Artigo

Human rights and childhood: building the Convention on the Rights of the Child (1978-1989)

Silvia Maria Fávero Arend [*]

[*] Professora do Curso de Graduação em História e do Programa de Pós-graduação em História, Universidade do Estado de Santa Catarina (Udesc), Florianópolis (SC), Brasil. silvia.arend@udesc.br

ORCID: https://orcid.org/0000-0002-3262-5596

Abstract: Between 1978 and 1989, the United Nations held a debate aimed at producing a treaty for the child and youth population. This paper analyzes the document that systematized these discussions, produced by the non-governmental organization Save the Children, which addresses the Convention on the Rights of the Child, entitled *Legislative history of the Convention on the Rights of the Child*. The debates that gave rise to Articles 1 and 2 are discussed, pillars in the process of building the "universal child," from the perspective of Human Rights. The definition of beginning and end of childhood from an international public law viewpoint and the guarantee of legal equality for girls and boys marked the debate on Article 1. In turn, the debates on Article 2 were guided by the themes of guaranteeing rights for the offspring outside legal marriages and for international migrant children.

Keywords: Childhood; Human Rights; Convention on the Rights of the Child.

Direitos humanos e infância: construindo a Convenção sobre os Direitos da Criança (1978-1989)

Resumo: Entre 1978 e 1989, a Organização das Nações Unidas promoveu um debate com o objetivo de produzir uma normativa internacional para a população infantojuvenil. O artigo analisa o documento que sistematizou essas discussões, produzido pela organização não governamental Save the Children, acerca da Convenção sobre os Direitos da Criança, intitulado *Legislative history of the Convention on the Rights of the Child*. São abordados os debates que deram origem aos Artigos 1 e 2, pilares no processo de construção da "criança universal", sob a perspectiva dos Direitos Humanos. A definição do início e do fim da infância sob a perspectiva do direito internacional público e da garantia da igualdade jurídica para meninas e meninos balizaram o debate do Artigo 1. Já o debate sobre o Artigo 2 foi pautado pelos temas da garantia de direitos para a prole nascida fora dos casamentos considerados legais e para as crianças migrantes internacionais.

Palavras-chave: Infância; Direitos Humanos; Convenção sobre os Direitos da Criança.

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Introduction[1]

About 30 years ago, on November 20, 1989, the United Nations General Assembly (UNGA) adopted Resolution No. 44/25, which contained the text of the Convention on the Rights of the Child. This treaty came into force one year later, when, according to Article 49 of the referred international standard, more than twenty countries had ratified the legislation. The Convention on the Rights of the Child is regarded as successful by practitioners pursuing a career in the field of Public International Law, because, in addition to having been ratified over the decades by more than 190 countries (even under several reservation clauses), the socio-legal view of this legislation has been gradually adopted by the populations of countries located in various continents of the globe. International organizations, notably the United Nations (UN) agencies, have played a prominent role in this historic process that encouraged changes in tackling the issues involved in the lives of millions of children and youngsters (Oestreich, 1998; Pilotti, 2001).

The Convention on the Rights of the Child, as well as other UN-produced multilateral treaties, has a preamble and a set of articles arranged into three parts. The legal and sociological grounds that underlay the building of this international standard are stated in the Preamble. Part I, consisting of 41 articles, prescribes that rights should be granted to children by the member States of the organization that ratify this legislation. In turn, part II brings, in Articles 42, 43, 44, and 45, the diplomatic and administrative procedures that countries must follow after treaty ratification along with the UN. Lastly, Part III, which consists in Articles 46 to 54, regulates what the process to ratify this international standard by national States should be like.

Since the advent of social rights in the Western world during the 19th century, the Laws have become even more important for men, women, youngsters, and children, because, in addition to regulating social practices, they began to provide a basis for the formulation of public policy. The history of national and international pieces of legislation, among other possibilities, may be studied through the production of a discursive field by countries, economic/political blocs, and international bodies. Or by applying what is prescribed to populations in laws, jurisprudence, and treaties. This reflection focuses on the process of making the articles that constitute the text of the Convention on the Rights of the Child.

[1] A short version of this study was presented at the 56th International Congress of Americanists (ICA), held on July 15-20, 2018, at the University of Salamanca (Spain). This article presents the partial outcomes of the research entitled "From 'minor' to child: Human Rights and poor childhood (Brazil, 1976-1990)," funded by the Brazilian National Council for Scientific and Technological Development (Conselho Nacional de Desenvolvimento Científico e Tecnológico [CNPq]). The research relied on the participation of Mateus Viera de Souza, licensed teacher in History from the Santa Catarina State University (Universidade do Estado de Santa Catarina [UDESC]).

The building of this treaty took place between the years 1978 and 1989, by means of debates, mainly during the UN Human Rights Commission meetings. This text analyzes the legislative debates that gave rise to Articles 1 and 2 of the international standard, which provided the definition of children and the general legal principles supporting the establishment of other rights. The selection of these two articles is due to the criteria set by the UN for the confection, of social reports that the signatory countries of this treaty have committed to send to the organization every 5 years (see Article 44 of the Convention on the Rights of the Child).[2] With this study, besides the discussions concerning the History of Childhood and Youth, we seek to contribute to a prospective History of Law, focusing on the regulations of societies at their various levels — global, national, and local — and on the struggles taking place in the sociopolitical field at a given historical time.

The source that provides the making of this narrative with a basis is the work published in English, in 2007, by the Swedish non-governmental organization (NGO) Save the Children, entitled *Legislative history of the Convention on the Rights of the Child*. This 948-page piece of writing, distributed into two volumes, brings a compilation of the legislative debates held by diplomats from UN member countries sitting on the Human Rights Commission from 1979 to 1989, and by representatives of NGOs and international bodies that gave rise to each article, as well as to the preamble to this international standard. Public International Law practitioners name this type of text as preliminary activities (*travaux préparatoires*).

The primary documentary source of this analysis consists of documents issued over 10 years by the UN and compiled by a philanthropic institution — Save the Children –, which for a century has had as its "mission" the dissemination, at an international level, of the idea of Human Rights for children and youngsters from a protectionist legal viewpoint. Such a material characterization suggests problems and constraints, since the perspective adopted for the selection and presentation of debates may have been circumscribed by a certain position. In addition to this issue, perhaps the geopolitical scenario of the 2000s, regarding the end of the Cold War, may also have influenced the text selection process.[3] According to Robert Kolb (2005), after the extinction of the Union of Soviet Socialist Republics (USSR), Public International Law has moved mainly in three directions: the US hegemony, the search for the so-called globalization of ideas, and the rekindling of nationalisms.

As mentioned above, the work *Legislative history of the Convention on the Rights of the Child* consists of two volumes. The first has three parts, starting with the introduction of the

[2] United Nations (UN). Convention on the Rights of the Child (1989, Article 44).

[3] For instance, on the website of the University of Virginia School of Law (USA), there is another set of documents that guided the building of the Convention on the Rights of the Child (see UN, 2019).

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authorities' documents, addressing the significance of this publication for the field of Childhood Law; the second part of volume 1 describes what happened at meetings held between 1976 and 1989 at the UN and other institutions; finally, there is the narrative of discussions concerning the Preamble and Articles 1 to 17. The second volume contains the subsequent debates on the topics involved in Articles 18 to 44 of the treaty. The last part, entitled "other issues and matters," addresses the articles that, although discussed, were not incorporated in the international standard; additional protocols approved up to the year 2000 are also inserted. Legislative debates held at a certain time frames are constantly addressed by the work, namely: the preliminary draft written by the Polish diplomatic representatives in 1978; the first text discussion, held in 1980; the 1984 and 1988-89 debates; and those held in 1989, at the time of the final review of the draft standard.

The discussions that gave rise to each article are introduced in the text as follows: the name of the country or institution and, immediately below, the arguments given by their representatives are informed. The names of people who participated in the events for more than a decade have rarely been mentioned — whether they were diplomats, international agency officials, or NGO managers. For the purposes of this analysis, it focuses primarily on compiling the debates that gave rise to the Preamble (*Legislative history...*, 2007, p. 227-299) and to Articles 1 and 2 (*Legislative history...*, 2007, p. 301-334). It is indispensable, however, to contact the parties regarding the debates held in the process of making other articles and to bring information about them.

From the methodological viewpoint, the source was analyzed from the perspective taken by Michel Foucault in relation to discourse. This method of analysis aims to apprehend how certain social subjects are constituted through movements taking place in the domain of the order of discourse. The author states:

> No matter how the discourse is seemingly short, soon, the interdictions that affect it quickly reveal its connection to desire and power. There is nothing astonishing in this, since discourse — as Psychoanalysis has shown us — is not simply that which manifests (or hides) desire — it is also the object of desire; and since — as History constantly teaches us — discourse is not simply that translates struggles or systems of domination, but is the thing for which and by which there is struggle, discourse is a power which is to be seized (Foucault, 1996, p. 10; our translation).

Foucault demonstrates, especially in the works *The archaeology of knowledge* and *The discourse on language*, there is a set of procedures that operate in order to build a discourse he named as "rules of formation." Among the latter, it is worth highlighting the emergency conditions (historical and sociocultural), the delimitation instances, and the specification/classification grids. Regarding the content of discourse, the author suggests that there is a

"game" (almost always) controlled between the inclusion and exclusion of themes. It is in this double process — of a structural and content order — that the production of "truths" takes place, which subsequently endorse the exercise of power relations by various social players (States, institutions, or individuals) (Foucault, 1996).

The Convention on the Rights of the Child is the theme of studies in various areas of knowledge. In general, these reflections seek to analyze the impacts caused by the rights uttered by the international standard in a given society.[4] In the History domain, however, the theme is still very poorly explored. Therefore, it is worth emphasizing the need to dialogue with other fields of knowledge, especially with Public International Law. Among the studies that focus on this theme, stand out: a) that by the German International Relations researcher Anna Holzscheiter (2010), which address the characteristics of discourse observed in the Convention on the Rights of the Child; b) that by the Swiss educator Zoe Moody (2016), which brings an analysis of the emergence and diffusion of the international treaties' discourse produced by the League of Nations and the UN concerning childhood between 1924 and 1989; c) that by the German researcher Manfred Liebel (2010), on the theoretical assumptions that underpinned the building of Childhood Law during the last hundred years; and d) that by the Chilean sociologist Francisco Pilotti (2001), which analyzes the circulation of this treaty's utterances globally, as well as infers about the criticism made by various social players regarding the childhood perspective spread by this international standard.

An international standard for children from a Human Rights perspective

The Convention on the Rights of the Child was built on the doctrinal and socio-legal assumptions of Human Rights. According to Lynn Hunt (2009), Human Rights emerged as a legal framework in the second half of the 18th century. The Declaration of the Rights of Man and of the Citizen, issued in 1789, along with the United States Declaration of Independence, written 13 years earlier, are the main documents that signaled a paradigm shift on the legal scope in the bourgeois society announced at that historical moment. That is, after the circulation of the set of ideas that had guided the making of historical statements, it became more difficult to claim that people were different according to "tradition," "customs," or "History" in Europe and in the Americas. However, throughout the 19th cen-

[4] See, for instance, the article by Brazilian educators Fúlvia Rosenberg and Carmen Lúcia Sussel Mariano (2010), which discusses the relevance of this treaty in the law-making process in Brazil, since the 1990s.

tury, particularly due to the building of nation-States and the conquest of Africa, Asia, and Oceania by Europeans, the "rights of man" were "run over" by biologizing discourses, which repositioned under other arguments the so-called differences. According to the author:

> Ironically, therefore, the very notion of human rights inadvertently opened the door to the most virulent forms of sexism, racism, and anti-Semitism. Indeed, the all-embracing claims about the natural equality of all mankind raised equally global assertions about natural difference, producing a new kind of human rights opponent, even more powerful and sinister than the traditionalists. The new forms of racism, anti-Semitism, and sexism offered biological explanations for the natural character of human difference. In the new racism, Jews were not just the murderers of Jesus: their inherent racial inferiority threatened to stain the purity of whites through miscegenation. Blacks were no longer inferior because they were slaves: even as the abolition of slavery advanced all over the world, racism became more, not less, poisonous. Women were simply not less rational than men because they were less educated: their biology destined them for private and domestic life and made them entirely unsuitable for politics, business, or the professions. In these new biological doctrines, education or environmental changes could never alter the hierarchical structures inherent to human nature (Hunt, 2009, p. 188; our translation).

In addition to these biologizing discourses that guided the building of a significant portion of the nation-States' legislation in the various continents, criticism of Human Rights ideas in the 19th century and in the early 20th century came from several currents of thought. Among these critiques, that by Karl Marx stands out, which associated the referred legal repertoire with bourgeois practices and values (Tosi; Fragoso, 2017).

This was mainly the violence committed by belligerent states against civilian populations during World War II — mass deportations of populations from occupied territories, slave labor, violence, and serial killings in concentration camps, the use of men, women, youngsters, and children as guinea pigs in medical experiments, the deaths and physical, psychological, and genetic mutilations caused by the atomic bombs dropped on people in the cities of Hiroshima and Nagasaki, notoriously known and condemned acts — which led the Human Rights ideas to came back to the international public scene with prominence. But, it is worth pointing out, this return of Human Rights ideas came about associated with a new position occupied by Public International Law on the global stage. This geopolitical process was led by the UN, created in 1945 by more than 50 countries, soon after the end of the war. The Universal Declaration of Human Rights, drafted in 1948 under the impact of the violations of rights mentioned above, was the main document that ushered in the resumption of this legal viewpoint (Hoffmann, 2016). Article 2 of the aforementioned international standard, which underpinned the production of subsequent UN's

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pieces of legislation, outlines a set of broad and generous views on rights, based on views of the future of mankind that refer to various philosophical perspectives, expressed in modern utopias:

> Article 2 Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty (ONU, 1948).

According to Robert Kolb (2005), Public International Law acquired, during the so-called Cold War — between 1945 and 1990 –, some characteristics different from what happened under the auspices of the so-called League of Nations, predecessor to the UN, organization created after World War I, in 1919. Among these characteristics, two stand out, extremely significant for this study. First, individuals, in addition to States and international bodies, have become subjects of Public International Law, a phenomenon partly associated with the emergence of a criminal Public International Law that arose from the desire to respond to the violations of rights that occurred during World War II. On the other hand, and correlated to the previous aspect, the international standards that advocate broader regulations (global, continental, related to the economic blocs, etc.), produced by an increasing number of international organizations and the UN, started providing a part of the national pieces of legislation with a basis. This "increasing interpenetration" process of Public International Law in the countries' legislation was especially fostered by relations that took place at the economic and geopolitical levels. Gradually, this greater and rather compulsory circulation/appropriation of the propositions coming from the international organizations in the countries' legal universe led to the production of pieces of legislation that often put the interests of national social groups in check. A phenomenon that rarely occurred in the early decades of the 20th century, when Public International Law was in its consolidation phase.

The genesis of the History of Childhood Law may be traced back to the second half of the 19th century, when national States began to regulate issues concerning Civil, Criminal, and Social Law with regard to children and youngsters. Subsequently, some legislation emerged in Europe and in the Americas whose subjects were the so-called minors who worked, those accused of wrongdoing, and those who were orphans or lived under conditions of poverty and/or "moral hazard." This national legislation, along with a bureaucratic apparatus, constituted the so-called Minor's Justice (later, Child and Youth Justice), still present today in countless countries. The doctrinal and socio-legal assumptions of the

global international standards that preceded the Convention on the Rights of the Child are observed in various ways in these national pieces of legislation.

The Convention on the Rights of the Child was preceded by two global legal documents[5]. The Geneva Declaration, devised by Save the Children's leaders in the post-World War I context, was approved by the member States of the League of Nations, in 1924. This five-point international standard sought to protect children and youngsters from "exploitation," of economic and other origins, as well as to ensure the infants' physical, intellectual, and emotional development, so that they could reach adulthood.

The second document was produced in 1959, within the UN's framework, in view of the aftermath of World War II on the children and youngsters. According to Manfred Liebel (2010), for 9 years people discussed, at meetings of the aforementioned institution, whether children's rights were addressed by the Universal Declaration of Human Rights or if a specific document on the theme was needed. The Universal Declaration of the Rights of the Child, finally unanimously approved by the UNGA in 1959, constitutes a major legal innovation, as it introduces the infants' perspective as subjects of rights (Monaco, 2005). The prescription set out in the opening sentence of the first article of this international standard leaves no doubt about this: "the child shall enjoy all the rights set forth in this Declaration" (ONU, 1959, Principle 1). According to this author, the document, consisting of 10 principles (written in the form of articles), aimed to guarantee children's rights under the focus of psychological theories of child development in vogue at the time. The text adopted in 1959 is regarded as the main starting point for the formulation of the Convention on the Rights of the Child.

According to Holzscheiter (2010), in 1978 the Polish government presented a proposal for the creation of an international standard, which was not accepted by the UN Human Rights Commission, because the text's legal language was considered inadequate and due to the lack of consensus between member States on the need for creating this regulation, and to the fact that many countries do not have legal expertise on children's rights. The following year, the Warsaw Convention on the Legal Protection of the Child was held, relying on the participation of several lawyers from Europe, representatives of leading NGOs, and UN agencies. From this process emerged the second version of the text, again submitted in 1979 to the Human Rights Commission, and this time it was accepted.

According to the author mentioned above, there are various narratives about the fact that Poland's diplomatic representation has proposed the creation of the treaty. During the

[5] In the domain of Constitutional Law, it is noteworthy that the 1917 Mexican Constitution pioneered issues related to children's rights (albeit indirectly) (México, *Constitución Politica de los Estados Unidos Mexicanos que reforma la del 5 de febrero de 1857*, 5 Feb. 1917).

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1930s and 1940s, Poland had intellectuals who debated the childhood status in innovative ways at the time. Many Polish children had experienced serious Human Rights violations during the interwar period, in the occupation of the country by the Germans, and immediately after World War II. Doctors Ludwik Rajchman, the founder of the United Nations International Children's Emergency Fund (UNICEF), and Janusz Korczak (pseudonym of Henryk Goldszmit), who was also a pedagogue with a life history that led to his death in a concentration camp in 1942, stood out for their incisive actions. Both narratives emphasize that, as countries aligned to the international positions of the United States of America (USA) sought to build the international convention on torture, the socialist countries, by contrast, led by Poland, proposed an international standard aimed at discussing the childhood status globally.

Polish lawyer Adam Lopatka, chairman of the working group that drafted the convention's text, stated, in the prologue to the work *Legislative history of the Convention on the Rights of the Child* (2007) that the discussions took place in two distinct moments. In the first, between 1979 and 1981, the tensions stemming from the Cold War between the USA and the USSR greatly interfered with the progress of legislative works. During this period, the participation of NGOs and UN agencies in the discussions was shy. Subsequently, between 1981 and 1989, the situation changed in several points. The working group meetings were held before and after the Human Rights Commission sessions and were attended by representatives of international agencies and NGOs.

According to Lopatka, the final drafting of the treaty's articles was only completed after the working group members reached consensus (*Legislative history...*, 2007). However, it is of paramount importance to notice that the "voices" of the member countries of the Human Rights Commission had distinctive resonances in the global geopolitical scenario in the 1980s. According to Holzscheiter (2010), this fact is perceived in the work of the Soviet diplomatic representatives who, after 1985, with the rise of Mikhail Gorbachev to the role of ruler of that country, cooled their positions in defense of the so-called economic and social rights. Lopatka also states that the standard's text, before its final approval, was submitted to a reading by all UN member countries and UNICEF legal advisers.

In debate Articles 1 and 2 of the Convention on the Rights of the Child

Articles 1 and 2 of the international standard are regarded by Law practitioners as being of the utmost importance, because they are named by the Public International Law thinkers as "obligation clauses." That is, these articles supported the building of this internation-

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al standard as a whole. In addition to this epistemological issue, which concerns the legislative writing field, the aforementioned articles are key in the process that follows treaty ratification by the States, since these national entities have, in theory, the "duty" to try complying with them, either by incorporating them into national pieces of legislation or by formulating and deploying social policies.

Article 1 of the Convention on the Rights of the Child reads as follows:

> For the purposes of the present Convention, a child means every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier (ONU, 1989).

Defining what "being a child" is from a global perspective was not considered an easy task by legislators belonging to diplomatic corps, international bodies, or independent organizations. In 1978, during early discussions on the articles that would constitute the international standard, New Zealand's diplomatic representative outlined the issue from a sociocultural viewpoint. The diplomat's statement is reproduced below:

> A major point of this article, and which all articles address to some degree, is the definition of a child. Does the definition begin at conception, at birth, or at some point in the middle (of this process)? Perhaps equally important, in view of the special protection clause (Article II) is the definition of childhood's end. It seems that it would be very difficult to declare a generalized age and that childhood's end would be related to specific issues (right to leave home, vote, drive a motor vehicle, have sex, etc.) that might be covered by specific legislation in each country (*Legislative history...*, 2007, p. 301).

The ontological and legal issue of the time when a person's life begins was one of the topics discussed by the working group, especially at early meetings in the 1980s. Three countries expressed their views by associating them to children's rights. Diplomats from Barbados, Malta, and Portugal asked about possible fetal rights before birth. The debate on this theme was not carried forward at subsequent sessions by diplomats from various countries, and it was concluded that children's rights could be guaranteed by States after their birth. Thus, it was not possible to verify if the discussion on the theme was raised by diplomats of the referred nations due to demographic and religious arguments, or due to both aspects. Malta and Portugal were, at the time, constituted by a population that mostly professed the Roman Apostolic Catholic religion. Catholicism, in turn, was the official religion of the State of Malta at the time and it had been Portugal's official religion for a

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long time. The set of ideas uttered by the heralds of Catholicism at that historical moment was contrary to the practice of voluntary termination of pregnancy.[6]

Subsequently, at meetings where Article 6 was debated, whose legal subject guaranteed the children's right to survival, the Holy See's diplomats expressed their peremptory assertion that life began at the moment of conception (*Legislative history...*, 2007). The solution found to solve this issue without changing the wording of Article 1 was to put in the international standard's Preamble the mention that the child needed protection before and after birth, citing the provisions of the 1959 Declaration of the Rights of the Child (ONU, 1989).

The theme that generated the most controversy regarding the building of Article 1 was, without a doubt, the "childhood' end." That is, the moment a person ceased "to be a child" from a global legal viewpoint. The debates took place on three different fronts: that related to economic factors, that related to gender relations, and that related to the legal field. Nepal's diplomatic representatives said the following on the theme:

> Nepal's representative considered that an age limit of more than 16 years should be set for the definition of children, in order to take into account the concerns of the poorest States, which may not be able to meet the burdens imposed by this convention on children up to 18 years of age. He considered that such a proposal would provide richer States with the choice to expand their definition (of child) as they thought appropriate (*Legislative history...*, 2007, p. 311).

The concern of diplomats from poor countries, about the age limit for "childhood' end" was associated with two interrelated core agendas.[7] The States ratifying the international standard would be required to ensure primary and secondary schooling, if possible public, to individuals considered to be infants from the legal viewpoint in each country. The deployment of a public school system for the children and youth population within the age group from 7 to 16 years old would already require large financial resources from poor countries. It is worth noticing that the debate on ensuring school education for children, teenagers, and youngsters, mainly present in Articles 28 and 29 of the treaty, has generated great controversy between legislators (*Legislative history...*, 2007).

The other issue concerned the children and youth population's permanence in or exclusion from the rural or urban labor market. For poor countries, whose economies were still largely based on farming activities, abruptly removing a large contingent of minors from the labor market could bring many problems. The countries considered to be rich, in turn,

[6] Holy See, Encyclical *Humanae Vitae*, July 25, 1968; Holy See, Encyclical *Familiaris Consortio*, November 22, 1981 (Santa Sé, 25 jul. 1968; 22 nov. 1981).

[7] In this study, the terms *poor countries* and *rich countries* are used as cited in the documentary source.

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had carried out this movement since the late 19th century, with the deployment of large-scale schooling (Arend, 2015). Also regarding the age issue, but in Article 2 debates, some countries, such as the United Kingdom, expressed concern about legal majority and inheritance rights over property and other assets. The 18-year-old age group, advocated by rich countries, turned out to be the "winner" in this "childhood's end" debate. The diplomats from Japan were the only representatives of the rich countries who most vehemently polemized about setting 18 years as an age mark, given the concerns stated above.

Morocco's diplomatic representatives, present at the Human Rights Commission meetings in the early 1980s, claimed that the age group delimiting legal majority could not be the same for infants of both sexes. Depending on the age of marriage in their society, girls' legal majority should be between 14 or 15, and boys later. Such a theme has been hotly debated, and this ended up being rejected by various diplomatic representations, such as Austria's and the Netherlands'. The UNICEF agency representatives also spoke out against this gender-related cleavage of the "childhood's end" of the children and youth population. In this debate, the role played by women in various societies around the globe was expressed in the 1980s. While in certain societies women's population was still perceived as a part of the lineage/family, occupying the social positions of daughters, sisters, wives, or mothers, in others, women were perceived by means of the notion of individual, built in the "Western" world over the last 200 years (Zonabend, 1996). UNICEF representatives sought, by advocating equality within the legal majority of boys and girls, to disseminate Western women's values and achievements regarding the theme.

The missing theme, at least from the compiled debates on Article 1, was the age at which male infants could join the national armed forces. Perhaps, the theme no longer had the importance it had enjoyed in the early 20th century, due to decolonization of the territories in Africa and Asia that took place in the 1950s and 1960s, to the pacifist mobilizations in the USA at the time of the Vietnam War, and to the decompression of relations between the atomic powers, as a reflection of the Cold War cooling (Hobsbawm, 1995). War and the security of territories, due to new technologies, in the 1980s, were being carried out on bases that no longer required a large contingent of young soldiers.[8]

Finally, medical experiments, especially in the area of genetics, in the field of human reproduction, constituted a theme addressed only by the NGO World Association of Children's Friends, whose headquarters, from its inception to the present day, is located in

[8] In 2003, the UN approved the Optional Protocol to the Convention on the Rights of the Child concerning the involvement of children in armed conflict. The theme adolescent soldiers (mainly males) has been discussed again globally, due to the presence of the children and youth population in armed groups located in various countries around the globe.

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the Principality of Monaco. On the one hand, it is worth noticing that the first "test tube baby" — the British girl Louise Brown — had come to the world in 1978. Also, the "specter" of what happened during World War II in relation to medical experiences with human beings, above all in Germany, as well as the deployment of a social policy of eugenic nature in several countries since the beginning of the 20th century, generated fears (Agamben, 2004). The discussion of this theme does not seem to have been carried forward in the other sessions that discussed Article 1. The said NGO listed a set of restrictions that should guide biomedical procedures in relation to human reproduction, namely:

> 1. Any creation of identical human beings by cloning or other methods, with or without racial selection purposes;
> 2. implantation of a human embryo in the womb of another species, or vice versa;
> 3. the fusion of human gametes with those of another species;
> 4. creation of embryos using sperm from other individuals;
> 5. fusion of embryos or any other operation likely to result in terata; ectogenesis;
> 6. possible parenting of same-sex children;
> 7. sex selection by non-therapeutic genetic manipulation;
> 8. breeding identical twins;
> 9. investigation and experimentation of human embryos, viable or not;
> 10. experimentation on live embryos, viable or not.
>
> (*Legislative history...*, 2007, p. 310).

Article 2 of the Convention on the Rights of the Child reads as follows:

> 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
>
> 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members (ONU, 1989).

Perhaps this provision of the convention is one of the statements among the UN standards, written by having the Human Rights axiom as a basis, that best and most objective-

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ly expresses the utopias of modernity (Moyn, 2010). The words of the diplomatic representatives from the German Democratic Republic exemplify what has been said about utopia. For a socialist country, such as the one mentioned above, the guarantee of rights should be beyond the individual. That is, putting into question and fighting against a set of social relations which children were inserted in, produced from the perspective of the 19th and 20th centuries colonialism:

> The German Democratic Republic considers that the principles set out in the draft convention on the rights of the child, and particularly the provisions of the article on non-discrimination and the right of all children to physical and spiritual development without distinction, are in accordance with one of the main tasks of the United Nations, that is, to support the peoples in their struggle against colonialism, neocolonialism, racial discrimination and apartheid. This is the understanding of the German Democratic Republic that, in implementing the Convention, one must be aware of the inseparable unity of the struggle for peace and the ending of tensions, as well as the happiness, advancement, and protection of children around the world (*Legislative history...*, 2007, p. 315).

It is clear, in the wording of Article 2, that an attempt has been made to address a range of problems of various kinds that would make it impossible for children's rights to be guaranteed by States. Another major issue, expressed in the wording of Article 2, refers to the doctrinal principles that have guided the building of children's rights since the early 20th century: the protectionist and the autonomist (the latter, also called emancipatory, or liberationist).[9] Manfred Liebel (2010, p. 23-24; our translation) states the following about the autonomist view:

> Parallel to the efforts to reach an international agreement for children's protection, from the beginning of the 20th century, movements emerging in certain countries engaged expressly for children's rights to self-determination. They were created through attempts to achieve children's greater (political) participation and in order to identify them as citizens, equal in rights. These attempts were not limited to the rights to freedom, but also extended to children's economic and social rights. These were born either in the context of political revolutions and attempts at reform, or by taking as a model the social movements of disadvantaged population groups.

[9] The researchers Fúlvia Rosenberg and Carmen Lúcia Sussel Mariano (2010) bring a synthesis of the doctrinal debate in the field of Children's Law under an approach different from that presented by Manfred Liebel (2010). The researchers emphasize historical processes taking place in the USA, while the German author focuses his analysis on Europe.

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The autonomist legal perspective is present in the writing of Article 2, since the child's opinion has the same legal status as the other issues. This legal perspective is more apparent especially in Article 12 of the standard, which deals with the building of the "infants' opinion," as well as the guarantee of hearing children in court and administrative proceedings. Certainly, on this doctrinal issue lies one of the main differences between the Convention on the Rights of the Child and the earlier international documents produced for the children and youth population.

Debates in the Article 2 working group have moved mainly concerning three issues: a) the need to guarantee the rights of children born outside legal marriages in national societies; b) the importance of guaranteeing rights for infants in precarious or irregular legal status within the borders of certain countries, i.e. the offspring of international migrant families; and c) the perspective of equal rights for girls and boys.

Much of the pieces of legislation of national States, especially from countries of Europe and North, Central, and South Americas, has been built — whether consuetudinary or expressed in the form of codes (commonly referred to as Civil Law) –, since the 19th century, through the set of ideas of Liberalism, which has as one of its main pillars the defense of private property. The rules of succession and inheritance in this legislation are generally based on consanguineous kinship (the so-called social sonship relation), built on legal marriages. Thus, guaranteeing legal equality for sons and/or daughters born outside legal marriages, as suggested by the diplomatic representatives of the People's Republic of China, generated great debate. One of the main critiques of the Convention on the Rights of the Child is related to the preponderance of Western countries' values and practices in the final version of the standard. The text compiled by the Swedish NGO stated the following on the theme:

> Representatives from Australia, Japan, the United Kingdom, and the United States underlined that the proposal presented by the Chinese delegation was in conflict with their domestic succession law. The delegations of Algeria, Iraq, and Morocco specifically objected to the inclusion in the draft convention of a provision concerning children born out of legal marriages, while the representative of the German Democratic Republic stressed that such a provision should be included in the draft convention (*Legislative history...*, 2007, p. 326).

The diplomatic representatives who most strongly advocated the theme of guaranteeing rights for children born out of legal marriages as proposed by the People's Republic of China were those of the German Federal Republic. In 1987, its diplomatic representatives presented a proposal, written in nine articles, on the theme of equal rights regarding various types of sonship. The 8th item of the aforementioned proposal reads as follows: "the child born out of marriage shall have the same succession right as the inheritance of his father and

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mother, and of a family member of his father or mother, as if born in marriage" (*Legislative history...*, 2007, p. 327). The legislative proposal of the Federal Republic of Germany has not been fully incorporated into the international standard. However, the perspective of equality of sonship in the process of guaranteeing rights is present in the treaty's letter of the law. Pressure from socialist countries, such as the People's Republic of China, had an effect on the clash of "forces" in the international geopolitics in the 1980s.

The USA and the Federal Republic of Germany (country of greatest sociopolitical influence along with the nations that constitute the European Union [EU]) were the nations that argued that the guarantee of rights should be restricted to children who lived legally in their territories. What was at stake, in this debate, was the issue of international migration, which was becoming increasingly contoured in North America and in Europe. Guaranteeing the rights of migrant children meant investing the country's wealth in people who were not able to fully exercise citizenship. The legal principles of Human Rights, once again, clashed with those of Liberalism, since the notion of citizenship, in the latter legal perspective, is generally built through *jus solis* or/and *jus sanguinis*. From a Human Rights perspective, the guarantee of rights should take place regardless of one's nationality. The US proposal was this: "each State party shall respect and promulgate all rights under this Convention for all children legally living in its territory" (*Legislative history...*, 2007, p. 320-321). This proposal was not approved, despite the continued insistence of US diplomats throughout the biannual working group meetings.

Finally, the issue of equal rights for boys and girls, which had already been debated during the building of Article 1, returned to the scene in Article 2 discussions. The Food and Agriculture Organization of the United Nations (FAO), the UN body dedicated to food security and to fighting hunger, advocated that the international standard should include provisions to prevent discrimination against girls in relation to food and school education. The United Nations Educational, Scientific and Cultural Organization (UNESCO) representatives also made the same alert regarding girls. Representatives of this body at the UN, which works along with educational, scientific, and cultural institutions from various continents, asked the assertion about gender relations to be included in the international standard's preamble, something which did not happen. Several countries were in favor of equal rights between boys and girls. Among these nations, it is worth highlighting Brazil, which favored the elimination of all kinds of social discrimination.

Final considerations

As demonstrated in the debates that led to Articles 1 and 2 of the Convention on the Rights of the Child, it was not an easy task to build a treaty for the children and youth

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population across the globe. In the power "games" of the international geopolitics during the 1980s, the "Western' countries" perspectives, still largely based on the protectionist legal viewpoint, were the "winners." In this scenario, the clashes between the legal perspectives of Liberalism and Human Rights, which have been engendered in Western societies over the last three hundred years, have been a constant factor. Overcoming the perspective of Liberalism on certain themes was certainly a step towards securing a broader spectrum of rights for the infants of both sexes. The debates, however, also showed that the divergences between the proposals uttered by the various nations ended up being resolved in other ways: "silence" concerning certain themes, incorporation of a certain conflicting statement in the Preamble, discussions not carried out at the working group meetings.

It is understood that staging this dispute that took place in the order of discourse uttered by the Public International Law with regard to childhood in the 20th and 21st centuries constitutes a significant contribution of History as a subject to processes that occur at the national and local level in the present time, since social policies affecting the lives of millions of children, teenagers, and youngsters of both sexes on various continents are often formulated and/or deployed by having what is stated in the letter of the treaty law as a guideline.

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