluntary recruitment under the age of 18 is permitted. The Protocol declares several safeguards regarding to volunteering of these persons:

- “(a) *Such recruitment is genuinely voluntary;*
 (b) *Such recruitment is carried out with the informed consent of the person’s parents or legal guardians;*
 (c) *Such persons are fully informed of the duties involved in such military service;*
 (d) *Such persons provide reliable proof of age prior to acceptance into national military service.*”²⁰

In practice any claim that young persons under 18 years have volunteered for armed forces should be treated with scepticism. The “genuinely voluntary” will can be questioned if we think on the circumstances in which children are recruited in most of the conflicts. Is the child, who sees no other alternative beyond joining to the military, really willing to fight? Does the girl, who tries to escape from her abusive family, really want to take part in hostilities? It is extremely difficult to distinguish voluntary will and unavoidable compulsion. Beyond this difficulty, after a survey made by the Quaker United Nations Office, Geneva and the ILO, in very low number of cases have the children recruited “voluntarily” explicit prior parental consent to their joining.²¹ There are problems also with the fourth criterion, as in numerous developing countries affected by armed conflicts a suitable birth registration system does not exist.²² In this way, it is difficult to receive reliable proof about age.

Although there was more than a half decade for developing the legal rules related to the prohibition of child recruitment, and many positive achievements were reached, but the international legal norms applicable recently are still not sufficient enough. Stronger protection could be ensured by the prohibition of recruitment or use of children under the age of 18 years in hostilities under any circumstances, no matter if it is about rebel groups or national armed forces.

For the repression of child recruitment more monitoring mechanisms were established in the last decades. In the framework of the controlling system of the implementation of the Convention on the Rights of the Child and its Optional Protocol, each State Party is required to submit an initial report to the Committee on the Rights of the Child within two years of the entry into force of the Optional Protocol. Thereafter, the States are obliged to submit follow-up reports. In these reports States should provide information about the measures taken to implement the Optional Protocol or any difficulties and special circumstances related to the implementation. After the Committee examined the report, it publishes its concerns and recommendations in “Concluding Observations”. Beyond these documents it publishes also “General Comments” giving a general guidance on implementation. Beyond the reports of the States, the Committee collects information also from other sources, such as civil society and

¹⁹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts. 25th May 2000 Art. 1-4

²⁰ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts. 25th May 2000 Art. 3

²¹ Brett, Rachel: Adolescents volunteering for armed forces or armed groups. [www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5W7NJFX/\\$File/IRRC_852.Brett.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5W7NJFX/$File/IRRC_852.Brett.pdf) Page 864

²² Helle, Daniel: Optional Protocol on the involvement of children in armed conflict to the Convention on the Rights of the Child. In: *International Review of the Red Cross*. www.icrc.org/Web/Eng/siteeng0.nsf/html/impList520/83D791746ECOD44BC1256B66005F0444

non-governmental organizations, UN agencies, other intergovernmental organizations and academic institutions.²³

The other central monitoring system, which must be mentioned, is the one created by the UN Security Council according to the Action Plan made by the Secretary-General. In July 2005 the Security Council decided to establish a working group consisting of all members of the Council to co-ordinate a report-collecting system and review the reports related to the situation on child recruitment. The Working Group was established by the 1612 (2005) Security Council Resolution. This mechanism is operating in co-operation with national governments and relevant UN and civil society actors. It is monitoring also the function of non-state armed groups. After collecting and reviewing the reports, it is giving recommendations to the Council on possible measures to promote the protection of children affected by armed conflict.²⁴ Its work is supported by Radhika Coomaraswamy who was appointed by Secretary-General Kofi Annan on 7th February 2006 as his Special Representative for Children and Armed Conflict.

Beyond the establishment of proper monitoring systems, it is inevitable to endeavour States to ensure that their national law are compatible with international legal standards. States, international and non-governmental organizations shall provide training to military and non-state actors on child rights and protection. In this respect, for example the National Societies of the Red Cross and Red Crescent can help to a large extent, urging non-governmental armed forces to refrain from using children as soldiers, as they might be able to reach these groups through dissemination and first aid courses. For this aim and the dissemination activity, the International Committee of the Red Cross and the International Federation ensure the relevant background documents.²⁵

In February 2005 Secretary-General Kofi Annan reviewed the changes regarding to child recruitment in the past several years. Positive tendencies were that visibility, global awareness and advocacy greatly increased on children and armed conflict issues. The protection of war-affected children was placed on the international peace-and-security agenda. Key regional organizations, such as the European Union, the Organization of American States, the African Union, have adopted this issue as part of their own agenda through important political declarations. Important local initiatives have been developed in several countries.²⁶

Nevertheless, atrocities against children and use of them in armed conflict still occur to a large extent. In many conflicts, such as in Cote d'Ivoire, the Democratic Republic of Congo and Liberia, a massive increase of recruitment occurred in 2003. In Sri Lanka the forced recruitment of children by the armed opposition group continues. In numerous countries of Africa, Asia, Latin America and the Middle East child soldier issues remain part of the gross violations of human rights. Despite all the achievements in the field of law, international criminal jurisdiction and the efforts made by international and non-governmental organizations, child soldiering remains a problem to solve.

²³ UNICEF – Coalition to Stop the Use of Child Soldiers: Guide to the Optional Protocol on the Involvement of Children in Armed Conflict. The United Nations Children's Fund, New York, 2003 Page 36-37

²⁴ UN Security Council Resolution 1612, 26 July 2005, U.N. Doc. S/RES/1612 (2005) Art. 2, 8

²⁵ Council of Delegates: Plan of action concerning children in armed conflict. Geneva, 1995 www.icrc.org/Web/Eng/siteeng0.nsf/impList518/66751E6DE2F6D972C1256B66005C3840 Obj. 1.1

²⁶ Report of the Secretary-General. Children and armed conflict. 9 February 2005 U.N. Doc. A/59/695-S/2005/72 Art. 60

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138 Minimum Age Convention. (International Labour Organisation) 1973

182 Worst Forms of Child Labour Convention. (International Labour Organisation) 1999