

# The Right to Education of Ukrainian Children

Name: Kaeko Yoshimoto

Student ID Number: [REDACTED]

Supervisor: [REDACTED]

Advanced LLM in International Children's Rights (2022-2023)



Universiteit Leiden

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Name: Kaeko Yoshimoto

Student ID Number: XXXXXXXXXX

Program: Advanced LLM, International Children's Rights (2022-2023)

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**Executive summary**

Ukrainian children's right to education has been at stake since Russia's military invasion of Ukraine on 24 February 2022. Children have had to interrupt the education they were previously receiving in Ukraine and flee elsewhere in the country or to third countries. Many children have mental problems due to their experiences of being separated from their families, not having access to adequate housing, food, electricity and water, and witnessing violent events.

In the first place, education is interrelated with other children's rights. For example, an adequate standard of health and a stable family environment plays a major role in a child's environment and motivation to receive an education. Education also contributes significantly to the right to development, providing children with the skills they need for their future. Considering that school is not just a place where children study and is a very important society for children, as it is at school that they interact with their friends and teachers and build a society that is different from that of their families. Armed conflict negatively affects children's various rights and, in turn, violates their right to education.

Second, military attacks on schools and the use of schools for military purposes are major problems in countries that are parties to armed conflicts. Geneva Convention IV and the Additional Protocol protect schools as civilian objects, and other international initiatives, such as the Safe School Declaration, also shelter attacks on schools and their use for military purposes. However, a number of military attacks on schools have been reported in Ukraine. Nevertheless, a large number of children continue to receive their education in schools in such circumstances. For those children in armed conflict, schooling is a bridge to the future and schools are important places for them to heal their trauma and socialize with their friends.

Third, children who have fled Ukraine to third countries also face major obstacles in realising their right to education: the EU countries have various policies aimed at 'integration' by sending children to host country schools. However, there are a number of barriers to integration, such as language differences and children choosing not to go to local schools in the first place. In order to overcome these problems, it is necessary to overcome the issues one by one, including measures to encourage displaced children, parents and caregivers to understand the importance of 'integration' and the development of a system



and skills on the receiving side.

### **Overview of main findings**

Children who have experienced or are still experiencing armed conflict face a range of problems, including family, housing, physical and mental health, hygiene and interruptions in education. The right to education and other rights are closely interrelated, and the guarantee or restoration of other rights is essential for the realisation of the right to education.

Schools also play a crucial role for children who have experienced armed conflict. That is, by nature, schools are communities where social relationships with friends and teachers are established and are essential for children's emotional stability. It is also an important place for children who have experienced armed conflict, as it helps them to heal from psychological stresses such as trauma.

Children who remain in Ukraine are threatened by military attacks on schools and the use of schools for military purposes, which threatens the very existence of schools themselves, important places where they receive education. Nevertheless, attending school is still very important for children in order to maintain emotional stability. Efforts are being made to build strong shelters and other facilities in schools and to continue education even during conflict. In addition, the full realisation of the right to education requires not only the personal safety of children, but also the security of infrastructure such as electricity and water supply. With such an environment in place, children can heal from the emotional trauma of the armed conflict by interacting with their friends and teachers at school.

The EU has provided guidelines for the implementation of inclusive education in local schools for children who have fled Ukraine to EU countries, and the EU's explicit provision of such guidelines to ensure the right to education for Ukrainian children is an important step towards the children's right to education in accordance with the requirements of the CRC is an indication of the EU's firm attitude that the right to education of Ukrainian children should be realised in accordance with the requirements of the CRC and can be evaluated favorably from the perspective of protecting the right to education. However, in reality, there are many children and parents who do not wish to go to local schools, and even if they do attend local schools, there are various barriers to the realisation of inclusive education. It is important to

listen carefully to children's views and to provide opportunities for open-minded discussions about Ukraine and the host country in the classroom as a whole in order to ensure inclusion.

## Chapter 1. Introduction and Objectives of the Study

### 1.1. Introduction

Since the Russian invasion of Ukraine on 24 February 2022, education for more than 5 million Ukrainian children has been disrupted.<sup>1</sup> On the one hand, their education was severely affected by military attacks on school facilities and the military use of school facilities in Ukraine.<sup>2</sup> On the other hand, children have started their education in new environments, including in person and online, as they are displaced internationally, while some children's education remains interrupted.<sup>3</sup>

This thesis examines the guarantee of the right to education for Ukrainian children affected during the armed conflict between the two countries, which started in earnest on 24 February 2022 with the Russian military invasion of Ukraine.

Chapter 2 discusses primarily the legal framework of the child's right to education under armed conflict in the CRC and the role of schools based on an analysis of it. Baring that "education is both a human right in itself and an indispensable means of realizing other human rights"<sup>4</sup> and closely related to other rights, Chapter 1 begins with an examination of the relationship between the right to education and other children's rights. It then examines the framework of the child's rights to education itself. After clarifying the nature of the right to education through the above discussions, a framework for protecting the right to education for children in armed conflict is discussed. Finally, based on the above considerations, the role of schools for children in armed conflict is discussed.

Chapter 3 discusses military attacks on schools and the military use of school and how these

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<sup>1</sup> UNICEF, '11 months of war in Ukraine have disrupted education for more than five million children' 24 January 2023, <https://www.unicef.org/press-releases/11-months-war-ukraine-have-disrupted-education-more-five-million-children>

<sup>2</sup> Global Coalition to Protect Education from Attack (GCPEA), 'Attacks on Education and Military Use of Education Facilities in Ukraine in 2022' (February 2023), at 3-4.

<sup>3</sup> Save the Children, 'This is my life and I don't want to waste a year of it.' November 2022, at 13-17.

<sup>4</sup> UN Committee on the ESCR, General Comment No.13: The Right to Education (Art.13) (1999), para 1.

are affecting the right to education of children who remain in Ukraine. It begins by discussing international humanitarian law and other international legal frameworks that protect schools from military attacks and use for military purposes. It then discusses initiatives of the international community, such as Special Representative Children in Armed Conflict and the Safe School Declaration. Furthermore, the current situation of school life for Ukrainian children will be examined. Finally, based on the above discussion, the final section of the chapter examines what measures are required to protect the 'school' of Ukrainian children.

Chapter 4 discusses the guarantee of the right to education for children who have fled from Ukraine to third countries. Here, the focus is primarily on rights guarantees in the EU, given the fact that most of internationally displaced peoples from Ukraine have fled to EU countries.<sup>5</sup> First of all, the legal framework and policies guaranteeing the right to education for Ukrainian children in the EU will be examined in detail. Next, It considers the extent to which those policies and guidelines are useful in realising the right to education for Ukrainian children, what the practical barriers are in implementing them and how they should be overcome.

Chapter 5 concludes the discussion and review of Chapters 2 to 4 and provides a summary chapter with clear answers to the research questions.

## 1.2. Problem definition

The impact of Russia's invasion of Ukraine on Ukrainian children has been enormous. Since February 2022, 1,276 children have been killed or injured, separated from their families, or put at risk of violence.<sup>6</sup> And 6.5 million people, including 1.2 million children, are currently

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<sup>5</sup> As of 16 May 2023, the number of individual refugees from Ukraine recorded across Europe is 8,255,288. See, UNHCR, UKRAINE SITUATION FLASH UPDATE #48, 3 June 2023, available at <https://reporting.unhcr.org/europe-ukraine-situation-flash-update>, last visited (02-07-2023)

Note that above number includes those protected by temporary protection and other temporary asylum status.

See, Operational Data Portal -Ukraine Refugee Situation-, <https://data.unhcr.org/en/situations/ukraine>, last visited (02-07-2023)

<sup>6</sup> UNICEF, Humanitarian Action for Children, <https://www.unicef.org/media/139506/file/2023-HAC-Ukraine-revised-March.pdf>, last visited (02-07-2023).

displaced within Ukraine.<sup>7</sup> More than 8 million have fled the country, 90 percent women and children, have fled across Europe.<sup>8</sup>

Affected by these devastating humanitarian situations, both children who remain in Ukraine and those who have fled to seek asylum outside Ukraine face serious problems in continuing their education.<sup>9</sup> For example, they have problems on housing,<sup>10</sup> <sup>11</sup> health (including not only physical problems but also mental health problems due to separation from family, friends and other communities in Ukraine and the experience of armed conflict),<sup>12</sup> <sup>13</sup> financial problems to make ends meet caused by losing family jobs.<sup>14</sup> On the one hand, as to the specific problems children remaining in Ukraine, many schools have been destroyed by the military attacks in many areas, and it is difficult to secure human and material resources for education.<sup>15</sup> On the other hand, for children who have been internationally displaced is facing a variety of issues in addition to the common problems with children remaining Ukraine described above. For example, the stress caused by the long journey to a third country,<sup>16</sup> the confusion and anxiety about a totally unfamiliar language, healthcare system, education system and other social systems; the complete loss of the Ukrainian community,<sup>17</sup> and the uncertainty about the future including when they will return to Ukraine,

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Save the Children, November 2022, at 13-17.

<sup>10</sup> Habitat for Humanity, Housing of Ukrainian Refugees in Europe

Options for Long-Term Solutions, <https://www.habitat.org/emea/housing-ukrainian-refugees-europe>, last visited (20-07-2023).

<sup>11</sup> OHCHR Report on the Humanitarian Rights Situation in Ukraine, para 105-108.

<sup>12</sup> UNICEF, Ukraine country office, Humanitarian Situation Report No.24, December 2022, <https://www.unicef.org/ukraine/en/documents/humanitarian-situation-report-december-2022>, last visited (02-07-2023)

<sup>13</sup> Save the Children, November 2022, at 10-12.

<sup>14</sup> ILO, The impact of the Ukraine crisis on the world of work: Initial assessments, [https://www.ilo.org/europe/publications/WCMS\\_844295/lang--en/index.htm](https://www.ilo.org/europe/publications/WCMS_844295/lang--en/index.htm), last visited (02-07-2023).

<sup>15</sup> GCPEA, 'Attacks on Education and Military Use of Education Facilities in Ukraine in 2022' February 2023, at 3-4.

<sup>16</sup> Save the Children, November 2022, at 10.

<sup>17</sup> Ibid, at 10-12.

whether they will settle in the country where they are now, or move to another country.<sup>18</sup> These physical and mental instability, fear, insecurity and uncertainty are therefore directly related to the question of whether children can receive the adequate education they desire in these circumstances.<sup>19</sup>

Thus, the international community, including the parties to the conflict and the countries to which Ukrainian children have been displaced, is faced with the question of how to respond to this problem and practically guarantee the right to education for children in armed conflict.

### **1.3. Objectives of research**

There are three main objectives of the research.

First, it identifies the relationship between children's right to education and other rights (interdependence) and a framework for the protection of the right to education. Then, based on the above considerations, the role of 'schools' in armed conflict for children is clarified.

Second, it identifies the legal framework for protecting 'schools' from military attack or use for military purposes and clarifies the situation of the operation of schools and the education of children in Ukraine, and examines the necessary measures required to protect children's schools.

Third, it will examine the EU legal or policy framework for how children displaced outside Ukraine are guaranteed the right to education in a third country. It then examines what specific barriers to the right to education Ukrainian children face and what necessary measures are required to overcome them.

### **1.4. Research questions**

- Main question

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<sup>18</sup> Ibid, at 24-26.

<sup>19</sup> Ibid,, at 13-17.

To what extent are Ukrainian children's right to education protected, respected and fulfilled in accordance with the standards required by the international legal framework?

- Sub-questions

- How does the child's right to education relate to other children's rights?
- What is the role of schools in armed conflict?
- What legal framework is applied for protecting the right to education for children in a country in armed conflict?
- What legal framework protects schools from armed conflict?
- What is the status of schools and children's right to education in Ukraine?
- What is the legal framework and policies for guaranteeing the right to education of children who have fled from Ukraine to third countries (EU countries)?
- What are the practical problems of integration into the host country's education system?
- What duties to the Convention on the Rights of the Child (CRC) do state parties have for protecting the right to education of Ukrainian children who have fled from Ukraine to third countries?

### **1.5. Methodology and research techniques**

The materials based on the thesis will be collected primarily through desk-based research. As to the part of the legal framework for the education right of children under armed conflict, a comprehensive analysis of the CRC, International Covenants on Economic, Social and Cultural Rights (ICESCR), and Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC) will be undertaken. As to the part of the legal framework for protecting schools from military attack and use for military purposes, the fourth Geneva Convention and Additional Protocols, OPAC, other relevant framework of the international community will be analysed. On the other hand, the part of the discussion that specifically examines the problems of both children remaining in Ukraine and children internationally displaced will mainly focus on analyzing reports and information from NGOs, UNICEF, and other UN organizations.

## **Chapter 2. The significance and framework of the right to education of children under armed conflict under international human rights law**

### **2.1. Introduction**

This chapter examines the international human rights framework guaranteeing the right to education for children in armed conflict.

First, it discusses the significance of the right to education under the CRC and ICESCR (2.2). Next, it discusses the comprehensive picture of children's rights surrounding the right to education and examines the relationship between the right to education and other children's right (2.3). Then, based on the discussion in 2.2. and 2.3, it discusses State parties obligation with regards to right to education (2.4). It then further examines what legal framework exists to protect children's right to education in emergency and special circumstances of armed conflict (2.5). Lastly, it analyses the role of school for children in armed conflicts (2.6)

### **2.2. Right to education**

#### **2.2.1. Children as rights holders under the CRC**

The Convention on the Rights of the Child is the most universally accepted human rights treaty all over the world. 196 states and Taiwan have committed themselves to the implementation of the Convention.<sup>20</sup>

The most important point to note with regards to why we need a separate human rights treaty for children despite the existence of the ICCPR and the ICESCR is that it provides a perspective that is missing from these conventions - that the child is a rights holder -<sup>21</sup> and that it forces states to take the rights of the children seriously.<sup>22</sup>

#### **2.2.2. Right to education and Aim of education**

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<sup>20</sup> J. Doek, *The Human Rights of Children: An Introduction*, U. Kilkelly & T. Liefaard (Eds), *International Human Rights of Children*, Springer (2019), at 13.

<sup>21</sup> *Ibid*, at 12.

<sup>22</sup> M. Freeman, *Why It Remains Important to Take Children's Rights Seriously*, *International Journal of Children's Rights* 15 (2007), at 7.



The right to education is guaranteed in Article 28 of the CRC and the aims of education are set forth in Article 29 in the Convention. While Article 13 of the ICRSCR set forth the right to education as well, Article 28 of the CRC is “more specific in that it focuses only on the right to education dimensions relevant for the child who receives education.”<sup>23</sup> Article 28 focuses primarily on issues of access to education while Article 29 addresses its aims.<sup>24</sup>

Article 28 of the CRC states that States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity. The child’s right to education is not only a matter of access (Art.28) but also of content.<sup>25</sup> In paragraph 1 of Article 29, five aims of education are listed: the development of the child’s personality, talents and mental and physical abilities (Art.29(1)(a)), the development of respect for human rights and fundamental freedoms (Art.29(1)(b)), the development of respect for the child’s parents, his or her own cultural identity, language and values of the country of residence and origin (Art.29(1)(c)), his or her socialization and interaction with others (Art.29(1)(d)), and with the environment (Art.29(1)(e)).<sup>26</sup> The aims listed in Article 29(1) of the CRC partly correspond the aims and objectives enumerated in Article 13(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>27</sup>

### **2.3. Holistic picture of children’s rights surrounding right to education – relevance of the right to education and other children’s rights –**

Education described above is a human right in its own right and essential for the realisation of other human rights.<sup>28</sup> It is about empowering every child by providing them with life skills,

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<sup>23</sup> W. Vandenhoele, ‘ARTICLE 28: Rights to Education,’ in *Children’s Rights: A Commentary on the CRC and its Protocols*, edited by Wouter Vandenhoele, Gamze Erdem Türkelli and Sara Lembrechts, Cheltenham: Edward Elgar, (2019), para 28.01.

<sup>24</sup> L. Lundy & P. O’Lynn, ‘The Education Rights of Children’ in: *International Human Rights of Children*, edited by Ursula Kilkelly and Ton Liefaard. Singapore: Springer 2019, at 260.

<sup>25</sup> UN Committee on the Rights of the Child, General Comment No.1, The Aim of Education (2001), CRC/GC/2001/1, para 3.

<sup>26</sup> *Ibid*, para 1.

<sup>27</sup> W. Vandenhoele, ‘ARTICLE 29: Aim of Education,’ in *Children’s Rights: A Commentary on the CRC and its Protocols*, edited by Wouter Vandenhoele, Gamze Erdem Türkelli and Sara Lembrechts, Cheltenham: Edward Elgar (2019), para 29.03.

<sup>28</sup> UN Committee on Economic, Social and Cultural Rights (1999) General comment No. 13 The right to education, para 1.

strengthening their ability to enjoy the full range of their human rights and developing their skills, learning capacity, human dignity, self-respect and self-confidence. On the other hand, in order to receive an adequate education and to maximise its effectiveness, the physical situation surrounding children and their psychological situation must be stable.

In Section 2.3., the first step is to take stock of the CRC as a whole and what rights are stipulated in the Convention (2.3.1.), and then to examine the relationship between the right to education and each right individually (2.3.2.).

### **2.3.1. Various rights held by children and General Principles**

The CRC reflects the “comprehensive nature“of children’s rights.<sup>29</sup> It includes both aspects of specific children’s rights to be protected from all forms of violence and exploitation and rights that are critical for their health and harmonious development and for the recognition of their evolving capacities and participation in all decision-making processes relevant to them.<sup>30</sup>

The CRC Committee clustered the articles for the purpose of facilitating reporting on the implementation by States Parties, and it reflects the comprehensive, interrelated, and interdependent nature of children’s rights.<sup>31</sup> The eight clusters are (1) General measures of implementation (Arts. 4, 42 and 44, para. 6, of the Convention), (2) Definition of the child (Art. 1), (3) General principles (Arts. 2, 3, 6 and 12), (4) Civil rights and freedoms (Arts. 7, 8, and 13–17), (5) Violence against children (Arts. 19, 24, para. 3, 28, para. 2, 34, 37 (a) and 39), (6) Family environment and alternative care (Arts. 5, 9–11, 18, paras. 1 and 2, 20, 21, 25 and 27, para. 4), (7) Disability, basic health and welfare (arts. 6, 18, para. 3, 23, 24, 26, 27, paras. 1–3, and 33), (8) Education, leisure and cultural activities (arts. 28–31), (9) Special protection measures (Arts. 22, 30, 32, 33, 35, 36, 37 (b)–(d), and 38–40).<sup>32</sup> In addition, as to Optional Protocols, there are two more points for periodic reporting by States parties, (10) Follow-up to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and (11) Follow-up to the

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<sup>29</sup> J. Doek, Springer (2019), at 13.

<sup>30</sup> J. Doek, Springer (2019), at 13.

<sup>31</sup> J. Doek, Springer (2019), at 12.

<sup>32</sup> Committee on the Rights of the Child, ‘Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child’ (2015), CRC/C/58/Rev.3, para 17-43.

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.<sup>33</sup> Children's right to education (Art. 28 and 29) is classified within the eighth cluster, while provisions on children in armed conflict (Art. 38 and 39) are classified within the ninth<sup>34</sup> and eleventh clusters.

In considering the various children's rights, the four general principles of the CRC must always be borne in mind. These principles are the right to non-discrimination (Art.2), the best interest of the child (Art. 3), the right to life, survival and development (Art. 6), and the right to be heard (Art. 12).<sup>35</sup> The first three principles require that legislation, administrative policy, court judgment and any decision concerning children will protect and promote their right to life, survival, and development, will regard a child's best interest as a primary consideration, and will not discriminate against children.<sup>36</sup> In addition, the fourth principle requires State parties to ensure the right to express children's views freely in all matters affecting the child to be given due weight.<sup>37</sup>

### **2.3.2. Relationship and relevance between the right to education and other children's rights**

Based on the idea that children as rights holders as embedded in the CRC and each right on the CRC and its four general principles, the relationship between the right to education and other children's rights is examined below, with reference to the classification provided by the CRC Committee. It will start with the relationship to the right to rest, leisure, play, recreational activities, cultural life and arts, which is adjacent to the right to education based on the clusters the CRC committee made, the relationship to the other rights, and finally the relationship to the general principles will be discussed.

- The right of the child to rest, leisure, play, recreational activities, cultural life and the art (Art. 31)

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<sup>33</sup> Ibid, para 42 and 43.

<sup>34</sup> Ibid, para 40(f)

<sup>35</sup> United Nations Committee on the Rights of the Child, General Comment No.5, General measures of implementation of the Convention on the Rights of the Child (2003), CRC/GC/2003/5, para 12.

<sup>36</sup> N.Peleg, *The Human Rights of Children: General Principles*, U. Kilkelly & T. Liefaard (Eds), *International Human Rights of Children*, Springer (2019), at 139.

<sup>37</sup> Ibid., at 140.

Article 31 states that State parties recognize, shall respect, and shall promote the right of the child to rest, leisure, play, recreational activities, cultural life and the art. The CRC committee emphasizes the importance of the rights under Article 31 with regard to the right to education, saying that “For children to optimize their potential” which is one of the aims of education under Article 29(a), they require opportunities for cultural and artistic development as well as participation in sports and games.<sup>38</sup> The Committee also emphasises that the rights under Article 31 are of positive benefit to children’s educational development.<sup>39</sup>

Thus, throughout early childhood education and care as well as primary and secondary school, play is incorporated into education, children learn a lot from play, and education and play are inextricably linked for children.

- The right to the enjoyment of the highest attainable standard of health (Arts. 24)

Article 24(1) sets forth states parties’ obligation to ensure “the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” According to the CRC Committee, children’s right to health defined in Article 24 should be considered “as an inclusive right, extending not only timely and appropriate prevention, curative, rehabilitative and palliative service, but also to a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health.”<sup>40</sup> The CRC committee also refers to the preamble of the Constitution of the World Health Organization which says that states have agreed to regard health as a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.<sup>41</sup>

Further, the CRC Committee makes a special note of their concern about children’s mental illness.<sup>42</sup> To combat this concern, the Committee urges State parties to

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<sup>38</sup> UN Committee on the Rights of the Child, General Comment No.17, General Comment No.17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (2013), CRC/C/GC/17, para 27.

<sup>39</sup> Ibid.

<sup>40</sup> UN Committee on the Rights of the Child, General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), para 2, CRC/C/GC/15, 17 April 2013.

<sup>41</sup> Ibid, para 4.

<sup>42</sup> Ibid, para 38.

undertake an approach based on public health and psychosocial support to address mental ill-health among children and to invest in primary care approaches that facilitate the early detection and treatment of children's psychosocial, emotional, and mental problems.<sup>43</sup> It says that State parties have an obligation to provide adequate treatment and rehabilitation for children with mental health.<sup>44</sup>

Going to school, interacting with friends and teachers, learning new things, and exercising all these activities that are necessary for receiving an education are all based on not physical but also mental health.<sup>45</sup> The achievement of physical aspects of health, such as sufficient and adequate drinking water, food and shelter, provide children with mental stability, which is important for them to receive a good education and achieve well. Children's health, improved education and overall well-being are deeply affected by the quality of the housing in which they live.<sup>46</sup> Lack of adequate housing, forced evictions and homelessness are, affect children's growth, development and enjoyment of all their rights, including education and health.<sup>47</sup> Access to basic services associated with the home, such as safe drinking water and adequate sanitation (including toilets and baths), is fundamental to ensuring children's well-being.<sup>48</sup> Cramped, crowded, noisy and rundown residential environments without such safe drinking water and adequate sanitation facilities seriously undermine children's development and health, and their ability to learn and play.<sup>49</sup> The location of housing is also crucial to ensuring children's access to childcare, schools, health care and other services.<sup>50</sup> For example, if the residence is far from a school. Children will find it more difficult to attend school if they live far from school, if transport is non-existent or if transport costs are too high.

In addition to physical aspects of health, In many cases, children may also have mental health problems without apparent problems in the physical aspect, in which case

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<sup>43</sup> Ibid, para 39.

<sup>44</sup> Ibid, para 39.

<sup>45</sup> WHO, UNESCO, UNICEF, 'Five essential pillars for promoting and protecting mental health and psychosocial well-being in schools and learning environments' (2022), available at <https://www.unicef.org/reports/promoting-and-protecting-mental-health-schools-and-learning-environments>

<sup>46</sup> OHCHR, Fact Sheet on the right to adequate housing, at 18, available at, <https://www.ohchr.org/en/special-procedures/sr-housing/human-right-adequate-housing>

<sup>47</sup> Ibid at 18.

<sup>48</sup> Ibid at 20.

<sup>49</sup> Ibid at 20.

<sup>50</sup> Ibid at 20.

problems related to mental health will affect their right to education (e.g. non-attendance at school, low motivation to study, inability to achieve adequate educational outcomes, etc.). It should be noted that children who are traumatised and have mental health problems arising from armed conflict do not necessarily have educational problems, making school a negative place for them. In other words, schools may play a positive role in resolving children's mental health problems. This is discussed below in the 2.4.2.

- The right to grow up in a family environment (Preamble, Arts. 5, 7, 9, 10, and 18.)

In the Preamble to the CRC, State parties have agreed that “the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community” (para. 5), as well as that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding” (para. 6). Given that the family is the basic social unit with which a child first comes into contact and which occupies much of the child’s world, it is easy to imagine that whether or not the family environment is stable will have a bearing on the realization of many other children’s rights such as the best interest of children (Art.3), the right to life, survival and development (Art.6), the right to health (Art.24).<sup>51</sup> For example, changes in family structure lead to changes in economic, time and parental resources.<sup>52</sup> These changes impose stress on families including children and adversely affect child outcomes.<sup>53</sup> Family stability or instability also affect the children’s right to education (Art 28).<sup>54</sup> For example, can a child who has been subject to parental divorce or family violence, or who has been separated from his or her family, adequately concentrate on his or her studies and on school relationships with friends and teachers? The answer may vary from child to child and case to case, but it is at least clear that a child’s family environment and right to education are closely related

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<sup>51</sup> T.Craigie, J. Brooks & J. Waldfogel, *Family Structure, Family Stability and Early Child Wellbeing*, January 2010, at 3, available at [https://www.researchgate.net/publication/228827417\\_Family\\_Structure\\_Family\\_Stability\\_and\\_Early\\_Child\\_Wellbeing](https://www.researchgate.net/publication/228827417_Family_Structure_Family_Stability_and_Early_Child_Wellbeing)

<sup>52</sup> *Ibid*, at 4.

<sup>53</sup> *Ibid*, at 4.

<sup>54</sup> Y. Sun & Y. Li, *Positive Family Stability and Changes in Adolescents’ Academic Performance*, *Journal of Family Issues* 11, November 2009, at 1528-1532.

and have a significant influence on each other.<sup>55</sup>

- The right to non-discrimination (Art.2)

The right to non-discrimination is not a passive obligation only prohibiting all forms of discrimination.<sup>56</sup> Rather, the right call for states to ensure effective equal opportunities for all children to enjoy the rights under the CRC.<sup>57</sup> This may require positive measures aiming at redressing a situation of real inequality.<sup>58</sup> With regard to the relevance between the right to education and the right to non-discrimination, both the opportunity to education and the substantive content of education<sup>59</sup> must be non-discriminatory. This is discussed in more detail in the section “State parties obligations” in 2.3.2 State parties obligations.

- The right to life, survival and development (Art.6.)

The right to life is at the core of international human rights law<sup>60</sup> and the UN Human Rights Committee states it is “basic to all human rights.”<sup>61</sup> Failing to protect the right to life makes the realization of all other human rights meaningless.<sup>62</sup>

The right to development is closely linked to the right to education. The right to development is an important right that enables children to have as many options as possible in living their lives.<sup>63</sup> This right enables children to be aware of the range of options available to them and to increase their choice and freedom.<sup>64</sup> It also ensures

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<sup>55</sup> Ibid, at 1529.

<sup>56</sup> UN Committee on the Right of the Child, General Comment No.14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3, para 1) (2013), CRC/C/GC/14, para 41.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> UN Committee on the Rights of the Child, General Comment No.1, The Aim of Education (2001), para 3.

<sup>60</sup> N.Peleg, Springer (2019), at 144.

<sup>61</sup> United Nations Human Rights Committee, General Comment No. 14: Article 6 (Right to life) (1984), para 1.

<sup>62</sup> Peleg, Springer (2019) at 144.

<sup>63</sup> Ibid., at 147.

<sup>64</sup> Ibid, at 147.

that children have the necessary capacity to choose and express their preferences.<sup>65</sup> One of the objectives of education referred to in 2.3.2. below includes “The development of the child’s personality, talents and mental and physical abilities to their fullest potential” (Art.29(1)(a)), which is precisely what it has in common with the right to development. Thus, the child’s right to education has partially overlapping objectives with the right to development. Teaching the child how to read and write has additional and intrinsic values.<sup>66</sup> It enables the children to acquire new skills and knowledge and promotes their intellectual development.<sup>67</sup>

- The best interest of the child (Art 3(1).) and the right to be heard (Art. 12)

Article 3 of the CRC stipulates that children have the right to have his or her best interest assessed and taken into account as a primary consideration in all actions or decisions concerning him or her. It is in the best interests of the child to have free access to quality education, including early childhood education, non-formal or informal education and related activities.<sup>68</sup> All decisions on measures and actions concerning a particular child or group of children must respect the best interests of the child or children with regard to education.<sup>69</sup> Promoting education for more children, or better quality education, helps to overcome the limitations of any kind of vulnerability they have, which is in the best interests of the child.<sup>70</sup>

The CRC Committee says that respect for right of the child to be heard within education is fundamental to the realization of the right to education.<sup>71</sup> Children’s participation is indispensable for the creation of social interaction and relationships in the classroom.<sup>72</sup> Child active participation leads to cooperation and mutual support needed for child-centered interactive learning. Giving children’s views weight is

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<sup>65</sup> Ibid, at 147.

<sup>66</sup> Ibid, at 147.

<sup>67</sup> Ibid, at 147.

<sup>68</sup> UN Committee on the Rights of the Child, General Comment No.14 (2013), para 79.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> United Nations Committee on the Right of the Child, General Comment No.12 (2009) The right of the child to be heard, CRC/C/GC/12, para 105.

<sup>72</sup> Ibid, para 109.



particularly important in the elimination of discrimination, prevention of bullying and disciplinary measures<sup>73</sup> and is essential for the realization of children's best interest.<sup>74</sup>

Thus, the right to education is interdependent and closely related to other children's rights, and the full realisation of a child's right to education cannot happen if other rights are left behind and vice versa.

## **2.4. States Parties Obligations**

In the light of the relationship with the other rights discussed above, this section examines what obligations States parties to the CRC have with regard to the right to education of children.

### **2.4.1. Types of obligations**

To begin with, what kind of obligations do State Parties have?

The three types of obligations are applied to the right to education.<sup>75</sup> They are the obligation to respect (State parties should not interfere directly or indirectly with the enjoyment of children's rights.<sup>76</sup>), to protect (State parties shall prevent third parties from interfering with rights guaranteed under the Convention and the Optional Protocols<sup>77</sup>), to fulfill (States parties shall take action to ensure the full realization of the rights of the child.<sup>78</sup>). However, more than any other human right, the direct provision of education is considered a primary

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<sup>73</sup> Ibid, para 109.

<sup>74</sup> UN Committee on the Rights of the Child, General Comment No.14 (2013), para 43. See, it says Article 3(1) and Article 12 "have complementary roles: the first aims to realize the child's best interests, and the second provides the methodology for hearing the views of the child or children and their inclusion in all matters affecting the child". (para 43).

<sup>75</sup> W. Vandenhole, 'ARTICLE 28: Rights to Education,' in *Children's Rights: A Commentary on the CRC and its Protocols*, edited by Wouter Vandenhole, Gamze Erdem Türkelli and Sara Lembrechts, Cheltenham: Edward Elgar, (2019), para 28.05.

<sup>76</sup> UN Committee on the Rights of the Child, General Comment No.19 (2016), para 27(a).

<sup>77</sup> Ibid, para 27(b).

<sup>78</sup> Ibid, para 27(c).

obligation of the State.<sup>79</sup> States parties are therefore reinforcing the obligations they have to fulfil with regard to the right to education, but the extent of this obligation is not uniform for all levels of education.<sup>80</sup> Article 28(1) of the CRC stipulates that primary education shall be compulsory and free of charge for all (Art.28 (1)(a)), that secondary education shall be available and accessible to all children and that measures of free education and financial assistance have to be taken based on needs (Art.28(1)(b)), and that higher education must be available and accessible to all children, and that all should be given the opportunity to access it in accordance with their capacity (Art.28(1)(c)).

In addition, the Committee on Economic, Social and Cultural Rights confirmed that States parties have ‘a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels’<sup>81</sup> of each of the rights in the Covenant. In the context of education rights, the ‘core’ includes an obligation to ensure the right of access to public educational institutions and programmes without any discrimination and to ensure that education is provided in accordance with the objectives set forth in Article 13(1).<sup>82</sup>

#### **2.4.2. Contents and forms of education**

Next, what content of education must States parties provide? In other words, what content and forms of education provision should be provided to meet the requirements of the CRC? The usual interrelated essential elements of ESC rights constitute the normative content of the right to education: availability; accessibility; acceptability; and adaptability.<sup>83</sup> In applying these four elements, “The best interest of the student shall be a primary consideration.”<sup>84</sup> The details of the four elements are as follows;

First, education must be available (Availability)<sup>85</sup> “Functioning educational institutions and

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<sup>79</sup> W. Vandenhoe, ‘ARTICLE 28: Rights to Education,’ Edward Elgar, (2019), para 28.05.

<sup>80</sup> Ibid.

<sup>81</sup> UN Committee on the Economic, Social and Cultural Rights, General Comment No.3, The nature of States parties’ obligations, (1990), para 10.

<sup>82</sup> UN Committee on the Economic, Social and Cultural Rights, General Comment No.13 (1999), para 57.

<sup>83</sup> W. Vandenhoe, ‘ARTICLE 28: Rights to Education’, (2019), para 28.05.

<sup>84</sup> UN Committee on Economic, Social and Cultural Rights (1999) General comment No. 13 (1999), para 7.

<sup>85</sup> Ibid, para 6(a).

programmes have to be available in sufficient quantity within the jurisdiction of the State party.”<sup>86</sup>

Second, education must be accessible (Accessibility)<sup>87</sup> “Educational institutions and programmes have to be accessible to everyone without discrimination.”<sup>88</sup> In more detail, Accessibility is divided into three categories, Non-discrimination, Physical accessibility, and Economic accessibility.<sup>89</sup> Non-discrimination means that education must be accessible to all children including the most vulnerable group without discrimination.<sup>90</sup> Physical accessibility means that education has to be reachable, “either by attendance at some reasonably convenient geographic location or via modern technology.”<sup>91</sup> Economic accessibility means that education has to be affordable to all. While primary education shall be available free to all (Aet 28(1)), State parties are required to progressively introduce free secondary and higher education.<sup>92</sup>

Third, education must be acceptable (Acceptability)<sup>93</sup> The form and contents of education such as curriculum and teaching have to be acceptable to students.<sup>94</sup> These should be “relevant, culturally appropriate and of good quality”.<sup>95</sup>

Forth, education must be adaptable (Adaptability)<sup>96</sup> Education must be flexible so it can adapt to the needs of societies, communities and students.

Therefore, naturally, the education provided cannot be of any content or mode. It must be ensured that sufficient quantities of educational resources, including educational facilities, teachers and other staff, and teaching materials, are available for the number of children in need of education. All children must have equal access to education, there must be schools

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<sup>86</sup> Ibid.

<sup>87</sup> Ibid., para 6(b).

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid, para 6(c).

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid, para 6(d).

within children's reach, and if online classes are provided, computers/tablets to access them, the internet and the skills to use these technologies must be provided and sufficiently accessible in terms of cost (e.g. If it is primary education, it is free of charge). The content and form of education will also have to be appropriate to the child's capacity and level of development and acceptable to contribute to achieving the objectives of education as set out in Article 29(1). Furthermore, the content, modalities and methods of education should be varied and adapted to take into account the child's individual circumstances, social conditions and various other circumstances, so that the needs of the child are identified on a case-by-case basis and education is conducive to the child.

Furthermore, the CRC committee has called all States parties to take the necessary steps for a strong endorsement of the aims of education in national law and policy.<sup>97</sup> It also emphasizes the importance of the reflection of the spirit and educational philosophy of the CRC into the teaching methods used in schools.<sup>98</sup> The committee also requires that the school environment itself must reflect the freedom and the spirit of understanding called for in Article 29(1)(b) and (d).<sup>99</sup> In other words, the school environment must be set up in conformity with the aims listed in Article 29(1) of the CRC.<sup>100</sup>

#### **2.4.3. How to fulfill the obligations**

Lastly, in what manner should States parties fulfil their obligations?

Article 4 of the CRC states, "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."

The second sentence of this article reflects a realistic acceptance that lack of resources such as financial and other resources can hinder the full implementation of economic, social

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<sup>97</sup> UN Committee on the Rights of the Child, General Comment No.1, (2001), para 17.

<sup>98</sup> *Ibid.*, para 18.

<sup>99</sup> *Ibid.*, para 19.

<sup>100</sup> W. Vandenhoele, 'ARTICLE 29: Aim of Education,' Edward Elgar, (2019), para 29.04.

and cultural rights in some states.<sup>101</sup> This leads to “the concept of progressive realization” of such rights.”<sup>102</sup> The progressive realization means State parties have to make every effort to realise these rights including the mobilization, allocation and spending of public budgets.<sup>103</sup> Importantly, the obligation of progressive realisation does not mean that State parties can postpone the realisation of these rights of children and they are under an obligation to take immediate steps towards full realisation.<sup>104</sup>

Therefore, , implementation of Article 29(1) is an immediate obligation.<sup>105</sup> The resource limitations cannot be a justifiable reason for a state’s failure to take any measures that are required.<sup>106</sup>

Thus, States party are obliged to immediately provide education with content consistent with the CRC requirements set out above to all children in their country, regardless of their nationalities including refugee children and asylum seekers, respecting the cultural identity, language and values of the child’s country of origin, to enable them to fully realise their right to education.

## **2.5. The right to education of children in armed conflict**

The above has examined children's right to education comprehensively and individually, but how is this right guaranteed under international human rights law in a state of emergency of armed conflict? The following examines the impact of armed conflict on children's rights, the work by the United Nations to tackle the issue of children in armed conflict, provisions of CRC with regards to children in armed conflict, and the Optional Protocol to the CRC in the involvement of children in armed conflict (OPAC).

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<sup>101</sup> UN Committee on the Rights of the Child, General Comment No. 5 (2003), para 7

<sup>102</sup> Ibid.

<sup>103</sup> W. Vandenhole, ‘ARTICLE 4: General Obligation,’ in *Children’s Rights: A Commentary on the CRC and its Protocols*, edited by Wouter Vandenhole, Gamze Erdem Türkelli and Sara Lembrechts, Cheltenham: Edward Elgar, (2019), para 4.07.

<sup>104</sup> Ibid.

<sup>105</sup> W. Vandenhole, ‘ARTICLE 29:Aims of Education, Edward Elgar (2019), para 29.08.

<sup>106</sup> UN Committee on the Rights of the Child, General Comment No.1 (2001), para 28.

### **2.5.1. Overview of the impact of armed conflict on children's rights and the work of the Special Representative of the Secretary-General for Children and Armed Conflict.**

Globally, approximately 449 million children (more than one in six) were living in a situation of armed conflict.<sup>107</sup> Children are affected by armed conflict in many different ways and face both old and new threats in different contexts.<sup>108</sup> On the one hand, children remain exposed to the issues that children face around the world.<sup>109</sup> They face the pre-existing problems that can occur in peacetime or wartime, such as “domestic and sexual violence, gender inequality, poverty and preventable disease.”<sup>110</sup> However, in a wartime context, these existing problems may be exacerbated by the loss of family and community ties.<sup>111</sup> On the other hand, children living in armed conflict also face new problems directly attributable to armed conflict.<sup>112</sup> These include attacks on life and limb, psychological trauma and forced displacement.

In addition, as to human rights violations directly linked to armed conflicts, the Special Representative of the Secretary-General for Children and Armed Conflict (SRSG-CAC) identified and condemned the six grave violations that most significantly affected children during wartime and called on the Secretary-General to report on the issue.<sup>113</sup> The six grave breaches are Killing and maiming of children, Sexual violence against children, Abduction of children, Attacks against schools or hospitals, and Denial of humanitarian access for children.<sup>114</sup>

The mandate of the SRSG-CAC was created by the UN General Assembly in December 1996 to strengthen the protection of children affected by armed conflict, raise awareness, facilitate

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<sup>107</sup> The Peace Research Institute Oslo (PRIO), *Children Affected by Armed Conflict, 1990–2021*, available at, <https://reliefweb.int/report/world/children-affected-armed-conflict-1990-2021>

<sup>108</sup> C. Aptel, Springer (2019), at 516,

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> United Nations Security Council, UN Doc. S/RES/1261 (1999).

<sup>114</sup> *Ibid.*, para 2.

the collection of information on the plight of children affected by war and promote international cooperation to improve their protection.<sup>115</sup> In 2005, with the adoption of Resolution 1612,<sup>116</sup> the Security Council established the Monitoring and Reporting Mechanism (MRM) to monitor systematically, document and report on violations committed against children in situations of concern worldwide.<sup>117</sup> Based on this information, the UN Secretary-General, in his annual report on children and armed conflict, names the parties involved in 6 grave violations and calls for efforts aimed at eliminating these violations.<sup>118</sup> Moreover, the Security Council Working Group on Children and Armed Conflict reviews country reports under the MRM and makes recommendations on how to protect children in specific country situations better.<sup>119</sup> Ending and preventing these six serious violations is the focus of the Special Representative's work and advocacy.<sup>120</sup>

While the SRSG-CAC has been leading UN advocacy for the protection and well-being of children affected by armed conflict since its inception, there is criticism that the dominance of the protection framework in the work of the Security Council has kept the SRSG-CAC from advocating for stronger implementation of the child rights agenda, including active participation of children in peacebuilding and relief efforts.<sup>121</sup>

### **2.5.2. Application of the CRC in times of war and obligation regarding children in armed conflict**

The CRC has no general derogation clause and applies even during armed conflicts or emergency situations.<sup>122</sup> Therefore, all children's rights enshrined in the CRC and other

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<sup>115</sup> The Special Representative for Children in Armed Conflict, <https://childrenandarmedconflict.un.org/about/>, last visited (02-07-2023)

<sup>116</sup> United Nations Security Council, UN Doc. S/RES/1612 (2005).

<sup>117</sup> The Special Representative for Children in Armed Conflict, <https://childrenandarmedconflict.un.org/six-grave-violations/>, last visited (02-07-2023).

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> K. Lee-Koo, 'The Intolerable Impact of Armed Conflict on Children': The United Nations Security Council and the Protection of Children in Armed Conflict, global responsibility to protect (2018), at 65.

<sup>122</sup> United Nations Committee on the Rights of the Child, Days of general discussion, 'Children in Armed Conflict', (1992), CRC/C/10, para 67.

international human rights treaties continue to apply even in times of war.<sup>123</sup>

In addition, Articles 38 and 39 of the CRC refer specifically to children in armed conflict. Article 38 sets forth the State parties' obligation to the rights of children under armed conflict. These obligations include respecting international humanitarian law (Art.38(1)), curbing recruitment of children into armed conflicts (Art.38(2)(3)), and ensuring protection and care of children who are affected by an armed conflict (Art.38(4)).

Moreover, Article 39 requires States parties "to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of" armed conflicts. More specifically, the CRC committee states that there is a need to recognize the particular challenges to health for children affected by humanitarian emergencies, including those resulting in large-scale displacements due to natural or manmade disasters.<sup>124</sup> Then the Committee urges States parties to take all possible measures to ensure that children have uninterrupted access to health services, to unite/reunite them with their families and to protect them not only with physical support, such as food and clean water, but also to encourage special parental or other psychosocial care to prevent or address fear and traumas.<sup>125</sup>

### **2.5.3. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC)**

The OPAC enshrines the need to protect children in particular from armed conflict, prevents the involvement of children under 18 in armed conflict and provides for technical cooperation in the rehabilitation of victims, was adopted by the General Assembly on 25 May 2000 and entered into force in 12 February 2002. It aims to "protect children from recruitment and use in hostilities."<sup>126</sup> Currently, 173 countries have ratified the Protocol, including Russia and Ukraine.<sup>127</sup>

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<sup>123</sup> C. Aptel, Springer (2019), at 517.

<sup>124</sup> UN Committee on the Rights of the Child, General Comment No.19 (2016), para 40.

<sup>125</sup> Ibid.

<sup>126</sup> The Special Representative for Children in Armed Conflict, <https://childrenandarmedconflict.un.org/tools-for-action/opac/>, last visited (02-07-2023)

<sup>127</sup> Treaty body collection, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-)



With regard to the right to education, in its preamble, the OPAC condemns 'the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools and hospitals.'<sup>128</sup>

## 2.6. Wider role of schools in the protection of children's rights

Building on the above discussion of the interdependent relationship between the right to education and other children's rights, the right to education and the rights of children in armed conflict and the obligations of States Parties, the role of 'schools' in armed conflict is considered below.

First, as a prerequisite for considering the role of schools in times of conflict, it is necessary to examine what schools mean to children in peacetime in the first place. The impact on children of the school closure due to the recent global Covid-19 pandemic is instructive in this regard.

The Covid 19 pandemic was one of the most significant global disruptions to education since World War II.<sup>129</sup> By the end of the year, educational institutions in 183 countries had closed their schools, affecting around 89 percent of learners worldwide.<sup>130</sup> In addition, UNESCO 2022 reports that an average of 55 percent of school days were closed or partially closed due to COVID-19 in the period from March 2020 to October 2021.<sup>131</sup> The affected learners range from pre-primary to primary, secondary and higher education levels.<sup>132</sup>

The closure of these schools has significantly changed the way students engage with each

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<sup>128</sup> Optional Protocol on the Involvement of Children in armed conflict, preamble para 5.

<sup>129</sup> M. A. White & F. McCallum, Crisis or catalyst? Examining COVID-19' implications for wellbeing and resilience education, M. A. White, F. McCallum (Eds), Wellbeing and Resilience Education COVID-19 and Its Impact on Education (2021), at 4.

<sup>130</sup> M. M. Ledertoug, L. Tidmand, C. Las Hayas, S. Gabrielli, & S. Carbone, UPRIGHT – well-being & resilience education Disrupted by the COVID-19 pandemic, M. A. White, F. McCallum (Eds), Wellbeing and Resilience Education COVID-19 and Its Impact on Education (2021), at 54.

<sup>131</sup> UNESCO, Global Education Monitoring Report – Gender Report: Deepening the debate on those still left behind (2022), at 1, available at <https://unesdoc.unesco.org/ark:/48223/pf0000381329>.

<sup>132</sup> M. M. Ledertoug, (2021), at 54.

other and with their teachers. The digitalization of learning, i.e. taking classes online, has become the norm, and children not only learn their subject knowledge online but also their interactions with other pupils and teachers. However, “interaction with other students and teachers is essential for the development of self-esteem, self-confidence and sense of identity.”<sup>133</sup> The digitalisation of learning can never replace face-to-face schooling.<sup>134</sup> This is because onsite and face-to-face education not only allows teachers to deliver the content to students directly and it also enables teachers to ensure that students truly understand and that they are able to acquire the knowledge and integrate it into their own ability.<sup>135</sup> Furthermore, education is not just about transmitting knowledge but also aiming at “socio-economic skills, critical spirit, creativity, citizenship and mutual understanding between groups that need to interact and mix in order to live in and build a peaceful society, and connecting children to nature and to their environment.”<sup>136</sup> An environment in which children are deprived of face-to-face direct interaction with friends and teachers has a significant impact on this development. Isolation from involvement with friends and teachers can also lead to children's sense of not belonging anywhere, which can give rise to behavioral or psychological problems.<sup>137</sup>

Then, what, is the significance of schools for children who have experienced (or are experiencing) armed conflict? In addition to the significance in peacetime described above, what significance do schools have in armed conflict?

Armed conflict affects children's rights in various ways and short- and long-term, consequences of armed conflicts are serious concerns on children's development for the future. It affects children's daily lives, their physical and mental development and their ability to trust other human beings and public institutions.<sup>138</sup> In addition, many of the children will

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<sup>133</sup> Ibid, at 55.

<sup>134</sup> UN Human Rights Council, Right to education: impact of the Covid-19 crisis on the right to education; concerns, challenges and opportunities (Report of the Special Rapporteur on the right to education), A/HRC/44/39, 15 June 2020, para 47.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> M. M. Ledertoug, (2021), at 55.

<sup>138</sup> Council of Europe Parliamentary Assembly, ‘Protecting children affected by armed conflicts,’ Resolution 2204 (2018), para 3, See <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24495&lang=en>, last visited (02-07-2023)

be traumatised for their entire lives.<sup>139</sup>

In this regards, schools play an important role in managing, mitigating and healing children's psychosocial stress and trauma caused by armed conflicts through study and play interaction with friends and teachers.<sup>140</sup> Schools provide children with a peer group with whom they can talk through their problems, access to adults outside the home environment to help them process their emotions and, where necessary, referrals to mental health professionals.<sup>141</sup> It is essential to manage children's mental health problems at an early stage to ensure that they do not become lifelong problems.<sup>142</sup> Engaging with others in schools is one way Regular classroom contact with teachers and fellow students can be very helpful for reducing and overcoming these stress and trauma.<sup>143</sup> Difficulties with emotional control can also be overcome through participation in cultural (or classroom) conventions, such as the belief that one can influence one's surroundings and that one is a good and valuable member of one's community.<sup>144</sup> The opportunity to do something good and have a positive impact on their community (classroom) can bring great joy to children.<sup>145</sup> Participation in activities that help teachers, schoolmates, or the community as a whole can be very effective in developing control over violent feelings within the self.<sup>146</sup> Children are able to reduce and come to terms with their "bad" feelings about the violence they have experienced.<sup>147</sup> These activities help children realise that they can grow up to be good people who are not tainted by violence forever.<sup>148</sup>

Thus, schools are the critical place for children where psychological recovery and social

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<sup>139</sup> Ibid.

<sup>140</sup> Martha Bragin and Wirefred George Opiro, 'Making the Right to Education a Reality for War Affected Children: The Northern Uganda Experience', *Int.J.Appl.Psychoanal.Studies* 9 (2) (2012), at 165.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid, at 163-165.

reintegration under Article 39 of the CRC can be realised. States have an obligation to accord special attention and assistance to children who have survived armed conflict by taking all necessary measures that will achieve conditions conducive to recovery and reintegration.<sup>149</sup> For children's right to physical and psychological recovery and social reintegration, protecting schools from war is an essential obligation for the parties to the conflict.

## **2.7. Conclusion**

As discussed above, a child's right to education is inextricably linked to the realization of other children's rights, and the importance of realizing the right to education remains unchanged even during armed conflict. Rather, it is necessary for the protection of children unjustly affected by armed conflict and for their reintegration into society, and the role of schools as places for education is crucial in armed conflict. This is an important principle shared by third countries that receive children fleeing armed conflict, whether within the country of the armed conflict or not.

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<sup>149</sup> W. Vandenhoele, 'ARTICLE 39: Recovery and Reintegration of Child Victims,' in *Children's Rights: A Commentary on the CRC and its Protocols*, edited by Wouter Vandenhoele, Gamze Erdem Türkelli and Sara Lembrechts, Cheltenham: Edward Elgar, 2019, para 39.05.

## **Chapter 3. Special legal framework and international community efforts to protect schools and situation of schools in Ukraine**

### **3.1. Introduction**

According to the data as of 23 January, about 5,352,000 people were internally displaced within Ukraine.<sup>150</sup> Of these, 26.5 percent, or 1,382,200 are children under the age of 18.<sup>151</sup> Thousands of schools, pre-schools or other educational facilities across the country have been damaged or destroyed.<sup>152</sup> Many parents and caregivers are reluctant to send children to school due to safety concerns.<sup>153</sup>

This chapter examines the problems of the military attack against schools and the military use of schools which is affecting the right to education of children in Ukraine seriously. First, it begins with the legal framework prohibiting military attacks and military use of schools under international humanitarian law (3.2). Next, it examines OPAC and measures by the United Nations with regard to military attacks and military use of schools (3.3) and the Safe School Declaration as one of the other measures by the international community (3.4). Then it discusses the humanitarian situations of Ukrainian children who remain in the country and examine the situation of their right to education focusing on military attack and military use of schools (3.5). Lastly, it discusses the expected measures to protect schools and the right to education remaining in Ukraine (3.6)

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<sup>150</sup> UN High Commissioner for Refugee Regional Bureau for Europe, 'UKRAINE SITUATION FLASH UPDATE #47' 19 May 2023, available at <https://data.unhcr.org/en/documents/details/100793>

<sup>151</sup> International Organization for Migration, 'UKRAINE INTERNAL DISPLACEMENT REPORT GENERAL POPULATION SURVEY ROUND 12', 23 January 2023, at 7.

<sup>152</sup> UNICEF, '11 months of war in Ukraine have disrupted education for more than five million children', 24 January 2023, <https://www.unicef.org/press-releases/11-months-war-ukraine-have-disrupted-education-more-five-million-children>, last visited (31-05-2023)

<sup>153</sup> Ibid.

### 3.2. International Humanitarian Law

#### 3.2.1. Geneva Conventions and Additional Protocols

International Humanitarian Law protects persons who are not or are no longer participating in the hostilities and restrict weapons and methods of warfare.<sup>154</sup> Key documents include the four Geneva Conventions of 1949 and the two Additional Protocols of 1977. In particular, the Geneva Conventions have been ratified by 196 countries worldwide and can be considered a universal standard. Both Russia and Ukraine have ratified the Geneva Conventions and Additional Protocols.<sup>155</sup>

Especially, Geneva Convention IV requires special protection for children in international armed conflict. For example, children are subject to special considerations with regard to evacuation from besieged and encircled areas (Article 17); medical supplies, food and clothing (Articles 23 and 50); measures for children who are orphaned or separated from their families (Article 24); education and preservation of their identity (Article 50); the exemption from the death penalty (Article 68); treatment during detained (Article 76).<sup>156</sup>

The following provisions are of particular importance with regard to children's education under armed conflicts. First, with respect to children under fifteen who are orphaned or separated from their families, the parties to an international armed conflict must ensure that they may continue exercising their religion and their education as far as possible and their education shall be entrusted to a person's similar cultural tradition (Article 24).<sup>157</sup> Second, regardless of whether the children are orphaned or separated from their families, parties to an international armed conflict have an obligation that the occupying power must facilitate

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<sup>154</sup> C. Aptel, Springer (2019), at 519.

<sup>155</sup> In particular, with regard to Geneva Convention 4, which is the subject of this paper, Russia ratified it on 10 May 1954 and Ukraine on 3 August 1954; with regard to Additional protocol 1, Russia ratified it on 29 September 1989 and Ukraine on 23 January 1990. Russia and Ukraine ratified it on 29 September 1989 and 23 January 1990, respectively.

See, <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/state-parties>, last visited (02-07-2023)

<https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/state-parties>, last visited (02-07-2023)

<sup>156</sup> C. Aptel, Springer (2019), at 520.

<sup>157</sup> Denise Plattner, 'Protection of Children in International Humanitarian Law,' *International Review of the Red Cross*, No.240 (1984).

the proper working of all institutions devoted to the education of children (Article 50).<sup>158</sup> Lastly, although this does not apply in the case of war between Ukraine and Russia, Article 4(3)(a) of Additional Protocol II prescribed that children “shall receive an education, including religious and moral education, in keeping with the wishes of their parents or in the absence of parents, of these responsible for their care.”

Military attacks on school facilities, which are important educational sites, are prohibited by Geneva Convention IV and Additional Protocol I. This means that infrastructure and property, including educational facilities, which are privately owned and not used for military purposes, are protected against direct and arbitrary attacks (Geneva Convention IV Art 11,18, ADP I Art 51 52).<sup>159</sup> Additional Protocol I also provides that objects normally provided for civilian purposes, such as schools, where there is doubt as to whether objects normally provided for civilian purposes, are presumed not to be used for military activities (Art 52 (3)).<sup>160</sup>

### 3.2.2. Customary International Law

Customary international humanitarian law exists independently from the Treaties such as Geneva Conventions and it derives from “a general practice accepted as law.”<sup>161</sup> Such practice can be found in official accounts of military operations, military manuals, national legislation, and case law.<sup>162</sup>

The significance of customary international humanitarian law, according to a study by the International Committee of the Red Cross (ICRC), lies in the following. First, while treaties bind only those States which ratified them, customary international humanitarian law binds all states and all parties to the conflict without the need for any formal procedure.<sup>163</sup> Second, as international humanitarian law (Article 3 common to the Geneva Conventions and Additional Protocol II), which also applies to non-international armed conflicts, is very

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<sup>158</sup> Ibid.

<sup>159</sup> C. Aptel, Springer (2019), at 523.

<sup>160</sup> Ibid.

<sup>161</sup> International Committee of the Red Cross, <https://www.icrc.org/en/war-and-law/treaties-customary-law/customary-law>, last visited (02-07-2023).

<sup>162</sup> Ibid.

<sup>163</sup> J.Henckaerts & L.Doswald-Beck, Customary International Humanitarian Law Volume I: Rules, at xvi (2005)

rudimentary and does not meet all protection needs, customary law, applicable in both international and non-international conflicts, is essential to ensure adequate humanitarian protection during wartime.<sup>164</sup> Third, customary international law is very useful in the interpretation of treaties. It is a well-established principle that a treaty must be interpreted in good faith and with due regard for all relevant rules of international law.<sup>165</sup>

In terms of the Russian-Ukrainian war, customary international humanitarian law would be significant in the third sense above, given that it is an international conflict and that both states ratified not only the Geneva Conventions but also the Additional Protocols.

Rule 135 of this study on customary international humanitarian law prescribes that “Children affected by armed conflict are entitled to special respect and protection” in both international and non-international armed conflicts.<sup>166</sup>

In addition, with regard to the definition of civilian objects set forth in Article 52(1) of the Additional Protocol, the study says “The definition of civilian objects has to be read together with the definition of military objectives”, “only those objects that qualify as military objectives may be attacked” and “other objects are protected against attack” under Rule 9 on the study.<sup>167</sup> Further, the study clearly provides ‘schools’ as an example of civilian objects.<sup>168</sup>

### **3.3. Optional Protocol on the Involvement of Children in armed conflict and measures by United Nations**

Ukraine ratified it on July 2005 and Russian Federation ratified it on September 2008.<sup>169</sup> With regard to the right to education, in its preamble, the OPAC condemns “the targeting of

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<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid, at 479-481.

<sup>167</sup> Ibid., at 32.

<sup>168</sup> Ibid., at 34.

<sup>169</sup> United Nations Treaty Collection, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&clang=_en), last visited (02-07-2023).



children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools and hospitals” (preamble, para 5).

Attacks on schools and hospitals during conflict is one of the six grave violations identified and condemned by the UN Security Council.<sup>170</sup> By the Security Council Resolution in 2011, attacks on schools and hospitals and attacks and threats of attacks against protected personnel become triggers to list parties to armed conflict in the annexes of the annual report of the Secretary-General on children and armed conflict.<sup>171</sup>

In addition, the Special Representative for Children and Armed Conflict launched a ‘Guidance Note on Attacks against schools and hospitals’<sup>172</sup> May 2014. This Note aims to strengthen monitoring and reporting on attacks on schools and hospitals and to promote advocacy and dialogue with parties to the conflict on attacks on schools and hospitals.<sup>173</sup>

The note also advocates the prevention of attacks on schools and hospitals, but also of military use of those facilities.<sup>174</sup> While there are provisions in international law prohibiting military attacks on civilian objects, there are no clear provisions prohibiting the use of civilian objects for military purposes.<sup>175</sup> In addition, military use of those facilities is not a criterion for listing parties in the Secretary General’s Annual Report.<sup>176</sup> However, Security Council Resolution 1998 explicitly expresses concern about the use of schools and hospitals for military purposes,<sup>177</sup> and Security Council Resolution 2143 expresses serious concern about the military use of schools, stating that the use of schools for military purposes would

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<sup>170</sup> The Special Representative for Children in Armed Conflict  
<https://childrenandarmedconflict.un.org/six-grave-violations/attacks-against-schools/>, last visited (02-07-2023)

<sup>171</sup> United Nations Security Council, UN Doc. S/RES/1998 (2011), para 22.

<sup>172</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, ‘Guidance Note on Attacks Against Schools and Hospitals’ (2014), available at <https://childrenandarmedconflict.un.org/publications/AttacksonSchoolsHospitals.pdf>

<sup>173</sup> *Ibid.*, at 1.

<sup>174</sup> *Ibid.*, at 19-20.

<sup>175</sup> *Ibid.*, at 19.

<sup>176</sup> *Ibid.*

<sup>177</sup> United Nations Security Council (2011), para 4.

make them subject to military attack and put children and teachers at risk. <sup>178</sup>

### **3.4. Other international community's approach to protect schools from armed conflicts – Safe School Declaration-**

In 2015, the governments of Norway and Argentina led United Nations (UN) Member States in developing the Safe Schools Declaration, an intergovernmental political agreement dedicated to the protection of education in armed conflict. <sup>179</sup>

The Safe Schools Declaration aims to ensure the safe continuation of education during armed conflict, outlining a series of commitments to strengthen the protection of education from attack and limit the use of schools for military purposes. <sup>180</sup>

Noting that educational facilities have been used as military bases, barracks and detention centers by parties to the armed conflict, the Declaration condemns such practices as putting students and educational personnel in danger, denying the right of large numbers of children and students and depriving communities of the foundation on which to build their futures. <sup>181</sup>

It also states that armed conflict continues to destroy not only the infrastructure of schools, but also the hopes and ambitions of an entire generation of children. <sup>182</sup> It further notes that attacks and threats of attacks on education can undermine access to education, impede the functioning of educational facilities, and cause severe and long-lasting damage to individuals and society. <sup>183</sup>

It also emphasizes the role of education and schools, stating that education can protect children and adolescents from death, injury and exploitation, and mitigate the psychological

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<sup>178</sup> United Nations Security Council, UN Doc. S/RES/2143 (2014), para 18.

<sup>179</sup> Global Coalition to Protect Education from Attacks (GCPEA), <https://ssd.protectingeducation.org/>, last visited (02-07-2023)

<sup>180</sup> Safe School Declaration, para 1, available at [https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe\\_schools\\_declaration.pdf](https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe_schools_declaration.pdf), last visited (02-07-2023)

<sup>181</sup> Ibid, para 2.

<sup>182</sup> Ibid, para 2.

<sup>183</sup> Ibid, para 2.

effects of armed conflict by providing routine and stability.<sup>184</sup> In addition, it states that education is fundamental to development and the full enjoyment of human rights and freedoms.<sup>185</sup>

Lastly, it also recognizes the right to education and the role of education in promoting understanding, tolerance and friendship among all States, resolves to strengthen in practice the protection of children and young people in armed conflict, and declares that it will work together towards safe schools for all.<sup>186</sup> To this end, specifically, States commit to make every effort at the national level to collect reliable and relevant data on military attacks on and military use of educational facilities, to support the reconstruction of educational facilities and to provide and promote international cooperation and assistance for ensuring the continuity of education in armed conflict.<sup>187</sup>

As of May 2023, 118 states around the world have joined this international political agreement.<sup>188</sup> While Ukraine has endorsed the declaration, Russia has not.<sup>189</sup>

### **3.5. Specific situations and difficulties of children remaining in Ukraine**

#### **3.5.1. Humanitarian situation in Ukraine**

From 24 February 2022, when the Russian Federation's armed attack against Ukraine started, to 29 January 2023, the Office of the UN High Commissioner for Human Rights (OHCHR) recorded 18,657 civilian casualties in the country: 7,110 people including 438 children were killed and 11,547 people including 838 children were injured.<sup>190</sup> According to

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<sup>184</sup> Ibid, para 3.

<sup>185</sup> Ibid, para 3.

<sup>186</sup> Ibid, para 8.

<sup>187</sup> Ibid, para 8.

<sup>188</sup> Global Coalition to Protect Education from Attacks (GCPEA), <https://ssd.protectingeducation.org/>

<sup>189</sup> Government of Norway, [https://www.regjeringen.no/en/topics/foreign-affairs/development-cooperation/safeschools\\_declaration/id2460245/](https://www.regjeringen.no/en/topics/foreign-affairs/development-cooperation/safeschools_declaration/id2460245/), last visited (02-07-2023)

<sup>190</sup> OHCHR, <https://www.ohchr.org/en/news/2023/01/ukraine-civilian-casualty-update-30-january-2023>, last visited (02-07-2023)

a UNICEF report dated 1 May 2023,<sup>191</sup> the following humanitarian crises are occurring in Ukraine. In areas affected by heavy fighting, services have been devastated and protection mechanisms are unable to support vulnerable children; just under 550 health facilities have been affected by the attacks; health facilities are unable to provide critical services; water systems are crippled; and the number of people affected is increasing.<sup>192</sup>

They are already at extremely high risk of pneumonia, seasonal flu, waterborne diseases and coronavirus infection 2019 (COVID-19).<sup>193</sup> In addition to the risk of physical illness, the risk of mental illness is also serious. An estimated 1.5 million children are at risk of depression, anxiety, post-traumatic stress disorder and other mental conditions, and face a looming mental health crisis.<sup>194</sup>

Furthermore, war increases children's risk of illness, violence, family separation, child trafficking, unexploded ordnance and disruption of schooling. Nevertheless, access to vulnerable families in areas of active fighting remains difficult to reach.<sup>195</sup>

### **3.5.2. Attacks on schools, military use of schools, and strikes on critical energy infrastructure**

In 2022, secondary education was a particular target of attacks.<sup>196</sup> Attacks on schools often occurred as Russian forces shelled or fired missiles at Ukrainian cities and towns.<sup>197</sup>

The number of attacks on and destruction of schools varies according to the organisation presenting it; in its report on Ukraine, the United Nations Human Rights Office of the High Commissioner stated that they documented the destruction of 156 educational facilities and the damage of 475 educational facilities from 24 February 2022 to 31 January 2023.<sup>198</sup> On

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<sup>191</sup> UNICEF, 'Humanitarian Action for Children: Ukraine and Refugee Response Appeal', March 2023, <https://www.unicef.org/media/139506/file/2023-HAC-Ukraine-revised-March.pdf>

<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

<sup>195</sup> Ibid.

<sup>196</sup> Global Coalition to Protect Education from Attack, 'Attacks on Education and Military Use of Education Facilities in Ukraine in 2022' February 2023, at 2.

<sup>197</sup> Ibid.

<sup>198</sup> UN Human Rights Office of the High Commissioner, (24 March 2023), para 38,

the other hand, the report states that the actual number of destroyed or damaged educational facilities on both sides of the front line is considerably higher citing the figures issued by the Ukrainian Government.<sup>199</sup> The Ukrainian Ministry of Education and Science reported that 441 educational facilities had been destroyed and 3,121 damaged from 24 February 2022 to 21 February 2023.<sup>200</sup>

UNICEF Ukraine, in a press release issued on 24 January 2023, International Education Day, stated 'only about 25 percent of Ukrainian schools nationwide have been able to offer full-time and in-person learning since September'<sup>201</sup> based on these figures provided by the Ministry of Education of Ukraine.

There are also numerous accounts of the use of civilian objects by occupying forces as military headquarters and/or storage for military equipment.<sup>202</sup> Situations have been reported where children are forced to attend schools and kindergartens in temporarily occupied areas and civilians are used as cover during military operations.<sup>203</sup>

Attacks on schools in eastern Ukraine had been a problem before the Russian-Ukraine war commenced in February 2022,<sup>204</sup> but in any case, serious violations of the principle of the prohibition of attacks on schools and the use of schools for military purposes under international law are recognized.

In addition to direct attacks on schools and the use of schools for military purposes, what we should not overlook is the attack on facilities and infrastructure essential for the operation of schools and access to education. Russian armed forces initiated a series of strikes by missiles and loitering munitions targeting critical infrastructure and energy objects across

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<sup>199</sup> Ibid.

<sup>200</sup> Ibid, supra note 13.

<sup>201</sup> UNICEF Ukraine, 'War has hampered education for 5.3 Million children in Ukraine, warns UNICEF', 24 January 2023, <https://www.unicef.org/ukraine/en/press-releases/war-has-hampered-education>, last visited (01-06-2023)

<sup>202</sup> The Voices of Children Charitable Foundation (The Kharkiv Institute of Social Research NGO), 'CHILDREN IN UKRAINE: ALMOST A YEAR OF THE WAR' (2022), <https://voices.org.ua/en/news/key-problems-and-needs-of-children-in-different-situations-of-war-situational-analysis-almost-a-year-of-the-war/>, at 9.

<sup>203</sup> Ibid.

<sup>204</sup> Ibid.

Ukraine on 10 October. As of 31 January 2023, they had implemented 14 of these attacks.<sup>205</sup> According to the report that OHCHR received, the attacks damaged and destroyed at least 76 objects of energy infrastructure in 19 regions of Ukraine and Kyiv.<sup>206</sup> These strikes have caused power, heating, and water supply outages and disrupted mobile and internet connectivity and railway traffic across the country.<sup>207</sup> Millions of civilians have been put at risk during the freezing months and education for millions of children in Ukraine has been disrupted.<sup>208</sup> The current situation in Ukraine is that children continue their education in person at schools when it is deemed safe to do so, and through online and community-based alternative classes if in-person classes are deemed impossible.<sup>209</sup> The destruction of essential infrastructure, such as electricity and water, makes school facilities unavailable, and online classes, which are the mainstay of education, cannot be offered without electricity and internet access.<sup>210</sup> Thus, even attending virtual classes is not well guaranteed and there are physical barriers to overcome.

In its report, OHCHR harshly condemns attacks on school facilities, the use of schools for military purposes and attacks on essential infrastructure, concluding that “While OHCHR has not been able to assess compliance with IHL for each individual incident, the patterns, frequency, scale and severity of civilian casualties and of the destruction of and damage to civilian objects – including hospitals and schools – strongly indicate that recurring violations of IHL have taken place.”

However, the last thing to add to this section is that children are attending school and taking classes despite the threat of attacks. Some schools are equipped with bomb shelters with the support of UNICEF, EU, and other agencies and continue to offer in-person classes.<sup>211</sup>

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<sup>205</sup> UN Human Rights Office of the High Commissioner (24 March 2023) para 39.

<sup>206</sup> *Ibid.*

<sup>207</sup> *Ibid.*, para 40.

<sup>208</sup> *Ibid.*

<sup>209</sup> UNICEF Ukraine, ‘War has hampered education for 5.3 Million children in Ukraine, warns UNICEF’, 24 January 2023, <https://www.unicef.org/ukraine/en/press-releases/war-has-hampered-education>, last visited (02-07-2023)

<sup>210</sup> UNICEF, ‘11 months of war in Ukraine have disrupted education for more than five million children’, 24 January 2023, <https://www.unicef.org/press-releases/11-months-war-ukraine-have-disrupted-education-more-five-million-children>, last visited (02-07-2023)

<sup>211</sup> UNICEF Ukraine, ‘UNICEF support ensures schools stay open in Ukraine’ 16 May 2023,

When the air raid siren sound, children follow their teacher's instructions to enter the shelter and continue their classes there.<sup>212</sup> The underground shelter itself is a classroom, with desks, chairs, teaching materials, and games for students to play.<sup>213</sup> The report says war has become an integral part of life for school children in Ukraine.<sup>214</sup> The report concludes with the reassuring words of a child who says that even in such circumstances she has not lost hope for the future,<sup>215</sup> but at the same time, it is hard to describe the mental stress of children living in such an environment where alert sirens are a daily occurrence.

### **3.6. Expected measures for protecting school and the right to education for children remaining in Ukraine**

Various bodies have made recommendations to protect the right to education of children who remain in Ukraine, and the schools that are the sites of this right. The important recommendations from the various bodies overlap.

First, both the report by OHCHR and GCPEA states the parties to the conflict are urged to give due consideration to the "civilian object" nature of schools and to immediately cease attacks on schools, students, teachers, and infrastructure facilities essential to their operation and their use for military purposes.<sup>216</sup> This means that both parties, Russia and Ukraine must thoroughly comply with international human rights law and international humanitarian law.<sup>217</sup> If schools are destroyed, they are required to rehabilitate them,

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<https://www.unicef.org/ukraine/en/stories/schools-stay-open>, last visited (02-07-2023).

<sup>212</sup> UNICEF Ukraine, 'Making schools safer for Ukraine's children' 9 November 2022, <https://www.unicef.org/ukraine/en/stories/making-schools-safer>, last visited (02-07-2023).

<sup>213</sup> Ibid,

<sup>214</sup> Ibid.

<sup>215</sup> Ibid.

<sup>216</sup> UN Human Rights Office of the High Commissioner,(24 March 2023), para 132 (a)(b).

GCPEA; Global Coalition to Protect Education from Attack (2022), at 7.

<sup>217</sup> In the period from 24 February 2022 to 31 January 2023, OHCHR documented the destruction of 38 medical facilities and 156 educational facilities, and damage to 287 medical facilities and 475 educational facilities, of which 598 cases were by Russian armed forces and 279 cases by Ukrainian armed forces. Therefore, Russia, as well as Ukraine, is required to respond in accordance with international law. See, Report on the human rights situation in Ukraine, OHCHR,

including the construction of shelters.<sup>218</sup>

In the Concluding observation issued in September 2022, the CRC committee recommended Ukraine to 'protect educational facilities from attacks, including shelling, and ensure that the occupation and use of, and attacks on, schools and hospitals, for military purposes, is deterred in line with the Safe School Declaration, and expedite the reconstruction of these facilities as appropriate.'<sup>219</sup> Accordingly, Ukraine has an obligation to undertake all appropriate measures for protecting the right to education and schools in Ukraine in accordance with Article 4 of the CRC. Ukraine should also demonstrate that, where necessary, they have made every effort to seek and implement international cooperation to realize children's education rights.<sup>220</sup> With regard to this, although Ukraine is already trying to keep its schools running as long as possible by building protective shelters in schools with support from various agencies including UNICEF,<sup>221</sup> it is necessary to continue to analyse the situation of children and schools accurately, provide this information to the international community, and to continue efforts to protect children's schools with help from the international community as well as self-help efforts.

Second, the international community is required to strongly condemn attacks on schools and the use of schools for military purposes, including attacks on infrastructure facilities, and to call for an immediate halt to them.<sup>222</sup> Ukraine should be supported to implement Safe School Declaration, and Russia should be urged to endorse the safe school declaration.<sup>223</sup> It goes without saying that both of these calls need to be reiterated.

Finally, support for teachers and school personnel must not be lacking. Although teachers, school officials, and other adults working on the frontlines for children's education are going

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March 2023, para 38.

<sup>218</sup> Ibid.

<sup>219</sup> UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Ukraine (2022), UN Doc. CRC/C/UKR/CO/5-6, para 35(e)

<sup>220</sup> UN Committee of the Rights of the Child, General Comment No.19 (2016), para 36.

<sup>221</sup> UNICEF Ukraine, 'Making schools safer for Ukraine's children' 9 November 2022, and UNICEF Ukraine, 'UNICEF support ensures schools stay open in Ukraine' 16 May 2023.

<sup>222</sup> OHCHR; United Nations Human Rights Office of the High Commissioner (24 March 2023) para 138 (ii) and Global Coalition to Protect Education from Attack (2022), at 8.

<sup>223</sup> Global Coalition to Protect Education from Attack (2022), at 9.



through a lot of hard work, even in the midst of war, they should not give up on creating “fun schools” and will continue their efforts to help children enjoy their time in school. School is a place to have fun and develop knowledge and ideas with friends and teachers, incorporating play and recreation set forth in Article 31 of the CRC into the study. Play contributes to all aspects of learning, is a form of participation in everyday life and provides pure enjoyment and pleasure.<sup>224</sup> Play and recreation promote children's ability to negotiate, regain emotional balance, resolve conflicts and make decisions.<sup>225</sup>

As mentioned above, we must not forget that schools are not only a place for children to receive and education, but also an important part of society where they can interact with others, heal emotional wounds, and grow. While the safety of life is the top priority, even the parties to the conflict will continue to pursue the creation of schools as spaces where children can truly enjoy themselves.

To support the people in the frontlines of this field, it is very important for international organizations and NGOs to actively collaborate with the local civil society to propose and provide assistance.

### **3.7. Conclusion**

The importance of the right to education for children does not recede at all during the war, but rather the question is how to guarantee children the education they should normally have while healing the physical and mental wounds they have suffered as a result of the war. The prohibition of attacks on schools, which are of paramount importance for children's education, is required by international humanitarian law, including the Geneva Conventions and their Additional Protocols. The parties to the conflict, Russia and Ukraine, have ratified all Geneva Conventions and Additional Protocols and are required to act accordingly. Furthermore, it is fait to say that there is universal recognition that protecting schools from attack and military use and guaranteeing the full education of children, even in times of war, is a task that the international community must unite to tackle.

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<sup>224</sup> UN Committee of the Rights of the Child, General Comment No.17 (2013), para 9.

<sup>225</sup> Ibid, para 9.

## **Chapter 4. Legal framework for protecting the right to education for children who have been internationally displaced**

### **4.1. Introduction**

As of 16 May 2023, over 8.2 million individual refugees from Ukraine were recorded across Europe.<sup>226</sup> Over 5.1 million refugees from Ukraine registered for temporary protection or similar national protection schemes in Europe.<sup>227</sup>

This chapter examines the framework and actual situation of the guarantee of the right to education for children who have fled internationally from Ukraine.

To begin with, it explains how the third countries' obligations against the children internationally displaced are prescribed under the CRC (4.2). Then, although host countries are not limited to EU countries, given the reality that most of those displaced from Ukraine have gone to Europe countries, European policies aim to realise the right to education for children who have fled Ukraine will be discussed. It also examines the existing international frameworks that can be used as a reference for realising the right to education of children internationally displaced (4.3). Finally, the chapter discusses how inclusive education advocated by these EU policies and other guidelines contributes to the realisation of the right to education and related rights under the CRC, and to what extent it helps protect the right to education of Ukrainian children (4.4).

### **4.2. The third countries' obligations against the children internationally displaced under the CRC**

Article 2 (1) of the CRC prescribed that State Parties shall respect and ensure the rights set forth in the CRC to each child within (States Parties') jurisdiction. Thus, the rights contained in the CRC apply to all children in the jurisdiction of a state party, including refugees, asylum seekers, and those refused asylum seekers, and subcategories of children are entitled to benefit from the provision of the CRC to the same extent as a citizen child.<sup>228</sup> The principle

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<sup>226</sup> UNHCR, UKRAINE SITUATION FLASH UPDATE #48 9 June 2023.

<sup>227</sup> Ibid.

<sup>228</sup> Jason M. Pobjoy, 'Situating the Refugee Child in International Law', *The Child in International*

of non-discrimination extends to all persons of school age residing in the territory of a state party, including non-nationals, and irrespective of their legal status.<sup>229</sup> In addition, with respect to public budgeting, the State parties should take proactive measures to ensure positive outcomes with respect to all children's laws, policies and programs by mobilizing sufficient revenues and allocating and disbursing funds accordingly in relation to laws, policies, and programmes.<sup>230</sup> To achieve substantive equality, States Parties should identify groups of children who are eligible for special measures and use public budgets to implement such measures.<sup>231</sup>

Furthermore, it should be noted that host countries have the following obligation for full realisation of the right to education internationally displaced.

First, as noted in Chapter 2, the realization of other children's rights is crucial for the full realisation of the right to education. For example, based on Articles 24(1) and 24(2)(a), States should prioritize universal access for children to primary healthcare services provided as close as possible to where children and their families live.<sup>232</sup> The need for parties to take proactive measures to help people recover from the trauma and mental health issues resulting from the experience of armed conflict itself, separation from their family and friends, and fleeing their country of origin is similar to the obligations of parties to the conflict described in Chapter 2.<sup>233</sup> Accordingly, State parties must therefore take measures to ensure that internationally displaced children receive healthcare services and remain physically and mentally healthy. Another important thing is the State parties' obligations regarding the children's parents/caregivers for exercising their rights. If the child is fleeing armed conflict without a parent or primary caregiver, namely in the case of unaccompanied or separated children, it is important to appoint a guardian as soon as possible to ensure that the child can fully exercise his or her rights. In this regard, States should appoint a guardian or advisor as soon as the unaccompanied or separated child is identified and

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Refugee Law, Cambridge: University Press 2017, at 20.

<sup>229</sup> UN Committee on Economic Social and Cultural Rights, General Comment No. 13 (1999), para 34.

<sup>230</sup> UN Committee on the Rights of the Child, General comment No.19 (2016), para 42.

<sup>231</sup> *Ibid.*

<sup>232</sup> UN Committee on the Rights of the Child, General comment No.15 (2013), para 36.

<sup>233</sup> *Ibid.*, para 40.

maintain such guardianship arrangement until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State.<sup>234</sup> The guardian should be an expert in the field of childcare to ensure that the child's interests are safeguarded and that the child's legal, social, health, psychological, material, and educational needs are appropriately covered.<sup>235</sup>

Second, Article 29(1)(c) of the CRC states that the right to education includes provisions concerning the development of the child's cultural identity and language values of the child's country of origin. While it is important that children are integrated into the education system of the country in which they are newly living, it is also important that they learn the language and culture of their country of origin and follow its education curriculum.

### **4.3. EU's legal framework and policies to realise the right to education for children who have fled Ukraine**

#### **4.3.1. Regional Human Rights Framework regarding Education**

##### **EU Charter of fundamental human rights**

Article 14 of the EU Charter of fundamental human rights also prescribes that "everyone has the right to education" (paragraph 1). Children have the right to education regardless of their nationality or migration status.<sup>236</sup> The EU ensures migrant children's right to access education on the same or depending on their migrant status, a similar basis as nationals.<sup>237</sup> In addition, paragraph 3 of the Article emphasises the significance of education in conformity with their religious, philosophical, and pedagogical convictions.<sup>238</sup>

##### **European Convention on Human Rights**

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<sup>234</sup> UN Committee on the Rights of the Child, General comment, No.6 (2005), para 33.

<sup>235</sup> Ibid, para 33.

<sup>236</sup> European Commission, 'Supporting the inclusion of displaced children from Ukraine in education Considerations, key principles and practices for school year 2022-2023' (2022), at 3-4.

<sup>237</sup> Ibid., at 4.

<sup>238</sup> Article 24 (3) states, "The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right."

It should be noted that, although not within the EU framework, the ECHR applies to most EU countries as they are members of the Council of Europe.<sup>239</sup> Article 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms states “No person shall be denied the right to education.” Where rights closely related to the right to education are also important, as discussed above, Article 2 provides for the right to life, Article 8 for the right to respect for private and family life and Article 4 for prohibition of discrimination.

#### **4.3.2. Temporary Protection Directive**

Furthermore, It is important to remember that there is an important statement on children's education in the Temporary Protection Activated on 4 March 2022. Due to the number of estimated arrivals of asylum seekers from Ukraine, the European Commission identified a clear risk that each asylum system in EU countries would be unable to cope with applications within the time period set forth in their laws or rules.<sup>240</sup> Therefore, the Temporary Protection Directive adopted on 20 July 2001 (2001/55/EC) following the conflicts in former Yugoslavia, was triggered for the first time by the Council in response to the unprecedented Russian invasion of Ukraine on 24 February 2022 to offer immediate and effective assistance to people fleeing the war in Ukraine.<sup>241</sup> By the Commission's proposal to activate the Temporary Protection Directive, the Council unanimously adopted the Decision (2022/382) to ensure the right to temporary protection to those fleeing war in Ukraine on 4 March 2022.<sup>242</sup>

Article 14(1) of The Temporary Protection prescribed that “The Member States shall grant to persons under 18 years of age enjoying temporary protection access to the education system under the same conditions as nationals of the host Member State. The Member States may stipulate that such access must be confined to the state education system.” Again, here, it is stipulated that the education received by children receiving Temporary protection must be in the same conditions as that of children in the Host country. Even though the protection

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<sup>239</sup> While Ukraine is one of the State parties of the European Convention on Human Rights (ECHR), the Russian Federation was expelled from the Council of Europe on 16 March 2022. Therefore, ECHR is not applicable to Russia anymore. See <https://www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe>, last visited (02-07-2023)

<sup>240</sup> European Commission, [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en), last visited (02-07-2023).

<sup>241</sup> Ibid.

<sup>242</sup> Ibid.

provided is Temporary, the education provided must never be inferior to that received by other children.

In addition, according to the Optional guideline for the implementing Decision 2022/382 (2022/C 126 I /01),<sup>243</sup> support measures to facilitate children's access to and participation in the education system should be provided by the Member States. It says such measures should include "supporting the acquisition of the knowledge of the host country language (in mainstream education or through preparatory class leading to a quick transition into regular education), assessing of pupils' competence levels, providing guidance to pupils and parent about the host country psychological support, and supporting to the teachers and other education professional welcoming refugees."<sup>244</sup>

#### **4.3.3. EU policies for the education of children fled Ukraine**

The European Commission (EC) adopted a document outlining key principles and practices for the inclusion of displaced children from Ukraine in national education systems within the EU for the school year 2022-2023.<sup>245</sup> Upon the drafting of the staff working document, it consulted with the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), and representatives of ministries of education and other stakeholder organisations.<sup>246</sup>

The emphasis here is on the importance of educational Inclusion. The document cites the following reasons for recommending Inclusion. A non-segregated environment allows a greater focus on ensuring quality education and makes it easier for children to interact with their peers.<sup>247</sup> It also allows for a return to normalcy and access to appropriate support services, regardless of the length of their stay.<sup>248</sup> Children can also prepare for any possible future developments, such as returning to Ukraine after a temporary stay in an EU school or

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<sup>243</sup> COMMUNICATION FROM THE COMMISSION, on Operational guidelines for the implementation of Council implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection

<sup>244</sup> Ibid.

<sup>245</sup> European Commission, 'Supporting the inclusion of displaced children from Ukraine in education', available at [https://ec.europa.eu/migrant-integration/library-document/supporting-inclusion-displaced-children-ukraine-education\\_en](https://ec.europa.eu/migrant-integration/library-document/supporting-inclusion-displaced-children-ukraine-education_en)

<sup>246</sup> Ibid. at 1.

<sup>247</sup> Ibid, at 6.

<sup>248</sup> Ibid, at 6.

making long-term plans to stay in the EU.<sup>249</sup>

On the other hand, it also says the inclusion helps to strike a balance between school enrolment in the host country and activities that bring the children into contact with their mother tongue.<sup>250</sup> Whether they eventually return to Ukraine or settle in the host country, maintaining a connection with Ukrainian culture is important and can complement education in Ukraine.<sup>251</sup>

The required actions outlined in the document include the following six points.

First, “Organising the reception and admission process.”<sup>252</sup> It is essential to provide all displaced children with a place in the host-country schools.<sup>253</sup> If there is a need to increase the capacity to accept new students from Ukraine, measures to address this challenge include providing temporary infrastructure, utilizing existing space (including changing or renting space) or building new facilities, equipment, and temporary changes to rules regarding the number of children per class.<sup>254</sup> Providing information about schools in a language and manner that is understandable to children and their families, as well as financial assistance for the various associated costs of even compulsory education, are also necessary measures to guide Ukrainian children to the ‘entry point’ of attending a school in the host country.<sup>255</sup>

Second, “Preparing host-country education institutions and educational staff to include displaced children”.<sup>256</sup> Whether there will be enough teachers and non-teaching staff with the necessary professional skills is the key to inclusion.<sup>257</sup> In practical terms, this specialized skill can (1) “contribute to relieving the trauma and stress of children who had to be forcibly displaced from Ukraine”, and (2) “to teach in multi-lingual and multi-cultural

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<sup>249</sup> Ibid, at 6.

<sup>250</sup> Ibid, at 6.

<sup>251</sup> Ibid, at 6.

<sup>252</sup> Ibid, at 5.

<sup>253</sup> Ibid, at 6.

<sup>254</sup> Ibid, at 7.

<sup>255</sup> Ibid, at 7.

<sup>256</sup> Ibid, at 9.

<sup>257</sup> Ibid, at 9.

contexts and promote intercultural learning environments.”<sup>258</sup> In addition, it is worth nothing here that ‘caring for caregiver’ activities are recommended.<sup>259</sup> This means that some staffs and children’s caregivers also have experienced displaced as well and/or may be mentally overwhelmed by dealing with so many new issues.<sup>260</sup> The well-being of those around the child is essential for child’s well-being.

Third, “Running targeted activities to help include displaced children in education”.<sup>261</sup>

Targeted measures to facilitate the inclusion of displaced children in the education system are essential.<sup>262</sup> One of the important measures is to involve the entire school community, including parents and professionals, in providing support such as language and psychological support to children who have been traumatised by war.<sup>263</sup> In doing so, the most important thing is to listen carefully to the voices of children and to the voices of their families, who have a primary role in supporting displaced children, and who can help schools understand their children's experiences of war and displacement in Ukraine, contribute to culturally meaningful and linguistically accessible interventions.<sup>264</sup> Another important measure is making use of non-formal learning opportunities such as extra-curricular activities, additional classes outside school hours, summer camps and bridging language courses during school holidays.<sup>265</sup> Non-formal settings offer opportunities for displaced children to interact with their host country peers and develop friendships, facilitate language learning, and express and cope with emotions in a non-stressful way.<sup>266</sup>

Forth, “Engaging with displaced families and communities and helping displaced children

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<sup>258</sup> Ibid, at 9.

<sup>259</sup> Ibid, at 13.

<sup>260</sup> Ibid, at 13.

<sup>261</sup> Ibid, at 14.

<sup>262</sup> Ibid at 14.

<sup>263</sup> Ibid at 14-20.

<sup>264</sup> Ibid at 15.

<sup>265</sup> Ibid at 19.

<sup>266</sup> Ibid, at 19.



maintain the link with Ukraine.”<sup>267</sup>

Even if the Host country side touts Inclusion, some displaced families from Ukraine are hesitant to allow their children to participate in local education.<sup>268</sup> In order to address these concerns, it is important to first reach out to parents and caregivers and provide them with accurate and sufficient information on how the education system in the host country works, how it is accessible and what support is available for different age groups.<sup>269</sup> It is then important to involve parents and the Ukrainian community in the management of schools and support to students.<sup>270</sup> It is also important that those responsible ensure that transferred children have the opportunity to continue studying Ukrainian history, culture and language once they are enrolled in schools in the host country.<sup>271</sup>

Fifth, “Taking long-term measures to promote inclusive education.”<sup>272</sup>

In addition to immediate measures aimed at accommodating displaced children, further measures are needed to lay the foundations for lasting change to improve educational institutions.<sup>273</sup> Receiving countries must not be distracted by responding to the current emergency situation and neglect to embark on longer-term measures that will take time to bear fruit.<sup>274</sup> Bearing in mind the fact that learners from migrant backgrounds often score lower than their peers in basic skills, quality structural measures (legislation, planning, monitoring and evaluation) to ensure access to education are essential in addition to emergency measures for displaced children.<sup>275</sup>

Sixth, “Taking specific measures for early childhood education and care.”<sup>276</sup>

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<sup>267</sup> Ibid 21.

<sup>268</sup> Ibid 21.

<sup>269</sup> Ibid 21.

<sup>270</sup> Ibid 21-22.

<sup>271</sup> Ibid 21-22.

<sup>272</sup> Ibid, 23.

<sup>273</sup> Ibid, 23-24.

<sup>274</sup> Ibid, 23-24.

<sup>275</sup> Ibid, 23-24.

<sup>276</sup> Ibid, 25.

Member States should support access to early childhood education and care (ECEC). Participation in ECEC is an important component of children's social and emotional skill development and personality development.<sup>277</sup> This is particularly necessary if they are from disadvantaged backgrounds, have experienced upheaval or trauma, or have specific learning needs or disabilities, because poverty, physical and emotional stress, trauma and lack of language skills may hinder future educational prospects and successful Inclusion into the new society.<sup>278</sup> Participation in ECEC can help reduce these risk factors.<sup>279</sup> However, ECEC is not mandatory and requires parents to pay all or part of the fees, which is a significant burden for families struggling financially. Furthermore, many EU countries suffer from a lack of places, staff and quality ECEC services.<sup>280</sup> Therefore, financial support for access to ECEC should be provided and extended, targeted capacity-building should be provided to ECEC staff and reception should be strengthened.<sup>281</sup>

#### **4.3.4. Other international instruments and policies for realising the right to education of children internationally displaced**

Other United Nations organizations, NGOs and others have recommended a framework for how receiving countries should deal with the education of migrant and refugee children. These provide significant clues to guaranteeing Ukrainian children's right to education in third countries.

For example, in December 2019, the Global Refugee Forum Education Co-Sponsorship Alliances prepared the Global Framework for Refugee Education for the first Global Refugee Forum.<sup>282</sup> The purpose of this Framework is to create the conditions for global support for the education of refugees and host countries to achieve the commitments of the Global Compact on Refugees and the Sustainable Development Goals (SDGs)<sup>283</sup>. SDGs 4 aims to

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<sup>277</sup> Ibid, 25.

<sup>278</sup> Ibid, 25-26.

<sup>279</sup> Ibid, 26.

<sup>280</sup> Ibid, 26,

<sup>281</sup> Ibid, 26-28.

<sup>282</sup> United Nations High Commissioner for Refugee, 'Global Framework for Refugee Education' (2019), at 4, available at <https://www.unhcr.org/media/global-refugee-forum-pledging-guidance-global-framework-refugee-education>

<sup>283</sup> United Nations: Department of Economic and Social Affairs Sustainable Development,

“ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.”<sup>284</sup> Like the EU document mentioned above, this framework also advocates 'inclusion in national education systems.'<sup>285</sup> Notably, with regard to secondary education, the document warns that even public schools require a certain amount of money for tuition, materials and facilities, as well as a higher level of local language skills and comprehension, making 'integration' more difficult.<sup>286</sup> It points out that as a result of inadequate access to secondary education, children are withdrawing from the educational process, putting their health and lives at risk as well.<sup>287</sup> The framework calls on host countries to first improve the availability and quality of education in secondary education.<sup>288</sup> It also requires them to provide more flexible alternative means of education for out-of-school children.<sup>289</sup>

Another example is ICAM (Including Children Affected by Migration). The ICAM programme is an innovative EU-funded initiative to improve inclusion in schools and ensure the rights to quality education for all Children who have been Affected by Migration (CAM).<sup>290</sup> ICAM aims to improve inclusion and learning environments by enhancing a climate of "convivencia" (Spanish word meaning "living in harmony").<sup>291</sup> It raises awareness among school staff, families, and others about the rights of children affected by migration and further supports children's social and emotional learning.<sup>292</sup> The program will train and support school staff with talents to promote children's social and emotional well-being and lead whole-school development.<sup>293</sup> The ICAM programme works by building a network of schools that receive

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<https://sdgs.un.org/goals> last visited (02-07-2023).

<sup>284</sup> United Nations: Department of Economic and Social Affairs Sustainable Development, <https://sdgs.un.org/goals/goal4> last visited (02-07-2023).

<sup>285</sup> United Nations High Commissioner for Refugee, 'Global Framework for Refugee Education' (2019), at 6.

<sup>286</sup> *Ibid*, at 21.

<sup>287</sup> *Ibid*.

<sup>288</sup> *Ibid*.

<sup>289</sup> *Ibid*.

<sup>290</sup> <https://www.eurochild.org/initiative/icam-improving-the-inclusion-in-school-of-children-affected-by-migration/>, last visited (02-07-2023)

<sup>291</sup> <https://www.icamproject.eu/convivencia/>, last visited (02-07-2023)

<sup>292</sup> <https://www.icamproject.eu/find-out-more-about-the-objectives-of-the-icam-programme/>, (02-07-2023)

<sup>293</sup> *Ibid*.

ongoing support from National ICAM Facilitators, who are trained by ICAM partners in each country.<sup>294</sup> National ICAM Facilitators train a community of 10-20 school ICAM leaders to deliver the programme in their schools.<sup>295</sup>

#### **4.4. Assessment of EU policies**

As mentioned above, the EU policy and guidelines are to aim for inclusive education of Ukrainian children in local schools, but will such measures meet the requirements of guaranteeing children's education under the CRC, as discussed in Chapter 1?

##### **4.4.1. Significance of EU guidelines on education for Ukrainian children**

First, what are the implications of the existence of the EU's policy on how to educate children who fled armed conflict, explicitly targeting Ukrainian children, in relation to the CRC?

EU countries have been receiving large numbers of migrants and refugees since before the Russian invasion of Ukraine in February 2022, and this is not the first time that they have received large numbers of displaced persons.<sup>296</sup> Inclusive education has been an international commitment since 1994 (UNESCO 1994), and although the definition is strictly controversial, various studies have been conducted on the methods of inclusive education.<sup>297</sup> Although there is some variation between studies, much of the literature outlines some key elements common to effective inclusive schools, which are (1) a clear vision focused on all children and supported by the whole school community; (2) all children are valued as members of the classroom and educated together; (3) a comprehensive approach to children and parents; (4) a collaborative team approach in schools; (5) flexible curriculum and quality teaching using evidence-based approaches; (6) supportive leadership

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<sup>294</sup> ICAM, <https://www.icamproject.eu/>, last visited (02-07-2023)

<sup>295</sup> Ibid.

<sup>296</sup> P. Rodrigues & C. Tobler, 'Reception of people from Ukraine: Discrimination in international protection?', Leiden Law Blog, 17 May 2022, available at, <https://www.leidenlawblog.nl/articles/reception-of-people-from-ukraine-discrimination-in-international-protection>

<sup>297</sup> A. Qvortrup & L. Qvortrup, Inclusion: Dimensions of inclusion in education, *International Journal of Inclusive Education* (2018), at 803.

including shared decision-making; and (7) quality professional development.<sup>298</sup>

The above-mentioned EU document on the education of Ukrainian children, as well as other documents, stress the importance of all children attending local school classrooms and being educated alongside local children, working with the whole school community, involving the children's parents, training and care for teachers and others, and it reflects the history and research findings of inclusive education to date. Critically, it is not new but rather a natural necessity for inclusive education.

However, the fact that the EU has focused on the importance of the Ukrainian children's right to education, advocated inclusive education, and issued a document with concrete proposals on how to achieve this is to be evaluated favorably. Ukrainian children are among the most vulnerable, having been forced to leave their homeland due to the armed conflict, which has violated not only their right to education but also all their related rights to health, family, play, housing, and identity. The fact that the EU has provided such specific guidelines for this particular group of children and urged EU Member States to implement them is a sign of the EU's firm commitment to ensuring the right to education for Ukrainian children. It reiterates the obligation of EU States parties to the CRC to ensure the right of Ukrainian children to education in accordance with the requirements of Articles 28 and 29 of the CRC, by providing "to the maximum extent of their available recourses" (Art. 4). Of course, on the one hand, there exist criticisms that it is racist because it did not invoke the Temporary Protection Directive during the other mass influx of Syrian refugees in 2015 and did not provide the same degree of generous support as it is providing Ukrainian.<sup>299</sup> However, at the very least, the EU's response to the Ukrainian issue demonstrates the EU's attitude towards Ukrainian children's right to education and provides certain guidelines for the future. If, in the future, large numbers of refugees were to flow into EU countries in other cases, the EU's response in Ukraine would be of great help. If the EU does not take the same level of measures, racist reasons would be unacceptable and if there are reasonable grounds to justify not taking the same level of measures, then the explanation would have to be sincere. In terms of the protection of the rights of displaced persons, including children, the EU's response is expected to put significant pressure on the EU in the future.

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<sup>298</sup> *Ibid*, at 806.

<sup>299</sup> P. Rodrigues & C. Tobler, 'Reception of people from Ukraine: Discrimination in international protection?', *Leiden Law Blog*, 17 May 2022,

#### **4.4.2. The relationship between inclusive education and the realisation of rights under the CRC**

Secondly, how will the inclusive education concept help to realise the right to education of Ukrainian children who have fled to third countries?

To begin with, as discussed in Chapters 1 and 2, schools are important places for children to interact, study and play with friends and teachers to provide them with emotional stability, and for children who have been injured during armed conflict to heal from their trauma. In addition, Ukrainian children can have “feelings of belongingness” to classrooms, schools, and the local (host countries’) community when they attend local schools, study with local children in the classroom, play and recreate in class and through extra-curricular activities, and develop relationships with their classmates and teachers.<sup>300</sup> All human beings need to feel a sense of belonging in social groups, especially children.<sup>301</sup> Children need to feel a sense of belongingness in their school for their basic psychological well-being.<sup>302</sup> Research also shows that children are more engaged in learning when they feel that they do indeed belong to their local school and classroom communities.<sup>303</sup> On the other hand, children tend to be less motivated and engaged in learning when they feel that they do not belong to their school or classroom community.<sup>304</sup> In other words, students’ feelings of belongingness are positively related to academic achievement through engagement or motivation.<sup>305</sup> This is particularly true for children from migrant and refugee backgrounds who are Where learning is delivered in classrooms that separate children from local children, a sense of belongingness to the classroom or the groups that make up the classroom may be generated, but not to the school as a whole or to the local community.

Attending local schools and learning with local children is therefore crucial for children's right to play (Art. 31), their right to health (Art.24, mainly psychological), their development (Art.6), and for achieving educational outcomes (Art.28 and 29).

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<sup>300</sup> A. Braun, *Psychological Inclusion: Considering Students’ Feelings of Belongingness and the Benefits for Academic Achievement*, *The Sage Handbook of Inclusion and Diversity in Education* (2019), at 2.

<sup>301</sup> *Ibid*, at 4.

<sup>302</sup> *Ibid*, at 4.

<sup>303</sup> *Ibid*, at 4.

<sup>304</sup> *Ibid*, at 4.

<sup>305</sup> *Ibid*, at 10.

#### 4.4.3. Issues in the implementation of inclusive education

Third, while it would be ideal to realise inclusive education as described above, inclusive education still appears to be a troubled, problematic, and contested field. The educational setting is clear, but there is a view that it is extremely hard work to realise and implement this policy in practice. What are the obstacles to the actual implementation of inclusive education with regard to children displaced from Ukraine to third countries? And how can they be overcome?

To begin with, the lack of motivation for inclusive education on the part of the child and his/her family. This is a point that is closely related to the first Targeted measure in the above-mentioned EU document. In detail, there are many children who do not participate in school in the first place.<sup>306</sup> Around one-third (32%) of children surveyed did not attend school between the escalation of conflict and the summer holidays 2022. A further one in four (25%) only attended online.<sup>307</sup> In addition, a certain percentage of children and parents make choices that discourage or avoid entering the host country's education system. Around one in four children said they did not intend to enroll in a host community school for the 2022–2023 academic year or were unsure.<sup>308</sup> In countries such as Sweden, a relatively high proportion of displaced children attend local schools (80 percent), while in Poland, which hosts the highest number of displaced Ukrainian children, 41 percent, or less than half, of displaced children from Ukraine attend local schools (182,245 children out of 441,000 children aged between 5 and 17 who are registered in the country).<sup>309</sup> One explanation for this is related to potential differences in school attainment levels.<sup>310</sup> Some children and their parents want to continue to attend their Ukrainian school online to maintain links to the Ukrainian education system, where they know the certification and grading system will be applicable.<sup>311</sup> These parents and children fear that by attending local schools, they will be

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<sup>306</sup> Save the Children, November 2022, at 14.

<sup>307</sup> *Ibid.*

<sup>308</sup> *Ibid.*

<sup>309</sup> *Ibid.*

<sup>310</sup> *Ibid.*, at 15.

<sup>311</sup> *Ibid.*

placed in lower grades, or their certifications will not be valid on their return to Ukraine.<sup>312</sup> This research by Save the Children also introduces the words by Ukrainian displaced persons living in the Netherlands; “We have to allow children to learn online only in Ukrainian schools. Do not force them to study offline in Dutch schools”.<sup>313</sup> In the recently published EU 'INTEGRATION OF PEOPLE FLEEING UKRAINE IN THE EU NOTE TO EUROPEAN COMMISSION Lodewijk Asscher, Special Adviser for Ukraine, May 2023 ' text, it is referred to as a 'waiting dilemma'.<sup>314</sup> In other words, people who fled tend to keep an eye on their home country and want to return as soon as it is safe, making it difficult to decide to start learning a new language, to embark on more serious training or education programmes, or to integrate children into the education system of the host country.<sup>315</sup>

While integration is desirable, it should not be an imposition of value to combat this problem. Children have already experienced armed conflict and displacement and are emotionally exhausted, and so are their parents. Therefore, the voices of children and their parents should be listened to first and foremost. The kind of environment and the kind of education a child receives are important matters that directly concern the child. Therefore, the views of the child should be listened to through dialogue on what the child thinks and hopes for now, and how he/she is spending his/her daily life in a new country different from his/her homeland Ukraine based on Article 12 of the CRC. This dialogue with children and their families could be conducted by designated national and local authorities in EU countries or through NGOs and Ukrainian communities in third countries.

Then, it is necessary to ensure that children and parents understand why integration is desirable and what the benefit is and how troubles will be addressed if they confront it through the inclusive education. A common understanding of the benefits of integration needs to be shared by both displaced children and host countries, including parents and caregivers.

Next, there is a discrepancy between theoretical idea and practical difficulties.

Even if Ukrainian children were to enter local schools, there would be many difficulties in implementing inclusive education in practice. For one thing, the skills, knowledge and

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<sup>312</sup> Ibid.

<sup>313</sup> Ibid..

<sup>314</sup> INTEGRATION OF PEOPLE FLEEING UKRAINE IN THE EU NOTE TO EUROPEAN COMMISSION Lodewijk Asscher, Special Adviser for Ukraine, May 2023, at 11.

<sup>315</sup> Ibid, at 11.



mindset of Ukrainian children have a gap with those of local children.<sup>316</sup> The younger the child, the easier it is to adopt a different way of doing things, but the older the child, the greater the difficulties.<sup>317</sup>

The second is the Lack of social participation due to cultural and language differences.<sup>318</sup> Different cultures and languages naturally lead to situations where it is difficult to understand what others are saying and what they are doing. As these experiences accumulate, anxiety can increase, and people may become reluctant to engage with their classmates in the same classroom, or may even try to avoid interaction with them.<sup>319</sup>

The third problem is that psychological distress prevents active participation.<sup>320</sup> As mentioned above, Ukrainian children have suffered significant psychological trauma as a result of the armed conflict and displacement, and this mental illness prevents them from concentrating on learning.<sup>321</sup>

Unfortunately, there would be no specific remedy for such problems. However, as the above-mentioned EU Document also advocates, one-on-one teaching can be successfully introduced, or separate remedial classes can be held in parallel with mainstream classes<sup>322</sup> (Although individual or separate classes should only be complementary and should not be implemented on a long-term basis. These supplementary classes should not diverge from the mainstream classes.). Support should be given to reinforce areas where children, especially those from Ukraine, are experiencing difficulties. Above all, opportunities for cross-cultural and cross-linguistic interaction should be increased in the classroom to deepen mutual understanding between Ukrainian children and children from the host country.<sup>323</sup> For example, mentioning Ukrainian culture and language in class and holding

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<sup>316</sup> B. Taylor a, M. Wingren, A. Bengs, H. Katz, & E. Acquah, Educators' perspectives related to preparatory education and integration training for immigrants in Finland, *Teaching and Teacher Education* 128 (2023), at 4-5.

<sup>317</sup> *Ibid*, at 4-5.

<sup>318</sup> *Ibid*, at 5.

<sup>319</sup> *Ibid*.

<sup>320</sup> *Ibid*, at 5-6.

<sup>321</sup> *Ibid*, at 5.

<sup>322</sup> European Commission (2022), at 20.

<sup>323</sup> B. Taylor, (2023), at 5.

whole-class discussions. The idea is to increase opportunities for children to openly discuss not only Ukrainian, but also host country culture and language, as well as the culture and language of migrant children from other countries. This would open the door to motivate them to understand each other and, moreover, to engage Ukrainian children in classrooms where children from the host-country are in the majority.

#### **4.5. Conclusion**

Thus, it is highly commendable that guidelines for Inclusion have been clearly laid down in the EU. However, it is also true that many people believe that it is not possible to reconcile the desire to study or to have their children study in the Ukrainian curriculum with attending a local school. And it is also true that following the Ukrainian curriculum online, etc., while attending a local school places an undue burden on the child. The first step is to provide accurate information on the local education system, and to ensure that children and their families who have fled Ukraine understand the benefits of attending local schools (e.g. making friends in the country where they live, healing wounds caused by the armed conflict through relationships with friends, integrating into the community in the country where they live, etc.), and that they are able to make the most of their time in Ukraine. The government, local communities and NGOs need to provide information and awareness-raising activities to ensure that children and their families who have fled Ukraine understand these benefits. On top of this, it is necessary to establish a system of careful follow-up on the difficulties that children face when attending local schools, and to alleviate some of the anxiety of children studying in local schools. The host country community must build a society in which children can receive education with peace of mind, while utilising the already existing guidelines on education for migrant children and carefully customising the content of support according to each child's individual circumstances.

**Chapter 5. Conclusion and further**

It will soon be a year and a half since Russia invaded Ukraine on 24 February. However, there is no indication as to when the war between Russia and Ukraine will end. To what extent are Ukrainian children's right to education protected, respected in accordance with the standards required by the international legal framework? The answer to this question has been examined throughout this paper, it cannot be said that Ukrainian children's right to education is fulfilled at the level required by the international legal framework, including the CRC. The right to education is closely linked to other children's rights, and while the war is still going on, attacks on schools have not stopped, people are experiencing separation from their families, they cannot secure housing and infrastructural facilities, and they have serious mental issues caused by the war. In the EU and other third countries, various measures are being taken to protect, respect, and fulfill the right to education of Ukrainian children. However, in practice, there are many difficulties in the implementation of inclusive education. In the face of these difficulties, the States parties to the CRC must urgently assess the problem, using their possible ways, so that they can accurately take more proactive measures and enable as many children as possible to develop a sense of belongingness, develop and self-realise while interacting with their friends and teachers in a safe environment. The right to education of Ukrainian children must continue to be addressed using maximum resources by all State parties of the CRC.

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