

BRIEF REFLECTIONS ON THE RUSSIAN-UKRAINIAN WAR AND THE INTERNATIONAL AND TRANSVERSAL PROTECTION OF MIGRANT CHILDREN'S RIGHTS

BREVES REFLEXÕES SOBRE A GUERRA RUSSO-UCRANIANA E A PROTEÇÃO INTERNACIONAL E TRANSVERSAL DOS DIREITOS DAS CRIANÇAS MIGRANTES

Vinícius Abrantes ¹
Thiago Giovanni Romero ²

¹ Professor da Pós-graduação da Damásio Educacional. Consultor credenciado e vinculado à Pró-reitora de Pesquisa e Pós-graduação, da Universidade do Estado do Amapá. Discente do Programa de Pós-graduação em Estudos Linguísticos, na área de Linguística Aplicada, da Universidade Federal de Minas Gerais. Especialista em Direito Público (2023), e Direito Internacional (2023), pelo UniAmérica. Bacharel em Direito, pelo Instituto Metodista Granbery (2017-2021). Bacharelando em Letras, com ênfase em Línguas Estrangeiras Modernas e Linguística Aplicada, pela Universidade Federal de Juiz de Fora. Também foi aluno do Instituto de Estudos da Linguagem, da Universidade Estadual de Campinas (2021), atualmente vinculado à referida instituição através do IndisciPLAr. Possui experiência acadêmica e profissional em Relações Internacionais, Direito Internacional Público e Privado, Direitos Humanos, Linguística Aplicada e Teoria Crítica. Integrou entre 2021-2022 a banca de especialistas para a criação do Observatório da Criança e do Adolescente, projeto (BRA/10/007) firmado entre o Programa das Nações Unidas para o Desenvolvimento (PNUD), a Universidade Federal do Paraná (UFPR) e a Secretaria Nacional dos Direitos da Criança e do Adolescente do Ministério da Mulher, da Família e dos Direitos Humanos (SNDCA/MMFDH). É fundador do Direito Internacional sem Fronteiras, atuando como Diretor-geral e Editor-chefe das publicações periódicas. É pesquisador no Grupo de Estudos e Pesquisa em Direito Internacional, no projeto de pesquisa: Direito Internacional Crítico (GEPDI/DICRÍ/CNPq/UFU). Em 2024, teve observações escritas aprovadas pela Corte Interamericana de Direitos Humanos (San José, Costa Rica), no pedido de parecer consultivo (SOC-1-2023/1346), participando do 166 e 167 (em Brasília e Manaus, Brasil) Período Ordinário de Sessões da referida Corte. Em 2021, teve observações escritas aprovadas pela Corte Interamericana de Direitos Humanos, no pedido de parecer consultivo (Nota 642; OC-29), participando do 141 (San José, Costa Rica) Período Ordinário de Sessões da referida Corte. Em 2021, foi estagiário do Espaço Almeida Mantelli - ALMA (em São Paulo, São Paulo) e do Instituto Metodista Granbery - NPJ/IMG (em Juiz de Fora, Minas Gerais). Entre 2020 e 2021, foi estagiário do Escritório de Advocacia Thiago Giovanni Romero (em São Paulo, São Paulo). Em 2020, foi Professor Visitante na Concordia College, atuando, conjuntamente com o Prof. Dr. Lucas Mendes Ferreira, no Programa CLV (no Minnesota, Estados Unidos). Entre 2019 e 2020, foi colaborador externo do Centro de Direito Internacional - CEDIN (em Belo Horizonte, Minas Gerais), presidido pelo Prof. Dr. Leonardo Nemer Caldeira Brant. Entre 2017 e 2019, atuou em projetos de internacionalização na CsF/Em Rede, apoiados na Diretoria de Relações Internacionais, da Universidade Federal de Juiz de Fora - DRI/UFJF (em Juiz de Fora, Minas Gerais), coordenada, na época, pela Profa. Dra. Bárbara Inês Ribeiro Simões Daibert. Também foi professor de Língua Portuguesa - Interpretação de Texto (2018) e Coordenador de Ensino (2019) do Cursinho Popular GARRA (Projeto de Extensão vinculado à Universidade Federal de Juiz de Fora) e membro do projeto: Simulação Interna das Nações Unidas (projeto vinculado à Diretoria de Relações Internacionais da Universidade Federal de Juiz de Fora).

² Pós-doutorando em Direito na Universidade Federal de Uberlândia (UFU). Doutor em Direito Internacional e Comparado pela Faculdade de Direito da Universidade de São Paulo (FDUSP). Mestre em Direito pela Universidade Estadual Paulista "Júlio de Mesquita Filho" (UNESP). Especialista em Direito e Processo do Trabalho pelo Damásio Educacional. Especialista em Direito Internacional pela Pontifícia Universidade Católica de São Paulo (PUCSP). Graduado em Direito no Centro Universitário Toledo (UNITOLEDO). Professor de Direito Internacional Público e Privado no curso de graduação em Relações Internacionais no IBMEC São Paulo. Professor nos cursos de pós-graduação em Direito do Damásio Educacional (Direito Civil; Direito Notarial e Registral; Privacidade e Tratamento de Dados e Compliance, Governança e ESG). Professor de Direito Civil no Curso Preparatório para o Exame da OAB e de Carreiras Jurídicas no Damásio Educacional. Coordenador e Professor do curso de "Certificação em Inteligência Artificial para Advogados" no Damásio Educacional. Professor do curso de graduação em Direito da Fundação Educacional de Penápolis (FUNEPE). Professor Associado no portal Direito Internacional sem Fronteiras (DIsF). Pesquisador no Grupo de Pesquisa de Políticas Públicas e Direitos Sociais (UNESP/Franca); no Laboratório de Estudos e Pesquisas Avançadas em Direito Internacional e Ambiental (LEPADIA) da UFRJ; na Cátedra Jean Monnet "Global Crossings" (UFU) e no Observatório Interamericano e Europeu dos Objetivos do Desenvolvimento Sustentável (OIEODS/UFU). Árbitro

ABSTRACT: Children have always been present in wars and also as victims of them - historical records show that they were involved before the 20th century - and the phenomenon is still being discussed on international agendas today. Against this backdrop, this research aims, in a general and systematic way, to identify the moves made in the global and regional systems to protect migrant children in this scenario of forced displacement. It is known that changing the lens from private to public, with regard to “children”, should always lead research within the area of Children's Law in the International System to yearn for their [the children's] voices to be heard; therefore, the result of this work is intended to become a mechanism for discussing the problem with greater vehemence on international public and political agendas. In order to meet the objectives listed, this article was developed using a critical qualitative research strategy, of an exploratory nature, through bibliographical research.

Keywords: Childhood. Russian-Ukrainian War. International law.

RESUMO: As crianças sempre estiveram presentes nas guerras e também como vítimas delas - registros históricos mostram que elas já estavam envolvidas antes do século XX - e o fenômeno ainda hoje é discutido nas agendas internacionais. Diante desse cenário, esta pesquisa visa, de forma geral e sistemática, identificar os movimentos realizados nos sistemas global e regional para proteger as crianças migrantes nesse cenário de deslocamento forçado. Sabe-se que a mudança da lente do privado para o público, no que diz respeito às “crianças”, deve sempre levar a pesquisa na área do Direito da Criança no Sistema Internacional a ansiar que suas vozes [das crianças] sejam ouvidas; portanto, o resultado deste trabalho pretende se tornar um mecanismo para discutir o problema com maior veemência nas agendas públicas e políticas internacionais. Para atender aos objetivos elencados, este artigo foi desenvolvido utilizando uma estratégia de pesquisa qualitativa crítica, de caráter exploratório, por meio de pesquisa bibliográfica.

Palavras-chave: Infância. Guerra russo-ucraniana. Direito internacional.

INITIAL CONSIDERATIONS

For many decades, children were placed on the margins of state and international policies³. With the studies developed especially by Ariès⁴, it was possible to gain a better understanding of the construction of childhood in the West. Certainly, for the development of

Convidado da Câmara de Mediação e Arbitragem Especializada de São Paulo (CAMES). Foi Coordenador e Professor de Direito Internacional Público e Privado do Curso Clio (Curso Preparatório para o Ingresso à Carreira Diplomática), em 2024. Foi Professor Assistente da Pós Graduação em Relações Internacionais e Diplomacia do IBMEC (2022). Foi Pesquisador Sênior para a criação do Observatório da Criança e do Adolescente, projeto (BRA/10/007) firmado entre o Programa das Nações Unidas para o Desenvolvimento (PNUD), a Universidade Federal do Paraná (UFPR); no Núcleo de Estudos de Direito Internacional de Ribeirão Preto (NEDIRP/USP).

³ ALANEN, L. Teoria do bem-estar das crianças. *Cad. Pesqui.*, São Paulo, v. 40, n. 141, p. 751-777, 2010.

⁴ ARIÈS, P. *L'Enfant et la vie familiale sous l'ancien régime*. Rio de Janeiro: LTC, 1981.

childhood, the metaphorical shift from children as appendages (of the family) to children as social actors was of great importance.⁵

Once the needs and rights of children are recognized, new perspectives emerge.⁶ Alanen⁷ points out that children have never been included in the thematic axis of well-being, but that, over the years, various initiatives have emerged to develop indicators to measure children's well-being - in international systems as well as national ones.

Furthermore, children are becoming a more prominent subject in the rethinking and also reorganization of well-being and, in this context, the vehement contribution of the [Applied] Social Sciences is being called for. In response to this call, new research into childhood and its many faces is generating extremely relevant and necessary contributions.⁸

In the midst of the various advances and progress that have been made in the protection of children's rights in the international system, there are unquestionably a number of other problems that touch on the protection of human rights - and certainly the protection of children's rights. It's worth mentioning that these are problems that can have numerous repercussions, such as the increase in migratory flows due to wars. From this perspective, for example, in the current scenario, there is the Russian-Ukrainian War.⁹

According to official UNHCR data¹⁰ one year after the invasion there are more than 7.8 million Ukrainian refugees in Europe, most of them women and children. It is worth noting that there are more than 15 million movements across borders, with 6.5 million people displaced within the country. Certainly, as Custódio and Cabral¹¹ point out, in times of war, children and adolescents suffer and experience violations of their rights. In addition to the violations caused by the hostilities of war, they also suffer mental health problems, such as post-traumatic stress disorder.

Within this challenging scenario, this chapter seeks, in a general and systematic way, to identify the movements carried out in the global and regional systems aimed at protecting

⁵ ROSEMBERG, F.; MARIANO, C. L. S. A convenção internacional sobre os direitos da criança: debates e tensões. **Cadernos de Pesquisa**, São Paulo, v. 40, n. 141, p. 693-728, 2010.

⁶ ROSEMBERG, F.; MARIANO, C. L. S. A convenção internacional sobre os direitos da criança: debates e tensões. **Cadernos de Pesquisa**, São Paulo, v. 40, n. 141, p. 693-728, 2010.

⁷ ALANEN, L. Teoria do bem-estar das crianças. **Cad. Pesqui.**, São Paulo, v. 40, n. 141, p. 751-777, 2010.

⁸ ALANEN, L. Teoria do bem-estar das crianças. **Cad. Pesqui.**, São Paulo, v. 40, n. 141, p. 751-777, 2010.

⁹ It is understood here that the Russo-Ukrainian War is an armed conflict that has been unfolding since 2014 - the year in which Russia invaded and annexed Crimea and also invaded and occupied territories in the Ukrainian Donbas region. It is worth noting that it is not the purpose of this chapter to discuss geopolitical issues and international accountability.

¹⁰ ACNUR – Alto Comissário das Nações Unidas para Refugiados. **Emergências [Ucrânia]**. Última atualização em janeiro de 2023.

¹¹ CUSTÓDIO, A. V.; CABRAL, J. Racialização nas fronteiras: crianças ucranianas e a biopolítica nas migrações. **Revista de Estudos Internacionais – REI**, v. 14, n.1 (2023).

migrant children within this scenario of forced displacement. The specific objectives are: (i) to understand the recognition of children as subjects of rights, both at a global level and, in general, through the transversality of rights; (ii) to understand the concept of the transversality of rights; (iii) to present the sources of regional human rights protection systems that include the protection of children (and adolescents); and (iv) to present the movements carried out at a global and regional level to protect migrant children.

In order to meet the objectives, set out, this chapter is developed using a critical qualitative research strategy, of an exploratory nature, through bibliographical research. The analytical path of this work is built through successive interpretive movements, integrating elements from specialized works, regional and international legislation and protocols, as well as reports with official data.

1. INTERNATIONAL AND TRANSVERSAL RECOGNITION OF THE CHILD AS A SUBJECT OF RIGHTS

Before starting the topic, it is important to emphasize transversality - its use is interesting, since, insofar as international law can exist as law, it seeks to “[...] prove that it is composed of the same elements as internal legal orders (sociability, imperativeness, coerciveness - elements indicated by the general theory of law which, precisely because it claims to be general, must be able to be applied to international law)”¹²; in other words, international law would be valid as a legal norm capable of verifying obligations and duties *vis-à-vis* its recognized subjects, generating the possibility of thematic and legal transversality with the effect of liability, in turn, for obligations deriving from relationships assumed internationally.

The opening remarks of this chapter discussed the transformation of children into “social actors” and, consequently, holders of rights - in addition, it is known that modernity recreated childhood, making the 20th century the century of the child - precisely to promote strategies and public policies focused on children as a national project.¹³ All of this occurred when society understood that children should not just be passive subjects, but actors in society¹⁴ - however,

¹² MONACO, G. F. de C. **A proteção da criança no cenário internacional**. Belo Horizonte: Del Rey, 2005. P. 18.

¹³ ROSEMBERG, F.; MARIANO, C. L. S. A convenção internacional sobre os direitos da criança: debates e tensões. **Cadernos de Pesquisa**, São Paulo, v. 40, n. 141, p. 693-728, 2010.

¹⁴ ROSEMBERG, F.; MARIANO, C. L. S. A convenção internacional sobre os direitos da criança: debates e tensões. **Cadernos de Pesquisa**, São Paulo, v. 40, n. 141, p. 693-728, 2010.

still in the words of Muniz Falcão, “despite this attempt to put children at the center of attention of states and civil society, it is assured that they are still marked by exclusion in social structures and also in academia”.¹⁵

From this perspective, it is significant to point out that the recognition of children as rights holders¹⁶ on the international stage - through the great impact of human rights¹⁷ and, subsequently, with the implementation and adoption of the International Convention on the Rights of the Child¹⁸ - has led to states being asked to observe children's rights within their domestic jurisdictions. It also meant that (international) law had to think about the protection of children not only in an international way, but also across the board - this is because domestic legislation has to take this into account.¹⁹

Turning to the historiography of the construction of children's rights in the international system, one comes across the Geneva Declaration of 1924 - among all the rights enshrined in this document, we would highlight the right to food and education, as well as the right to receive first aid (in the face of others) in atypical moments of adversity. It is essential to point out that the Geneva Declaration was the pioneering document to stipulate the “rights of the child”.

With the harmful consequences for children of the post-war period²⁰ the United Nations Organization set up the United Nations Emergency Fund for Children (later to become the United Nations Emergency Fund for Children). Still in this post-World War II context:

[...] both the Universal Declaration of Human Rights of 1948 and the American Declaration of the Rights and Duties of Man of 1948 dedicate some articles to the issue of children, stating that childhood, as well as motherhood, should be the object of special protection and assistance. [...] Later, in 1959,

¹⁵ MUNIZ FALCÃO, W. H. M. **Voz e participação da criança-soldado sul-sudanesa no Comitê dos Direitos da Criança da ONU a partir da Teoria da reprodução interpretativa da criança**. 2017. 221 p. Dissertação (Mestrado em Direito) – Universidade Federal de Santa Catarina, Florianópolis, 2017. p. 44.

¹⁶ ALMEIDA, G. A. de *et al.* L'enfant sujet des droits de l'homme: réflexions en droit français et en droit brésilien. **Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito**, São Leopoldo, v. 11, n. 2, p. 220-238, 2019.

¹⁷ TRINDAD NÚÑEZ, P. ¿Qué es un niño? una visión desde el Derecho Internacional Público. **Revista Española de Educación Comparada**, Madrid, n. 9, p. 13-47, jan. 2003. Acesso em: 10 de junho de 2023.; RICOEUR, P. **Le Juste**. Paris, Esprit. 1995.

¹⁸ MONACO, G. F. de C. **A proteção da criança no cenário internacional**. Belo Horizonte: Del Rey, 2005.

¹⁹ We should think about the close link between children's rights - including children and adolescents - and human rights. In this area, therefore, there should be talk of national protections or national protective jurisdictions that deal with the issue. See: DEKEUWER-DEFOSSEZ, F. **Les droits de l'enfant**. Paris: PUF, 2010.

²⁰ RIVA, G. R. S. **Criança ou Soldado?** o direito internacional e o recrutamento de crianças por grupos armados. Recife: Ed. Universitária da UFPE, 2012.

the UN General Assembly reinforced the protection of children's rights by promulgating the Declaration of the Rights of the Child²¹⁻²²

As explained above, it is clear that in order to understand the recognition of children as subjects of law, it is necessary to analyze them at different levels, since, at a regional level, children's rights are constructed and made effective by (inter)American, European and African sources - thus impacting national jurisdictions. On the other hand, in the Global System, the International Convention on the Rights of the Child offers an essential overview that should be extended to regional systems, and it is important to note that the Convention is the result of a long journey on the international stage.²³

After 10 years of discussion, UN General Assembly Resolution 44/25 adopted the 1989 Convention on the Rights of the Child, which only came into force in 1990.

Article 1

For the purposes of this Convention, a child shall be considered to be any human being below the age of 18 years, unless, in accordance with the law applicable to the child, majority is attained earlier.²⁴

In its first provision, the CRC defines a child as anyone under the age of 18, in line with pre-existing legal terms; it also stipulates bases such as: the family unit and protection from physical and mental harm to children - such harm can come from the practice of kidnapping, trafficking and sexual exploitation of children.

2. FONTS OF REGIONAL SYSTEMS FOR THE PROTECTION OF HUMAN RIGHTS AND MOVEMENTS FOR THE PROTECTION OF CHILD MIGRANTS IN THE RISE OF THE RUSSIAN-USSIAN WAR

²¹ It is worth mentioning that this declaration only establishes ethical parameters for the treatment of children, and is not to be confused with the 1989 Convention on the Rights of the Child and its optional protocols.

²² Literal translation of the passage in Portuguese: “[...] tanto a Declaração Universal dos Direitos Humanos de 1948 quanto a Declaração Americana dos Direitos e Deveres do Homem de 1948 dedicam alguns artigos para a questão da criança, afirmando que a infância, assim como a maternidade, devem ser objetivos de proteção e assistência especiais. [...] [tempos depois], em 1959, a Assembleia Geral da ONU reforçou a proteção aos direitos das crianças promulgando a Declaração dos Direitos da Criança” (RIVA, G. R. S. **Criança ou Soldado?** o direito internacional e o recrutamento de crianças por grupos armados. Recife: Ed. Universitária da UFPE, 2012. p. 49-50).

²³ ALMEIDA, G. A. de *et al.* L'enfant sujet des droits de l'homme: réflexions en droit français et en droit brésilien. **Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito**, São Leopoldo, v. 11, n. 2, p. 220-238, 2019.

²⁴ Article 1 of the 1989 CRC.

This section briefly discusses two regional human rights protection systems: (i) the European System for the Protection of Human Rights; (ii) the Inter-American Human Rights System; and (iii) the African System for the Protection of Human and Peoples' Rights. These are the documents that cover the regional protection of children. Within each of these systems, we briefly discuss the movements that have also been made, in some way, to welcome and protect children.

3.1. THE EUROPEAN HUMAN RIGHTS SYSTEM

It is known that the European Convention on Human Rights (1950) is the governing treaty of the European System.²⁵ This document seeks to establish minimum standards for the protection of subjects before all member states of the convention. The Convention (1950) structurally establishes: the (i) Committee of Ministers; the (ii) European Commission of Human Rights and the (iii) European Court of Human Rights.²⁶

In the European Human Rights System, as mentioned by Abrantes, Siqueira and Bueno²⁷, despite the mechanisms in place today to protect children, as set out in Table 1 of this paper, until the adoption of the Charter of Fundamental Rights of the European Union in the 2000s, children remained in the background. Of course, the aforementioned Charter is a major step forward in protecting children's rights in the European Union, as it prohibits any discrimination and reinforces the best interests of children.²⁸ Thus, the legislation strengthens the effect of the International Convention on the Rights of the Child, enshrining the rights and freedoms granted to children.²⁹

²⁵ LOPES, R. S. R. **Direito Internacional Público: à luz dos direitos humanos e jurisprudência internacional.** Salvador: JusPodium. 2018.

²⁶ The European Court did not allow individual petitions; however, Protocol No. 9 to the European Convention opened up the possibility for individuals, NGOs and other groups, as well as states, to have direct access to the Court in the event of human rights violations.

²⁷ ABRANTES, V. V.; SIQUEIRA, E. C. V.; BUENO, B. A Competência Consultiva da Corte Interamericana de Direitos Humanos Frente às Infâncias: uma análise das opiniões consultivas sobre os direitos das crianças. *In: PEIXOTO, A. R.; ABRANTES, V. V (Org.). Diálogo entre a corte interamericana de direitos humanos e o tribunal europeu dos direitos do homem.* 1ed. Londrina: Editora Thoth, 2022, v. 1, p. 22-41.

²⁸ ABRANTES, V. V.; SIQUEIRA, E. C. V.; BUENO, B. A Competência Consultiva da Corte Interamericana de Direitos Humanos Frente às Infâncias: uma análise das opiniões consultivas sobre os direitos das crianças. *In: PEIXOTO, A. R.; ABRANTES, V. V (Org.). Diálogo entre a corte interamericana de direitos humanos e o tribunal europeu dos direitos do homem.* 1ed. Londrina: Editora Thoth, 2022, v. 1, p. 22-41.

²⁹ ALMEIDA, G. A. de *et al.* L'enfant sujet des droits de l'homme: réflexions en droit français et en droit brésilien. **Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito**, São Leopoldo, v. 11, n. 2, p. 220-238, 2019.

It is known that many subjects who were at the center of the Russian-Ukrainian conflict ended up crossing borders to neighboring countries such as Poland, the Czech Republic, Bulgaria, Romania, Slovakia, Moldova, Hungary, Germany and Italy.^{30,31.}

As the Council of Europe - COE³² points out, since the beginning of the Russian-Ukrainian war, the COE has been mobilizing on the basis of all available instruments to ensure that the Russian Federation is held fully accountable for human rights violations, as well as for serious violations of international law.

3.2. THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

O Sistema Interamericano de Proteção dos Direitos Humanos, estruturalmente, é composto pela: (i) Comissão Interamericana de Direitos Humanos e pela (ii) Corte Interamericana de Direitos Humanos – órgãos de monitoramento da Organização dos Estados Americanos.³³ Sabe-se que o Sistema Interamericano possui dois grandes instrumentos que reconhecem os direitos humanos nas Américas, conforme disposto na Tabela 1 deste trabalho.³⁴

Although there are no specific issues relating to the protection of children (and adolescents) in the general documents of the Inter-American system, such protection is covered in the Inter-American Convention on the Conflict of Laws Relating to the Adoption of Minors (1984), as well as the Inter-American Convention on the International Return of Minors (1989), the Convention on Support Obligations (1989) and the Convention on International Trafficking in Minors (1994).³⁵ It is also worth mentioning that the Additional Protocol to the American

³⁰ According to Custódio and Cabral (2023, p. 131), “[a]pproximately 4.9 million Ukrainians have applied for temporary protection in Europe. The institute of temporary protection seeks to meet the urgent needs of forced displaced persons in massive refugee flows. It consists of a provisional form of protection, which precedes the adoption of a lasting measure - such as applying for recognition of refugee status. Thus, in temporary protection, there may be registrations of the same person in two or more countries of the European Union (EU), incomplete registrations or even registrations of refugees who have followed the displacement, albeit to countries outside Europe”.

³¹ CUSTÓDIO, A. V.; CABRAL, J. Racialização nas fronteiras: crianças ucranianas e a biopolítica nas migrações. **Revista de Estudos Internacionais – REI**, v. 14, n.1 (2023). Disponível em: <https://revista.uepb.edu.br/REI/article/view/1874>. Acesso em: 23 de julho de 2023.

³² COE – Conselho da Europa. Página: **Guerra na Ucrânia**. Disponível em: <https://www.coe.int/es/web/portal/war-in-ukraine>. Acesso em 13 de julho de 2023.

³³ LOPES, R. S. R. **Direito Internacional Público: à luz dos direitos humanos e jurisprudência internacional**. Salvador: JusPodium. 2018.

³⁴ It is not possible to file individual petitions directly with the Inter-American Court of Human Rights, which is why you have to go to the Inter-American Commission. Thus, by filing a petition with the Inter-American Commission (IACHR), people who have suffered human rights violations can get help. It is worth noting that any person, group of people or non-governmental entity or collective group of lawyers can petition the Commission.

³⁵ ABRANTES, V. V.; SIQUEIRA, E. C. V.; BUENO, B. A Competência Consultiva da Corte Interamericana de Direitos Humanos Frente às Infâncias: uma análise das opiniões consultivas sobre os direitos das crianças. *In:*

Convention on Human Rights in the Area of Economic, Social and Cultural Rights plays a special role, as it provides specific rights for minors - it states that all children are entitled to the protection measures required by their condition as minors, and that family, society and the State are obliged to provide this protection³⁶

It should be emphasized that in the Inter-American Human Rights System, there is the institutional figure of Advisory Opinions and they have great relevance - many issues not addressed by the aforementioned Conventions and Protocols are covered by Advisory Opinions³⁷

In a statement issued on February 24, 2022, the OAS General Secretariat condemned the invasion of Ukraine by the Russian Federation and called for an immediate halt to the hostilities that had been started irresponsibly.

Russian aggression is a crime against international peace. The armed attack perpetrated against the sovereignty and territorial integrity of Ukraine is reprehensible and constitutes a very serious act of violation of international law. The aggression has been defined as a “supreme international crime” and undoubtedly constitutes an attack on the peace and security of humanity, as well as on civilized relations between states.³⁸

Certainly, not only from the documents listed, but also from Advisory Opinion 21/14 on 'Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection' of 2014, it is known that the IA Court, for example, recommends and encourages signatory states to ensure a humane, sensitive and adequate process of integration of the child into the society of the receiving country.

PEIXOTO, A. R.; ABRANTES, V. V (Org.). **Diálogo entre a corte interamericana de direitos humanos e o tribunal europeu dos direitos do homem**. 1ed. Londrina: Editora Thoth, 2022, v. 1, p. 22-41.

³⁶ ABRANTES, V. V.; SIQUEIRA, E. C. V.; BUENO, B. A Competência Consultiva da Corte Interamericana de Direitos Humanos Frente às Infâncias: uma análise das opiniões consultivas sobre os direitos das crianças. *In*: PEIXOTO, A. R.; ABRANTES, V. V (Org.). **Diálogo entre a corte interamericana de direitos humanos e o tribunal europeu dos direitos do homem**. 1ed. Londrina: Editora Thoth, 2022, v. 1, p. 22-41.; ALMEIDA, G. A. de *et al.* L'enfant sujet des droits de l'homme: réflexions en droit français et en droit brésilien. **Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito**, São Leopoldo, v. 11, n. 2, p. 220-238, 2019..

³⁷ See, for example: ABRANTES, V. V.; SIQUEIRA, E. C. V.; BUENO, B. A Competência Consultiva da Corte Interamericana de Direitos Humanos Frente às Infâncias: uma análise das opiniões consultivas sobre os direitos das crianças. *In*: PEIXOTO, A. R.; ABRANTES, V. V (Org.). **Diálogo entre a corte interamericana de direitos humanos e o tribunal europeu dos direitos do homem**. 1ed. Londrina: Editora Thoth, 2022, v. 1, p. 22-41.

³⁸ Literal translation of the passage into Portuguese: “A agressão russa constitui um crime contra a paz internacional. O ataque armado perpetrado contra a soberania e integridade territorial da Ucrânia é condenável e constitui um ato gravíssimo de violação do direito internacional. A agressão foi definida como um “supremo crime internacional” e constitui, sem dúvida, um atentado contra a paz e a segurança da humanidade, bem como as relações civilizadas entre os Estados” (OEA – Organização dos Estados Americanos. **Nota à Imprensa: Declaração da Secretaria-Geral da OEA sobre o ataque russo à Ucrânia** [24/02/2022b]. Disponível em: https://www.oas.org/pt/centro_midia/nota_imprensa.asp?sCodigo=P-008/22. Acesso em: 13 de julho de 2023).

Although it is not the action of the countries that make up the OAS, it is worth highlighting the “Uniting for Ukraine” program, which allowed Ukrainians to stay for two (2) years if they had - among other formal requirements - a supporter in the United States of America, responsible for financial support during their stay in the country.³⁹

At its fifty-second regular session, the following member states of the Organization of American States (OAS) made a declaration of “Continued support for the end of Russian aggression in Ukraine”. They also declared their immense concern at the Russian Federation's disregard and disregard for the calls of the Organization of American States (OAS) for the withdrawal of its military forces from the territory of Ukraine, within internationally recognized borders; as well as for the serious violations of human rights - in particular: sexual and gender-based violence that violate the principles and purposes of the United Nations and the OAS.⁴⁰

3.3. THE AFRICAN SYSTEM FOR THE PROTECTION OF HUMAN AND PEOPLES' RIGHTS

Until 1986, there were only the two regional systems mentioned above. With the African Charter on Human and Peoples' Rights (Banjul Charter), there are now three regional systems. As Rocha⁴¹ mentions, “[...] the African Charter laid the foundations for the promotion, protection and respect of human rights at both regional and global levels”.

The African Human Rights Protection System comprises two bodies: the (i) African Commission on Human and Peoples' Rights and the (ii) African Court on Human and Peoples' Rights.⁴² It is also worth noting that:

[...] in 2008 the African Court of Justice and Human Rights was created, a merger of the African Court of Justice and the African Court of Human and Peoples' Rights, but it has not yet entered into force. The African Commission on Human and Peoples' Rights (ACHPR) is charged with promoting human and peoples' rights and ensuring their protection in Africa, as is the African Court on Human

³⁹ From this perspective, dozens of Ukrainians enter Mexico as tourists to await admission to the United States. While they wait, many stay in reception camps located in the capital of Mexico, for example. See: CUSTÓDIO, A. V.; CABRAL, J. Racialização nas fronteiras: crianças ucranianas e a biopolítica nas migrações. **Revista de Estudos Internacionais – REI**, v. 14, n.1 (2023). Disponível em: <https://revista.uepb.edu.br/REI/article/view/1874>. Acesso em: 23 de julho de 2023.

⁴⁰ OEA – Organização dos Estados Americanos. **Declaração: “Continuo apoyo para el fin de la agresión rusa en Ucrania”** [06/10/2022a]. Disponível em: https://www.google.com/url?client=internal-element-cse&cx=015944883494641803591:ztyfzkausjg&q=https://scm.oas.org/doc_public/SPANISH/HIST_22/AG08631S03.docx&sa=U&ved=2ahUKEwiXjPKdmIyAAxWaqpUCHYsAA4EQFnoECAEQAg&usg=AOvVaw3nnFiOy3bBQvvXCQlfoBMo. Acesso em: 13 de julho de 2023.

⁴¹ ROCHA, J. O Sistema Africano de Proteção de Direitos Humanos: uma análise crítica. **INTER: revista de direito internacional e direitos humanos da UFRJ**, volume 3, número 1, 2020. p.2.

⁴² ROCHA, J. O Sistema Africano de Proteção de Direitos Humanos: uma análise crítica. **INTER: revista de direito internacional e direitos humanos da UFRJ**, volume 3, número 1, 2020. p.2.

and Peoples' Rights. That said, let's look for now at the evolution of human rights protection in Africa, starting from the pre-colonial phase to the present day⁴³

As shown in Table 1, the African Human Rights System is composed of the (i) African Charter on Human and Peoples' Rights of 1981/86, the (ii) Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights of 1998/2004, the (iii) OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969/74, the (iv) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2003 (not yet ratified) and a great example of evolution: (v) the African Charter on the Rights of the Child - which establishes a Committee capable of investigating and carrying out surveys relating to the protection of children.⁴⁴ It is known that a mission made up of African heads of state visited Kiev and Moscow (in June 2023) to present a plan to the leaders of the two countries to negotiate peace in Ukraine.

Leading the peace effort are the Heads of State of South Africa, Cyril Ramaphosa, of the Union of the Comoros, Azali Assoumani, who has also chaired the African Union (AU) since February, of the Republic of Congo, Denis Sassou Nguesso, of Uganda, Yoweri Museveni, of Senegal, Macky Sall, of Zambia, Hakainde Hichilema, and of Egypt, Abdel Fattah al-Sisi, he said.⁴⁵

Of course, it's worth thinking here that the war in Ukraine threatens the economy of sub-Saharan African countries - the rise in the price of oil could be one of the first effects, since

⁴³ Literal translation of the passage in Portuguese: “[...] em 2008 foi criado o tribunal africano de justiça e direitos humanos, uma fusão do tribunal africano de justiça com o tribunal africano de direitos humanos e dos povos, porém, ainda não adentrou em vigor. A Comissão Africana de Direitos Humanos e dos Povos (CADHP) é encarregada de promover os direitos humanos e dos povos e de assegurar a respectiva proteção na África, assim como o tribunal africano de direitos humanos e dos povos. Isto posto, vamos por ora, tratar da evolução da proteção dos direitos humanos na África, começando da fase pré-colonial até os dias atuais. (ROCHA, J. O Sistema Africano de Proteção de Direitos Humanos: uma análise crítica. **INTER: revista de direito internacional e direitos humanos da UFRJ**, volume 3, número 1, 2020. p. 4).”

⁴⁴ ABRANTES, V. V.; SIQUEIRA, E. C. V.; BUENO, B. A Competência Consultiva da Corte Interamericana de Direitos Humanos Frente às Infâncias: uma análise das opiniões consultivas sobre os direitos das crianças. *In*: PEIXOTO, A. R.; ABRANTES, V. V (Org.). **Diálogo entre a corte interamericana de direitos humanos e o tribunal europeu dos direitos do homem**. 1ed. Londrina: Editora Thoth, 2022, v. 1, p. 22-41.; HEYNS, C.; PADILLA, D.; ZWAAK, L. Comparação esquemática dos sistemas regionais de direitos humanos: uma atualização. **Sur – Rev. int. direitos human.**, São Paulo, v. 3, n. 4, p. 160-169, 2006.

⁴⁵ Literal translation of the passage in Portuguese: “Lideram o esforço de paz os Chefes de Estado da África do Sul, Cyril Ramaphosa, da União das Comores, Azali Assoumani, que também preside à União Africana (UA) desde fevereiro, da República do Congo, Denis Sassou Nguesso, do Uganda, Yoweri Museveni, do Senegal, Macky Sall, da Zâmbia, Hakainde Hichilema, e do Egito, Abdel Fattah al-Sisi, adiantou” (VATICAN NEWS. **A União Africana pela Paz na Ucrânia** [14/06/2023]. Disponível em: <https://www.vaticannews.va/pt/mundo/news/2023-06/uniao-africana-paz-ucrania.html>. Acesso em 13 de julho de 2023).

Russia is one of the largest producers of this fossil fuel in the world. In addition, Russia and Ukraine are responsible for importing more than 50% of Egypt's wheat.

3.4. SYSTEMATIZED CHILD PROTECTION

Table 1 shows, in a systematic and general way, the legislation in force that covers the protection of children in the international system (global and regional).

TABLE 1 - SYSTEMATIC FRAMEWORK OF LEGISLATION ON CHILD PROTECTION IN THE INTERNATIONAL SYSTEM

GLOBAL HUMAN RIGHTS PROTECTION SYSTEM	
1948	Universal Declaration of Human Rights (December 10, 1948);
1989	<u>Convention on the Rights of the Child (November 20, 1989);</u>
2002	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (of February 12, 2002);
2002	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (of January 18, 2002);
2014	Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (of April 14, 2014).
REGIONAL HUMAN RIGHTS PROTECTION SYSTEMS	
African Regional System for the Protection of Human and Peoples' Rights	
1969	Convention of the Organization of African Unity Governing the Specific Aspects of Refugee Problems in Africa
1981	African Charter on Human and Peoples' Rights
1981	<u>African Charter on the Rights of the Child (also known as the Banjù Charter)</u>
1998	Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights
2003	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

European Human Rights System	
1950	Convention for the Protection of Human Rights and Fundamental Freedoms (of November 4, 1950);
1961	European Social Charter (of October 18, 1961, revised on May 3, 1995 with regard to child labor);
1996	European Convention on the Exercise of Children's Rights (of January 25, 1996);
2000	<u>Charter of Fundamental Rights of the European Union.</u>
Inter-American Human Rights System	
1948	American Declaration of the Rights and Duties of Man
1969	American Convention on Human Rights (also known as the Pact of San José de Costa Rica or ACHR)
1984	Inter-American Convention on the Conflict of Laws Relating to the Adoption of Minors
1996	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (also known as the Protocol of San Salvador)

Of course, there are countless other documents (and Advisory Opinions, through the Inter-American System, for example) that could be incorporated into the table, however, the aim here is not to exhaust this exploration, just to present, in a general way, the main documents in relation to the protection of children in the international system.

FINAL CONSIDERATIONS

The people fleeing the Russian-Ukrainian war are part of the forced migrations taking place around the world. In these migrations, there is no time to prepare for the journey, and many of these individuals leave their belongings, documents and other important objects behind.⁴⁶ Although migrating is a human right, there is a constant labeling between migrants

⁴⁶ CUSTÓDIO, A. V.; CABRAL, J. Racialização nas fronteiras: crianças ucranianas e a biopolítica nas migrações. *Revista de Estudos Internacionais – REI*, v. 14, n.1 (2023). Disponível em: <https://revista.uepb.edu.br/REI/article/view/1874>. Acesso em: 23 de julho de 2023.

who are desirable and those who are not - certainly, allied to this there are several other physical and symbolic barriers that arise within migratory flows. Neoliberal logic establishes a selectivity in human mobility, which mainly affects migrants from the Global South. It should be noted that the migration of Ukrainians ends up fitting into a different scenario from irregular migration, especially of Africans to Europe, for example - not only poverty, but also racial and financial hierarchies mean that unwanted migrants are denied access to various social, political and economic spheres.

Within this challenging scenario, safeguarding children and adolescents from all kinds of harm and violence is imperative, regardless of their origin, ethnic background, religious beliefs or any other differentiating factor. It is important to note that the migration of Ukrainian children to Europe is different from the migration of children from North African countries or the Middle East.

The historiography of international law, specifically in the 20th century, recognizes the clear duty to rebuild and expand the branch, with the aim of creating a law that concerns all human beings and thus awakening a universal legal conscience. Transformations have taken place on the international stage - and, across the board, at regional and national levels - and in the words of Professor Antônio Augusto Cançado Trindade⁴⁷, the current dimension of the right to protect the human person is no longer centered solely on the recognition of such rights, but is founded on “respecting” and “ensuring respect”. As a result, there have been countless advances in the protection of children's rights in the international system, as can be seen from the systematization of the documents.

However, even more thought needs to be given to the participation of children in drawing up policies to make these jurisdictions effective, for example. We need to rethink the standards of civilization, taking international law back to the semantic return of one of its names - the law of the people. The fact that human rights (and therefore their protection) apply to all subjects of the law, and in the absence of any consideration of age, is underlined, thus leading to the fact that most children's rights are particular and specific applications of human rights. Therefore, it seems that migration of Ukrainians is more prevalent in countries that share a border with Ukraine or have close geographical, cultural or linguistic ties. This phenomenon is also observed in several European nations, as well as on the American continent, specifically in Mexico, the United States, Canada and Brazil. In all these migration flows, a consistent factor

⁴⁷ VATICAN NEWS. **A União Africana pela Paz na Ucrânia** [14/06/2023]. Disponível em: <https://www.vaticannews.va/pt/mundo/news/2023-06/uniao-africana-paz-ucrania.html>. Acesso em 13 de julho de 2023.

is the presence of Ukrainian children, highlighting the profound impact of the war on their lives. These children and adolescents, who ideally should live in a safe environment with their rights guaranteed, unfortunately suffer the consequences of armed conflicts.

REFERENCES

ABRANTES, V. V.; SIQUEIRA, E. C. V.; BUENO, B. A Competência Consultiva da Corte Interamericana de Direitos Humanos Frente às Infâncias: uma análise das opiniões consultivas sobre os direitos das crianças. *In*: PEIXOTO, A. R.; ABRANTES, V. V (Org.). **Diálogo entre a corte interamericana de direitos humanos e o tribunal europeu dos direitos do homem**. 1ed. Londrina: Editora Thoth, 2022, v. 1, p. 22-41.

ACNUR – Alto Comissário das Nações Unidas para Refugiados. **Emergências [Ucrânia]**. Última atualização em janeiro de 2023. Disponível em: <https://www.acnur.org/portugues/emergencias/ucrania/>. Acesso em: 10 de julho de 2023.

ALANEN, L. Teoria do bem-estar das crianças. **Cad. Pesqui.**, São Paulo, v. 40, n. 141, p. 751-777, 2010. Disponível em: <<https://www.scielo.br/pdf/cp/v40n141/v40n141a05.pdf>>. Acesso em: 10 de junho de 2023.

ALMEIDA, A. A. de; ALVEZ JUNIOR, O. F. O Tribunal Penal Internacional, a Violação em Massa dos Direitos Humanos e a Condenação Paradigmática no Caso Thomas Lubanga. **Revista Digital Constituição e Garantia de Direitos**, Natal, v. 9, n. 2, p. 137-154, 2017. Disponível em: <<https://periodicos.ufrn.br/constituicaoegarantiadedireitos/article/view/12257/8486>>. Acesso em: 10 de junho de 2023.

ALMEIDA, G. A. de *et al.* L'enfant sujet des droits de l'homme: réflexions en droit français et en droit brésilien. **Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito**, São Leopoldo, v. 11, n. 2, p. 220-238, 2019. Disponível em: <<http://revistas.unisinos.br/index.php/RECHTD/article/view/rechtd.2019.112.06>>. Acesso em: 10 de junho de 2023.

ALMEIDA, G. A. de *et al.* L'enfant sujet des droits de l'homme: réflexions en droit français et en droit brésilien. *Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito*, v. 11, n. 2, 2019, p. 225.

ARIÈS, P. **L'Enfant et la vie familiale sous l'ancien régime**. Rio de Janeiro: LTC, 1981.

CAMPOS, R. D. de. Philippe Ariès: a paixão pela história. **Cadernos de História da Educação**, [s.l.], v. 11, n. 1, 07 jul. 2012. Disponível em: <<http://www.seer.ufu.br/index.php/che/article/download/17542/9625/>>. Acesso em: 10 de junho de 2023.

COE – Conselho da Europa. Página: **Guerra na Ucrânia**. Disponível em: <https://www.coe.int/es/web/portal/war-in-ukraine>. Acesso em 13 de julho de 2023.

CUSTÓDIO, A. V.; CABRAL, J. Racialização nas fronteiras: crianças ucranianas e a biopolítica nas migrações. **Revista de Estudos Internacionais – REI**, v. 14, n.1 (2023). Disponível em: <https://revista.uepb.edu.br/REI/article/view/1874>. Acesso em: 23 de julho de 2023.

DALLARI, D. de A. **O Direito da Criança ao Respeito**. São Paulo: Summus, 1986. p. 31.

DEKEUWER-DEFOSSEZ, F. **Les droits de l'enfant**. Paris: PUF, 2010.

HEYNS, C.; PADILLA, D.; ZWAAK, L. Comparação esquemática dos sistemas regionais de direitos humanos: uma atualização. **Sur – Rev. int. direitos human.**, São Paulo, v. 3, n. 4, p. 160-169, 2006.

LOPES, R. S. R. **Direito Internacional Público: à luz dos direitos humanos e jurisprudência internacional**. Salvador: JusPodium. 2018.

MONACO, G. F. de C. **A proteção da criança no cenário internacional**. Belo Horizonte: Del Rey, 2005.

MUNIZ FALCÃO, W. H. M. **Voz e participação da criança-soldado sul-sudanesa no Comitê dos Direitos da Criança da ONU a partir da Teoria da reprodução interpretativa da criança**. 2017. 221 p. Dissertação (Mestrado em Direito) – Universidade Federal de Santa Catarina, Florianópolis, 2017.

OEA – Organização dos Estados Americanos. **Declaração: “Continuo apoyo para el fin de la agresión rusa en Ucrania”** [06/10/2022a]. Disponível em: https://www.google.com/url?client=internal-element-cse&cx=015944883494641803591:ztyfzkausjg&q=https://scm.oas.org/doc_public/SPANISH/HIST_22/AG08631S03.docx&sa=U&ved=2ahUKEwiXjPKdmIyAAxWaqpUCHYsAA4EQFnoECAEQAg&usg=AOvVaw3nnFiOy3bBQvvXCQlfoBMo. Acesso em: 13 de julho de 2023.

OEA – Organização dos Estados Americanos. **Nota à Imprensa: Declaração da Secretária-Geral da OEA sobre o ataque russo à Ucrânia** [24/02/2022b]. Disponível em: https://www.oas.org/pt/centro_midia/nota_imprensa.asp?sCodigo=P-008/22. Acesso em: 13 de julho de 2023.

RICOEUR, P. **Le Juste**. Paris, Esprit. 1995.

RIVA, G. R. S. **Criança ou Soldado?** o direito internacional e o recrutamento de crianças por grupos armados. Recife: Ed. Universitária da UFPE, 2012.

ROCHA, J. O Sistema Africano de Proteção de Direitos Humanos: uma análise crítica. **INTER: revista de direito internacional e direitos humanos da UFRJ**, volume 3, número 1. Disponível em: <https://revistas.ufrj.br/index.php/inter/article/view/31448>. Acesso em: 10 de junho de 2023.

ROSEMBERG, F.; MARIANO, C. L. S. A convenção internacional sobre os direitos da criança: debates e tensões. **Cadernos de Pesquisa**, São Paulo, v. 40, n. 141, p. 693-728, 2010. Disponível em: <https://www.scielo.br/pdf/cp/v40n141/v40n141a03.pdf>. Acesso em: 10 de junho de 2023.

TRINDAD NÚÑEZ, P. ¿Qué es un niño? una visión desde el Derecho Internacional Público. **Revista Española de Educación Comparada**, Madrid, n. 9, p. 13-47, jan. 2003. Disponível

em: <<http://revistas.uned.es/index.php/REEC/article/view/7950/7604>>. Acesso em: 10 de junho de 2023.

TRINDADE, A. A. C. A humanização do direito internacional. Belo Horizonte: Del Rey, 2006.

VATICAN NEWS. **A União Africana pela Paz na Ucrânia** [14/06/2023]. Disponível em: <https://www.vaticannews.va/pt/mundo/news/2023-06/uniao-africana-paz-ucrania.html>. Acesso em 13 de julho de 2023.