**International law**

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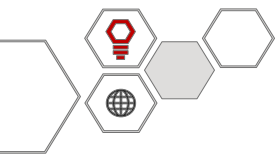
DOI <https://doi.org/10.5281/zenodo.20702167>**The Right to Identity in the Convention on the Rights of the Child, 1989****Aisel Omarova,**PhD in Law, Associate Professor, Senior Lecturer, School of Law and Social
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Abstract. The UN Convention on the Rights of the Child 1989 (CRC) is the first international instrument to enshrine the child's right to identity. And this is no coincidence. It was preceded by events in Argentina, specifically the period of the military junta's 'Dirty War' between 1974 and 1983. During this time, the military regime altered children's identities, which led the Argentine delegation to propose including the right to identity alongside other children's rights in the text of the draft Convention. The discussion of the article on the right to identity lasted two years and reflected the dynamics of the debate surrounding the right to identity, as well as what the drafters understood by the very concept of the right to identity. The very concept of identity is contained in two articles of the Convention on the Rights of the Child, namely Art.8 and Art.29(1)(c). This study examines the drafts of these articles proposed by the delegations of Argentina, Poland and Algeria. The article details the discussions, the proposals put forward by delegations, and the arguments regarding the inclusion or



exclusion of specific words and phrases from the proposed draft articles; it also analyses the content of the child's right to identity and identity as a component of the child's right to education. **The methodological basis** of the article consists of historical-legal and comparative-legal methods, which made it possible to trace the debates regarding key words and phrases in the draft article on the right to identity. The selection of sources was based on the principles of representativeness and reliability, drawing on the text of the Convention on the Rights of the Child, materials from meetings of the drafting committee, and sessions of the UN Human Rights Commission. **The results** of the analysis of drafts and proposals regarding the article on the right to identity reveal differences in how various delegations perceive the concept of the right to identity and the importance of its various aspects. **The study concludes** that it was only after the inclusion of an article on the right to identity in the text of the CRC that a change to a child's identity came to be recognised as a violation of the child's rights at the international level.

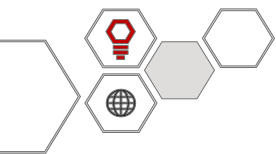
Keywords: children's rights; forcible transfer of children; family relations; nationality; cultural identity.

Право на ідентичність у Конвенції про права дитини 1989 р.

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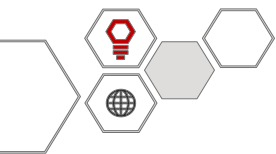
Анотація. Конвенція ООН про права дитини є першим міжнародним документом, в якому закріплюється право дитини на ідентичність. І це не є



випадковістю. Цьому передували події в Аргентині, а саме період військової хунти «Dirty War» у 1974-1983 рр. Під час цих подій військовий режим змінював ідентичність дітей, що стало причиною запропонування делегацією Аргентини включити право на ідентичність поряд із іншими правами дитини у текст проєкту Конвенції. Обговорення статті про право на ідентичність тривало два роки і відобразило динаміку дискусії права на ідентичність та що саме розуміли творці під самою концепцією права на ідентичність. Саме поняття ідентичності міститься в двох статтях Конвенції про права дитини, а саме ст. 8 та ст. 29 (1)(с). В цьому дослідженні розглянуто проєкти цих статей, запропоновані делегаціями Аргентини, Польщі та Алжиру. У статті розкрито деталі дискусій, пропозиції делегацій, аргументація щодо включення/виключення тих чи інших слів та фраз із запропонованих проєктів статей та проаналізовано зміст права дитини на ідентичність та ідентичність як складника права дитини на освіту. **Методологічну основу статті** становлять історико-правовий та порівняльно-правовий методи, що дали змогу простежити дебати щодо ключових слів та фраз у проєкті статті права на ідентичність. Добір джерел проводився за принципом репрезентативності та достовірності, із залученням тексту Конвенції про права дитини, матеріалів засідань редакційного комітету та сесій Комісії ООН з прав людини. **Результати** аналізу проєктів та пропозицій щодо статті про права на ідентичність розкривають відмінності у сприйнятті різними делегаціями концепції права на ідентичність та важливість різних його аспектів. Дослідження робить **висновок**, що саме після включення статті про право на ідентичність до тексту Конвенції про права дитини, зміна ідентичності дитини визнається порушенням прав дитини на міжнародному рівні.

Ключові слова: права дитини, насильницьке переміщення дітей, сімейні зв'язки, громадянство, культурна ідентичність.

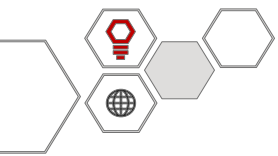
Problem statement. Every armed conflict in human history, including contemporary armed conflicts, results in widespread violations of children's rights.



Firstly, this is because children are one of the most vulnerable groups in society; they are unable, or have limited ability, to protect themselves or choose safe courses of action in wartime. Secondly, due to their immaturity, children are often exploited by the parties to the conflict to achieve their own ends. One of the most common forms of violation of children's rights in wartime is precisely the alteration of their identity. The Russian Federation's aggression and occupation of part of Ukraine's territory, a significant proportion of whose population consists of children, have created conditions conducive to criminal acts that infringe upon Ukrainian children's right to identity, and the instruments of these criminal infringements have been the deportation and forcible displacement of children to the territory of the occupying country, anti-Ukrainian indoctrination and the militarisation of children within the education and upbringing system. A detailed study on this subject was carried out by Krestovska N. [8] It is therefore important to consider the meaning of the child's right to identity and the historical and political interpretation of the relevant provisions of the CRC.

Analysis of recent research. The issue of a child's right to identity has been examined by various scholars from different perspectives. For instance, Bou-Sfia S. [3] examines Art.8 of the CRC and the importance of a child's own perspective in the application of Art.8. Ake T. [1] made research on specifics of western (and psychological) concept of identity and indigenous, native and non-Western cultures concept of identity. Martalas A. [11] in her book analysis the psychological perspective of identity. Freeman M. and Taylor N. [5] discuss identity and selfhood not only in context of Art.8, but also in context of family law. Ioffe Y. [7] in her article examines identity through the prism of genocide. She discusses cultural, national and ethnic identity. Similarly, Wierczyńska K. [17], Azarov D., Koval D., Nuridzhanian G. & Venher V. [2] and Mohammadi A. & Laridashti A. [12] examine the issue of identity through the prism of genocide.

Identification of Unresolved Aspects of the General Problem. Despite the large number of studies on the child's right to identity, the process of drafting and



incorporating an article on the right to identity into the text of the CRC remains under-researched, as does the examination of Art.29(1)(c) through the lens of the right to identity.

Formulation of this Article's Objectives (Statement of the Problem).

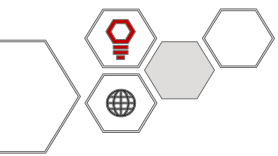
Existing scholarship primarily focuses on the interpretation and implementation of Article 8 CRC, while comparatively little attention has been devoted to art.29(1)(c) and to the political, historical and legal circumstances that shaped their inclusion in the CRC. At the same time, contemporary situations involving the deportation and forcible transfer of Ukrainian children have once again highlighted the importance of preserving children's identity, including their nationality, family relations, language and cultural belonging. In this context, revisiting the drafting history and evolution of the right to identity acquires particular legal and practical significance.

Main body. CRC was the first legally binding document to enshrine the rights of children. From the 10 years that the CRC took to draft, the right to identity took up a relatively short time to establish, taking only two years. As a result of this convention, ratifying countries were now required to report on their implementation of CRC provisions in their national legislations. In the case of Ukraine, the CRC brought about much change, albeit rather slowly: juvenile law was established, a discrete law on children's rights was adopted, and much pre-existing legislation was amended.

Despite a common belief that only Art.8 of the convention defines the right to identity, another article, Art.29, arguably also contains key direction. [4] Art.8 directly defines the right to identity, stating:

'1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.'



However, another important mention comes in Art.29 (1)(c), which posits the right to identity within the right to education. This article states:

'1. States Parties agree that the education of the child shall be directed to:

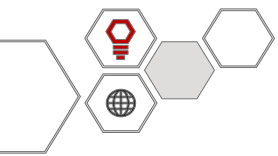
(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.'

Of course, elements of the right to identity had already existed (e.g. the right to a nationality in the Universal Declaration of Human Rights (UDHR 1948)) but as a discrete concept and in a discrete article, the CRC brought about a clear definition of this important legal concept. These articles are now fundamental to our understanding of children's rights.

Despite its modern relevance, the definition of identity in Art.8 is not exhaustive. To understand why, we must return to the drafting process and understand how the document evolved. The necessity to establish the right to identity as an independent concept stemmed from the activities of the military regime in Argentina in the 1970s. Many Argentinian children were either abducted or removed from their imprisoned mothers and subsequently 'adopted' by members of the military or police. [9, p.25; 6, p. 441] Thus, unsurprisingly, it was Argentina's representative in the UN who proposed the right to identity as a new article in 1985 [14]. The text of the proposed article was as follows:

'The child has the inalienable right to retain his true and genuine personal, legal and family identity.

In the event that a child has been fraudulently deprived of some or all of the elements of his identity, the State must given him special protection and assistance with a view to re-establishing his true and genuine identity as soon as possible. In particular, this obligation of the State includes restoring the child to his blood relations to be brought up.'



Alongside the Argentinian proposal there was also a proposal from the delegation of Poland [13], who considered identity in a somewhat different way. Their proposal read:

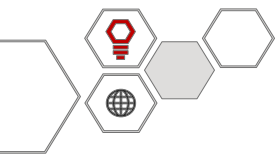
'1. The States Parties undertake to guarantee to the child the right to preserve his true and genuine personal, legal and family identity.

2. If a child has been fraudulently deprived of some or all of the elements of his identity, the States Parties shall provide the child with necessary assistance and protection, with a view to speedily re-establishing his true and genuine identity.'

The Polish definition was perceived as being too passive and thus the more direct Argentinian proposal, which considered the child as a legal subject, was taken as a basis for discussion [15].

More disagreement came in whether or not a discrete article was necessary. Representatives of Norway, Netherlands, Austria, US and Canada questioned the necessity of drafting a separate article, arguing that the question on identity had already been covered by Art.2, 6, 8 and 11 of the draft convention. This discussion led to the creation of a working party consisting of delegations from Argentina, the Netherlands, Norway and Poland with the assistance of the International Commission of Jurists for drafting a new version. The first points of discussion were the words 'inalienable' and 'fraudulently' and if they should be retained. Whilst the Argentinian representative immediately agreed about the first of these words, he initially insisted on preserving the second one. However, a compromise was reached eventually and 'fraudulently' was substituted with 'illegally'.

Another matter was the inclusion of 'family identity' in the draft text. Some countries raised concerns about the absence of this concept in their national legislation, and so these words were substituted with 'identity (nationality, name, family relations, as recognized by law)'. This new improved reformulation is the basis of this concept to this day.



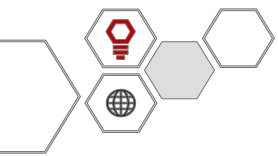
Whilst certain other CRC articles contain elements of identity (e.g., nationality, name), Art.8 defines the concept of identity itself. Art.8 provides the right to *preserve* identity and special assistance from the State Parties in re-establishing an identity which has been the subject of interference. The word ‘shall’ in this sentence indicates that the assistance should be mandatory and immediate. However, the CRC does not specify the forms of this assistance as other international documents do. For example, in Art.78 of Additional Protocol I to the Geneva Conventions, we find measures to ensure preservation of the identities of children subject to evacuation during armed conflict.

In Art.8, Right to identity means not only preserving information about children’s nationalities, names and family relations, but also accessing information about their origins and the identity of their biological parents (in the case of adoption). The word ‘including’ in the text of the Art.8 tells us that the list of elements of identity (nationality, name and family relations) was not considered to be exhaustive.

A child’s identity is of course not only formed in the family: children receive an enormous impact on their socialisation through education. During the 1986 session, the Algerian delegation proposed the following text for Art.29(1)(c):

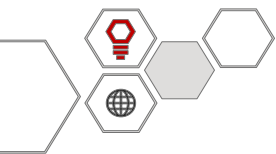
‘Children should be educated in a social climate imbued with the national values and the cultural identity of the children, with respect for civilizations different from their own and for the rights of peoples. In no case may children of countries still under colonial domination and foreign occupation or racist régimes be deprived of their cultural and national identity.’

The delegations of Argentina, China and Venezuela supported this new paragraph. However, the delegations of the Netherlands and the United Kingdom requested clarification of the concept of ‘cultural identity’. One problematic aspect was that the term ‘the child's cultural identity and national values’ sounded ambiguous as to whether it was the child's, the State's or the parents' identity and national values that were to be considered. This ambiguity would be especially problematic in a multicultural state.



The USSR representative suggested substituting ‘identity’ with ‘traditions’, but this was not supported. To avoid the ambiguity of the language, the representative of Australia proposed the insertion immediately after the words ‘cultural identity’ of the following: ‘and values, the values of the nation in which they live, for civilizations different from their own’. Lundy and Tobin note that the education of children should provide an opportunity for them to ‘learn their own history and culture within the framework of the national teaching curricula’ [10, p. 1136]. This discussion on the right to identity as an independent article and as a component of aims of education resumed in the 1989 session of the working group [16]. After minor amendments, Art.8 (the right to identity) and Art.29 (1)(c)(aims of education) were finally adopted. Today, the implementation of Art.8 and Art.29 (1)(c) of the CRC forms part of the periodic reporting obligations of States Parties before the Committee on the Rights of the Child. Through concluding observations and general comments, the Committee continues to monitor how states ensure the preservation of children’s identity, including their nationality, family relations, language and cultural belonging, particularly in situations involving armed conflict, displacement and forcible transfer.

Conclusions. This discussion and inclusion of the right to identity came in time to have a bearing on the Argentinian situation; changes to children’s identities were now seen as a violation of their rights under international law. However, as, we have seen, the concept of identity was not perceived similarly by all the countries, leaving us with a definition that was not exhaustive. This reflected differing understandings of the concept among the delegations, resulting in complex negotiations over the scope and content of the provision. As we can see the right to identity extends beyond formal elements (nationality, name and family relations). The travaux préparatoires confirm that delegates understood the significance of education and its role in formation of child’s identity. Due to that the development of respect for the child's own cultural identity was identified as one of the aims of education on international level.

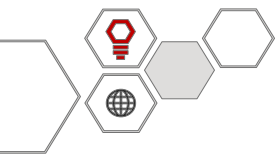


Contemporary cases involving the deportation and forcible transfer of Ukrainian children once again demonstrate the continuing relevance of these protections.

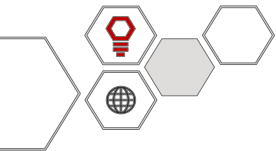
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