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## Children's Rights in International Law

Protection of the children's rights in today world is especially important due to some action taken by some organizations, or individuals, which strictly conduct to breach children's wellbeing, or even treat the child not as a human being, but as goods to sell. This may seem to be a strong statement to be made, and some people will stress that, in the modern times, children are much better protected than in the past decade. In some points this is true, but now there new trends which never existed before. Besides, there are still countries where children's rights are not protected and children suffer great damage, not only in the physical sphere but more so in the emotional sphere. Taking all of this into account, it is important to check how the international society protects children, what steps were taken to secure the rights of minors, what instruments we have to protect children's dignity and selfesteem. What important is that the effective protection of the rights of the child will not be achieved unless the substantive protections are perceived as culturally legitimate by local communities and unless the implementation procedures are aimed at enhancing such legitimacy as opposed to merely ensuring adherence to form. This short article will focus on the United Nations Convention on the Rights of the Child (1989) – the most important piece of international law concerning the children. The other important international instruments regarding the children are the Committee on the Rights of the Child, Children's Rights in Juvenile Justice, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules') introduced in 1985, United Nations Rules for the Protection of Juveniles Deprived of their Liberty ('Havana

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Rules') introduced in 1990, United Nations Guidelines for the Prevention of Juvenile Delinquency ('Riyadh Guidelines') introduced in 1990, Guidelines for Action on Children in the Criminal Justice System (Annex to UN Resolution 1997/30), Administration of Juvenile Justice ('Vienna Guidelines') introduced in 1997 and United National Common Approach to Justice for Children passed in 2008<sup>1</sup>.

The main scope of all these instruments is to secure for all children the right to opportunities to survive, grow and develop, within the context of physical, emotional and social well-being, to each child's full potential.

## 1. The Convention on the Rights of the Child – an introduction

The Convention on the Rights of the Child, with a Preamble and 54 articles, was adopted by the United Nations General Assembly by its resolution 44/25 on November 20, 1989, and entered into force on September 2, 1990.

Adopting the Convention in November 1989 ended the 10 years discussion on the children's rights issues, which started exactly in 1978 when the Government of Poland submitted the draft of the convention to the United Nations. The idea of putting all children's rights into one document was not new. In 1924, the League of Nations adopted a similar declaration, as the United Nations did in 1959. But there was only a declaration<sup>2</sup> concerning children's rights. Children's rights were also mentioned in a couple of different UN documents concerning general human rights<sup>3</sup>.

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<sup>1</sup> For Children's Rights and International Legal Frameworks see, [http://www.unicef.org/tdad/index\\_56386.html](http://www.unicef.org/tdad/index_56386.html) (23.12.2014).

<sup>2</sup> The general differences between the convention and declaration is the intention of the parties to create a binding document or not. Declaration is generally not legally binding for the signatories. So this term is used in the titles of international documents when parties deliberately chose not to create the binding documents, but only wanted to decelerate some ideas or provisions. Convention, on the other hand are formally binding for the signatories when the ratification process reaches the certain number of countries. Conventions, in general, are open for the all members of the international community to join. Convention, or the other word, Treaty, created the instruments, which allowed enforcement of the convention. *Introduction to the Convention on the Rights of the Child*, <http://www.unicef.org/crc/files/Definitions.pdf> (20.12.2014).

<sup>3</sup> *Fact Sheet No. 10 (Rev. 1), The Rights of the Child*, Committee on the Rights of the Child, first session, in October 1991, p. 1.

## 2. History of the Adoption of the Convention

The Polish Government was a strong supporter of adopting one document that would bind the international community. The idea of a Convention type of regulation on this issue was rooted in the 1959 Declaration of the Rights of the Child, in which Poland also took on the major role. However, it was not enough for the Polish Government. Still bearing the sufferings of World War II, Poland issued, on 17 January 1978, a Letter to the Director of the Division of Human Rights in the UN. Eugeniusz Wyzner, permanent Representative of the Polish Government, attached the explanatory memorandum to his letter. In this memorandum the Polish government wrote: "The Government of the Polish People's Republic is fully convinced that today, i.e. almost twenty years after the proclamation of the principles of this Declaration by the General Assembly, the conditions to take further and more consistent steps by adopting the internationally binding instrument in the form of a convention, have been already created. The development of the international cooperation in different areas shows that both the care of the child, and its rights, should not lag behind the elaboration of the international legal rules in other spheres"<sup>4</sup>. The next step taken by the Polish Government was sending UN the draft of the Convention to the UN, on 7 February 1978. So the discussion was opened, and on 14 February 1978 Poland, Austria, Bulgaria, Colombia, Jordan, Senegal and Syrian Arab Republic requested that the Secretary General transmit the Polish draft of the Convention to Member States, inviting them to communicate to him their views, observation and comments, until 30 June 1978<sup>5</sup>. The resolution of the draft was presented by Polish representative Adam Łopatka, who appealed that all the Member States, without any questions, should adopt the resolution about children's rights<sup>6</sup>. By sending the draft of the Convention (which was strictly based on the 1959 Declaration of Children's Rights) the Polish Government opened 10 years of discussion over the necessity of adopting such a convention by the international community and the principles of the future convention. In 1978, UNHCR, established a working group whose main purpose was to prepare the draft of the future convention. In December 1988, the draft

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<sup>4</sup> United Nations, *Legislative History of the Convention on the Rights of the Child*, vol. 1 Geneva 2007, p. 33.

<sup>5</sup> United Nations, *Legislative History of the Convention on the Rights of the Child*, vol. 1 Geneva 2007, p. 35.

<sup>6</sup> E. Verhellen, *Monitoring Children's Rights*, "The Hague" (1996), p. 380–381.

of the Convention was submitted to the UN General Assembly. The Convention was adopted on November 20, 1989, and opened for ratification on January 26, 1990. The Convention legally entered into force on September 2, 1990 when the twentieth state ratified the Convention<sup>7</sup>.

In 2014, 194 countries ratified the Convention on the Rights of the Child, two countries (United States of America and Somalia) signed the Convention, one country not take any action (Sudan) and a couple of countries took individual procedures<sup>8</sup>.

The Convention is built with the preamble and 54 articles, which are divided into three thematic parts. The first part is general, where the most important definitions were placed, and the general scopes of the convention where described. The second part is where different types of rights are described. The third part is about how adults and governments should behave to make sure that all children get all their rights<sup>9</sup>.

### 3. The Convention's scopes

One of the most important definitions which is placed in the Convention is the definition of the child in Article 1. This definition is very simple and straightforward: everyone under the 18 years of age is a child and has all the rights described in the Convention. According to the Convention regulation no matter what religion, race or abilities the child has or from what family it comes from, the Convention rights apply to all persons under the age of 18. This rule applies to all rights and all obligations, which the Convention secures and endorses<sup>10</sup>.

All children's rights are defined and described in 41 articles, each of which concerns a different type of rights. These articles can be grouped together under the following themes: children survival rights, development rights, protection

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<sup>7</sup> United Nations, *Legislative History of the Convention on the Rights of the Child*, vol. 1, Geneva 2007, p. 107–120; 274–280.

<sup>8</sup> Status of ratification: Convention on the Rights of the Child, <http://indicators.ohchr.org/> (23.12.2014).

<sup>9</sup> Konwencja o prawach dziecka, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., Dz.U. 1991 nr 120 poz. 526.

<sup>10</sup> A simplified version of the United Nations Convention on the Rights of the Child, <https://www.unicef.org.au/> (20.12.2014).

rights and participation rights<sup>11</sup>. The Convention also introduced new rights for children, which previously had not existed. According to Articles 7 and 8, the child's identity is now protected in special way. From his/her birth, the child has the right to: a name, a nationality, the right to be cared for by his or her parents, the right to know his and her parents and the right to not be stateless<sup>12</sup>. Also, the child has the right to be respected and to preserve his or her identity, and the State should take appropriate measure to protect and/or re-establish speedily child illegally deprived identity<sup>13</sup>. The special protection was established for vulnerable and indigenous children. This same Article 8 secures the rights of indigenous children to practice their cultures, whereas Article 30 strengthens this right by specific emphasis on the obligation of the State, where minorities or persons of indigenous origin exist, to secure the children's right to enjoy their culture, to profess and practice their religion and use their own language. Vulnerable children, such as refugees or war victims are specially entitled to greater protection and assistance by the State. Vulnerable child is entitled to alternative care, which could include: inter alia, foster care placement, adoption or kafalah<sup>14</sup> within Islamic law<sup>15</sup>. Other vulnerable children, such as victims of neglect, abuse, torture inhuman treatment and exploitation are also entitled to special protection and the State must guarantee special rehabilitative measures which foster the health, self-respect and dignity of the child<sup>16</sup>.

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<sup>11</sup> The United Nations Convention on the Rights of the Child, <http://www.childrensrights.ie/> (19.11.2014).

<sup>12</sup> Article 7, Konwencja o prawach dziecka, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., Dz.U. 1991 nr 120 poz. 526.

<sup>13</sup> Article 8, Konwencja o prawach dziecka, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., Dz.U. 1991 nr 120 poz. 526.

<sup>14</sup> Kafalah is the traditional Islamic way of taking care of the orphaned child. This is similar but not identical to adoption in continental law tradition. F. Kutty, *Islamic Law, Adoptions and Kafalah*, JURIST – Forum, Nov. 6, 2012, <http://jurist.org/forum/2012/11/faisal-kutty-adoption-kafalah.php> (30.12.2014).

<sup>15</sup> Article 8, 20 and 30, Konwencja o prawach dziecka, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., Dz.U. 1991 nr 120 poz. 526.

<sup>16</sup> Children's Rights: International Laws, <http://www.loc.gov/law/help/child-rights/international-law.php> (09.01.2015).

#### 4. Children's survival rights

The most important right is the right to life, secured in Article 6: “children have the right to live a full life; it is government duty to ensure that a child has survived and developed healthily”. According to Article 18: parents and government are responsible for the well-being of the child and for bringing up the child considering what is the best for the each of the child, not for children in general. The main duties in bringing up child are the parents’ responsibility, but when parents are not able to manage their duties by themselves, the government of the country where they are residing should grant them full support. The governments also are obliged to control if the child is properly cared for by the parents or other persons who are taking care of the child. It is also government responsibility to assure that each orphaned child and children whose parents are not able to take care of them, will be given an upbringing which respects their language, culture and religion. This rule applies also to adopted children according to Article 21. The other children’s survival rights are secured in the Articles 23 and 24. The first of these two articles refers to disabled children. This is simply a regulation, which can be quoted in one sentence: disabled children have rights to live a full and independent life. There is government responsibility to organised special care for such children and support them in ways that their lives will be exactly this same as their friends without disabilities<sup>17</sup>. Both survival and development rights can be derived from Article 24. This article ensures children’s rights to good quality health care, clean water, nutritious food and clean environment. All these factors are necessary for the child’s well-being and proper development. On the other hand, without food, water and health care, a child will be not able to survive. This same qualification occurs in Article 27 of the Convention. The Convention secures, for children, the right to have such living standards that meet their mental and physical needs. Once again, this is the parents’ responsibility to create for their child proper living conditions, and only when parents are not able to do it, government should support them. This second observation allowed to conclude that this Convention brings into force the subsidiarity principle. The general obligation to secure children’s rights and survival bear on the parents, and it is the parents’ duty to take care of their children. Only in such situations when parents are not able to do it, government is obliged to help them. The role of the government is broader, because whilst the

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<sup>17</sup> Article 23, Konwencja o prawach dziecka, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., Dz.U. 1991 nr 120 poz. 526.

parents' role is to take care of their children, the government's role is to ensure that they are doing this correctly, without the violation of the Convention of the Right of the Child. The state is breaking the Convention rules, when it does not establish appropriate control mechanisms over the parents or other peoples and institutions whose duties are take care of the children. To the survival rights, one can also add: the right to have registered name and nationality; the right not be separated from their parents, and the rights to presents their own opinion when the adults are making decisions that can affect the child, and this opinion<sup>18</sup> should be take into account by adults<sup>19</sup>. Children's survival rights are the right to life and to have the most basic needs met (e.g. adequate standard of living, shelter, nutrition, medical treatment).

## 5. Children's development rights

According to the preamble of the Convention the child: "should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular, in the spirit of peace, dignity, tolerance, freedom, equality and solidarity"<sup>20</sup>. Taking this into account, the Convention introduces the children's development rights, which are, in general, the rights to proper education, play and leisure, cultural activities, access to information and freedom of thought, conscience and religion. Article 14 proclaims that: each child which is growing up in a member state should have the right to the freedom of thought, conscience and religion. Similarly in Article 18 *in fine* it is said that: "this is the parents' primary right and obligation to bring up the child and secure its development". The best interests of the child should be their basic concern. On the other hand, it is the State's duty to provide each child the access to the education system and assure that each child would receive proper education. This right is expressed in Article 28. This article states that access to the education system should be equal to all children and should not depend on the

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<sup>18</sup> This particular right is the most ground-breaking children's right. Generally children's opinion is not taken into account in most important cases, which are conducted by the courts.

<sup>19</sup> *Children's Rights: International Laws*, <http://www.loc.gov/law/help/child-rights/international-law.php> (20.12.2014).

<sup>20</sup> Konwencja o prawach dziecka, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., Dz.U. 1991 nr 120 poz. 526.

sex, religion or race. Primary education should be compulsory and available freely to all. There also needs to be different types of the secondary education “including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need”<sup>21</sup>. Establishing the proper education system is not the only State’s responsibility; they are liable for the distribution of the proper information and guidance about it. Almost these same rules apply to higher education. It should be accessible to all on ability basis but nothing is said about it being free of charge. However the States are responsible to guarantee that each child younger than 18 years old, who is mentally capable, will get help from the State to start and finish university education. This really interesting obligation relies on the parents’ and State which is to take all necessary measures to encourage regular attendance at schools and the reduction of dropout rates<sup>22</sup>.

A curious interpretation of passage 2 of Article 28 exists in the African countries. It confers to the exact meaning of the passage: “State Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention”. Taking this citation into account it can be missed that, in the African schools (even those run by European organisations) corporal punishments are normal and lawful practices<sup>23</sup>. This situation puts in question the Convention regulation, because

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<sup>21</sup> Article 28 of the Konwencja o prawach dziecka, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., Dz.U. 1991 nr 120 poz. 526.

<sup>22</sup> *M. Santos Pais*, International law and children’s rights: critical review and wish list, <http://www.coe.int/t/dg3/children/> (09.12.2014).

<sup>23</sup> Corporal punishment is lawful in schools in mainland Tanzania under the National Corporal Punishment Regulations 1979 pursuant to article 60 of the National Education Act 1978, which authorizes the minister to make regulations “to provide for and control the administration of corporal punishment in schools”. The Law of the Child Act 2009 does not repeal this provision or prohibit corporal punishment in schools. Government guidelines in 2000 reduced the number of strokes from six to four and stated that only the heads of schools are allowed to administer the punishment, with penalties for teachers who flout these regulations. In Zanzibar, the Ministry of Education has adopted a policy against corporal punishment in schools, but it remains lawful under the 1982 Education Act. The Zanzibar Children’s Act 2011 does not explicitly prohibit corporal punishment in schools. In rejecting the recommendations to prohibit corporal punishment made during the UPR in 2011, the Government asserted that “corporal punishment does not apply in the education system” but that caning is administered in schools and is “a legitimate and acceptable form of punishment [not intended to] be violent, abusive or degrading”.

it can be used as an excuse to allow use corporal punishment legally at school, which is totally against the Convention's purpose to secure children's dignity. The last but not the least of the children's development right is the state obligation to promote and initiate international cooperation in relation to children's education.

## 6. Children's protection rights

Children's protection rights are one of the most important rights introduced by the Convention. On the 25 May, 2000, they were strengthened by the adoption of two optional protocols: the first one is the Protocol to the Convention on the Sale of Children (sex trafficking protocol)<sup>24</sup> and the second one is the Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Child Soldiers Protocol)<sup>25</sup>. Additionally, the children's protection rights were also strengthened with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty<sup>26</sup> adopted in 1990. All this regulations have the essential scopes, which are: safeguarding children and adolescents from all forms of abuse, neglect and exploitation. The importance of this regulation is great, especially when we look at what happened in Sierra Leone during civil war (1991 to 2002) or other African countries where children – especially boys, were used as child soldiers<sup>27</sup>.

Children's protection rights can be divided into four groups: child labour, sexual exploitation, military recruitment and juvenile justice. The first two groups are regulated in the Sex Trafficking protocol, the third one in the Child Soldier

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In April 2013, the Government reportedly confirmed that corporal punishment would continue to be used in public schools. *Summary of law reform necessary to achieve full prohibition*, <http://www.endcorporalpunishment.org/pages/progress/reports/un-rep-tanzania.html> (30.12.2014).

<sup>24</sup> Protokół Fakultatywny do Konwencji o Prawach Dziecka, w sprawie handlu dziećmi, dziecięcej prostytucji i dziecięcej pornografii, przyjęty w Nowym Jorku w dniu 24 maja 2000 r., Dz.U. 2007 nr 76 poz. 494.

<sup>25</sup> Protokół Fakultatywny do Konwencji o Prawach Dziecka w sprawie Angażowania Dzieci w Konflikty Zbrojne przyjęty w Nowym Jorku w dniu 24 maja 2000 r., Dz. U. 2007 nr 91 poz. 608 z późn. zm.

<sup>26</sup> United Nations General Assembly, 45/113 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, 68th plenary meeting 14 December 1990. Poland has not ratified it yet.

<sup>27</sup> Ch. Tylor, *The Armed Conflict in Sierra Leone*, Human Rights Watch, April 11, 2012, <http://www.hrw.org/news/2012/04/11/armed-conflict-sierra-leone> (20.12.2014).

protocol and the last one, in the Convention itself and in the UN Rules from 1990. The core question is: “Why did the international community need two additional protocols and did not simply regulate it in the Convention from the beginning?” There are two answers to this question. The first one is simple: at the time of the creation of the Convention, these problems were not so widely discussed and they were not considered priority rights to be protected. The second answer sends us to the beginning of this article, which showed that the United States of America, are listed among the countries who have not ratified the Children’s Rights Convention yet<sup>28</sup>. It was essential for the enforcement of the Convention to have the United States of the America among the Members of the Protocols, because this guarantees that the protocols were really executed. This happened on the 23 December 2002, when the United States not only signed but also ratified both protocols<sup>29</sup>.

The importance of particular groups of the children protection rights is different in different parts of the world. In Europe, United States, Russia or Mexico the governments are focusing on preventing the sexual exploitation of children, given their dependency on others and their limited ability to protect themselves. Sexual abuse and exploitation can take a variety of forms including rape, commercial sexual exploitation and domestic abuse. In Asian countries problems concentrate around the issue of child labour issue, where work is defined as exploitative. This exploitation includes a range of factors including the work itself, the work environment, the presence of particular hazards, the perceived benefits of work and the nature of the employment relationship. In African countries, there are military issues: “recruitment, where around 300,000 children and adolescents were engaged in armed conflict”. Brutality of children soldiers is legendary in a negative sense. Eyewitnesses describe the extreme brutal acts of violence of which children were doers<sup>30</sup>.

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<sup>28</sup> There are two answers, why the US do not want to ratify the Convention: the first argument is that American society does not want to give UN the power to interfere in US laws and families. The second answer is that the Convention does not sufficiently protect the parents and guardians. Whatever the reason, it is it is understandable why such important international regulation is not in power in the US. L. J. Cohen, A. T. DeBenede *Why is U.S. against the children rights?*, January 24 2002, <http://ideas.time.com/2012/01/24/why-is-the-us-against-childrens-rights/> (09.01.2015).

<sup>29</sup> *Status of Ratification: Optional Protocols to the Convention on the Rights of the Child*, <http://indicators.ohchr.org> (06.01.2015).

<sup>30</sup> *Children & youth*, [http://www.hrea.org/index.php?base\\_id=81](http://www.hrea.org/index.php?base_id=81) (23.12.2014).

Children are vulnerable and each child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth<sup>31</sup>.

## 7. Children's participation rights

Children's participation rights are among those rights, which are the most controversial and widely discussed. As it was said above, children have the right to be heard and to speak out about subjects which concern them. Article 12 of the Convention clearly and undoubtedly express that each child: "who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child"<sup>32</sup>. Participation rights could be manifest in different ways: for example, the child has the right to be a member of associations or different type of the organisations, according to his or her decision and interest. The child can actively participate in the community live and express his or her opinion about community matters<sup>33</sup>. Also, the child has the right to a child-friendly justice system, what means the right to participate in proceedings and express his or her judgement, opinion or presents his/her evidence and factual descriptions<sup>34</sup>.

Participation rights are rooted in Article 2 of the Convention which guarantees each child the equal treatment, and are known as non-discrimination rights<sup>35</sup>.

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<sup>31</sup> Konwencja o prawach dziecka, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., Dz. U. 1991 nr 120 poz. 526.

<sup>32</sup> Article 12, Konwencja o prawach dziecka, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., Dz.U. 1991 nr 120 poz. 526.

<sup>33</sup> *Children & youth*, [http://www.hrea.org/index.php?base\\_id=81](http://www.hrea.org/index.php?base_id=81) (23.12.2014).

<sup>34</sup> *M. Santos Pais*, International law and children's rights: critical review and wish list, <http://www.coe.int/t/dg3/children/> (09.10.2014).

<sup>35</sup> Article 3, Konwencja o prawach dziecka, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., Dz. U. 1991 nr 120 poz. 526.

## 8. Summary

The Convention on the Rights of the Child remains, until today, a key reference for the promotion of children's rights, and a source of inspiration for the administration of justice and the consolidation of international justice standards and mechanisms. What began as a simple project initiated by a communistic country at that time, developed into one of the most important international regulations. The Polish initiative to protect the most vulnerable members of the community, on an international level, is one of the most important initiatives in Polish legal history. The Polish government convinced the whole world that children are worth protection, and that their life should be under special safeguards, because children cannot protect themselves in the adults' world.

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